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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 MONDAY 9 DECEMBER, 2019

AT 2.00PM

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

MR ROBERTSON: Chief Commissioner, can I apologise for that delay? Some technical difficulties caused some delay. Can I deal with a formal tender? I tender PDF pages 9 and 10 of the call charge record document between Mr Xu and Mr Wun Chi Wong to which I asked some questions this morning.

10 THE COMMISSIONER: Yes, those records will be admitted, become Exhibit 332.

#EXH-332 – EXTRACT FROM CCRs BETWEEN TIM XU AND WUN CHI WONG FOR PERIOD 19 JAN 2015 TO 30 NOV 2015

MR ROBERTSON: Can we have Exhibit 330 at page 3 on the screen, please? Mr Xu, before lunch I asked you some questions about item
20 number 586 on the screen. But I'd now like to just draw your attention to the next one up the screen. So when we go up the screen, we're going later on in time. And so if we can just go back one page, please. And so item 585 starts towards the bottom of the screen, and can you see there it says, "Hi Jamie", do you see that one there?---Yes.

And if you just read that paragraph to yourself first. And then if we turn the page, please. And if you just read that to yourself as well. Now, is that an example of another message that you were sending to Mr Clements on Mr Huang's instructions?---Yes.
30

And so it's consistent with your recollection, is it, that throughout May of 2015, there's a number of communications between you and Mr Clements concerning the Jiangxi delegation to which we can see reference towards the top of the page?---Yes.

And do you recall whether later in May of 2015, whether you then attended on Mr Clements in his office at Sussex Street?---I'd been to his office once, yes.

40 And is it consistent with your recollection that it was around about the time that there were discussions concerning this particular delegation?---Yes.

Now, going to see Mr Clements in his office, was that your idea or was that someone else's idea?---Mr Huang's instructions.

So Mr Huang instructed you to attend on Mr Clements, is that right?---Yes.

And why did he instruct you to do that?---I don't remember exactly, but it was one of the early, as I said before, it's one of the early meetings to kind of say hello.

THE COMMISSIONER: Sorry, I couldn't quite catch that answer. Could you just repeat that?---So it was one, is one, it's during the early days we know each other, so I went into his office to say hello, that's all I remember.

10 MR ROBERTSON: But if you assume that it was in late May, you'd already said hello in the meeting of 7 April, 2015, and you'd already said hello in at least two lunches at Master Ken's, do you agree?---Not privately, not one-to-one. I, basically I was attending with Mr Huang.

But why would Mr Huang simply want you to go and see Mr Clements and say hello?---I don't remember exactly, but I, I went there because of his instruction.

20 Has Mr Huang ever instructed you to attend on anyone, be it Mr Clements or someone else, for the purposes of delivering something to them?
---Possibly.

Well, do you have a recollection of that occurring, or you're not sure?---Not sure.

Putting aside Mr Clements, do you have any recollection of delivering a package or a present or something else in a private meeting between you and that other person at which Mr Huang hasn't attended?---No.

30 Do you accept that it's at least possible that the reason that you were instructed by Mr Huang to attend on Mr Clements in his office alone was to give Mr Clements something?---It's possible.

Do you accept it's possible that during the course of that meeting that we're talking about – namely, the meeting between you and Mr Clements, but without Mr Huang – you delivered to Mr Clements an envelope?---It's possible.

And is it possible that that envelope contained cash?---It's possible.

40 Well, I'd like you to just reflect a little bit further. I've tried to take you a series of documents to try and assist you in the timing. Do you have a recollection in your mind of actually being in Mr Clements' office alone with him, in say, May or June of 2015?---Yes.

And you're quite clear in your mind that it wasn't your idea to attend, you were doing it on Mr Huang's instructions?---Yes.

Is it also clear in your mind that that was occurring around about the time that there were discussions concerning the Chinese delegation?---Yes.

Now, in the face of that, you must have some recollection of why Mr Huang wanted you to attend on Mr Clements directly and in person, rather than simply giving a telephone call or sending a message or something along those lines.---I, I might have been there to personally check with him on the arrangements. As, as you can see, I've sent a lot of messages before. Maybe at Mr Wong's request (not transcribable) to talk to him personally.

10

But why couldn't you do something like that by messages like we can see on the screen, or perhaps by telephone?---It's possibly because, as you can see, there are a lot of requests, and maybe it's better to speak to him personally, discussing all those arrangement, instead of sending these long text messages.

Do you deny that during the course of the meeting between you and Mr Clements alone in the Sussex Street office, you gave him an envelope that contained about \$10,000 in cash?---I've never taken cash to him.

20

Well, is it possible that you've given to Mr Clements an envelope the contents of which you were not aware, but may well have included cash or something else?---It's possible.

And I think you told us before that it wouldn't be your normal duty to go and organise cash, for example, is that right?---No.

And so you don't, you wouldn't have facility yourself to obtain \$10,000 out of Mr Huang's accounts or his company accounts, is that right?---That's right.

30

And so at least within your role within the business, if say \$10,000 in cash needed to be obtained, it would be someone else who would need to obtain that cash, correct?---Yes.

But I think you're accepting that it's quite possible that you did deliver an envelope to Mr Clements that had something in it, correct?---Yes, it's possible.

40

And it's quite possible that what was in that envelope was cash. Correct?---I can only say it's possible.

Similarly it's possible that on 7 April, 2015, Mr Huang gave a gift to Mr Clement. Correct?---Yes.

It's quite possible that there was an exchange of a bag between Mr Clements and Mr Huang. Correct?---Yes.

But it's your evidence that you don't recall ever knowing about the contents of any gifts that may have been given by either Mr Huang to Mr Clements or from you directly to Mr Clements. Is that your evidence?---No, I don't remember.

You don't have any recollection of anything of that kind?---No.

Do you have any recollection of some bag or other vessel being given to Mr Clements that Mr Clements then opens in your presence?---No.

10

So I think you're accepting that it was at least common for Mr Huang to give gifts to other people. Correct?---Yes.

In particular it would be common as a sign of respect to give a gift to someone who might either be a senior government official or someone connected with senior government officials. Correct?---Correct.

And maybe not just government, maybe in business as well, that would be a courtesy thing that Mr Huang might do. Correct?---Yes.

20

And you've seen that happen in your time as executive assistant. Is that right?---Yes.

But are you saying that you have no recollection of, of seeing not only a gift being handed over to Mr Clements but Mr Clements opening that gift in your presence?---No.

30

But I think you're accepting that it's possible both that Mr Huang had given something to Mr Clements on 7 April, 2015 and that you had given something to Mr Clements when you attended on him personally in the Sussex Street office. Is that right?---Yes.

THE COMMISSIONER: Mr Xu, do you remember the date that you attended alone at the ALP headquarters and saw Mr Clements, when was that?---I don't remember exact day.

Was it at or about the time that the matter concerning the Chinese delegation was being discussed and you passing on requests that the Premier assist in certain ways?---Yes.

40

Was it about that time?---Yes.

Looking at the call charge record you've been taken to on 29 May, the first entry reflects that fact that, it says, "We were told the Premier will be meeting," the named delegation and the time and the place and so on. It goes on, "Only one request. Can the Premier consider signing a cooperative agreement between," how do you pronounce that word here?---Jiangxi.

Thank you. "And Victoria," V-i-c, Victoria, "To show a friendly gesture," et cetera. This request was a bit of an ask, wasn't it, to be actually asking the Premier of another state to actually sign an agreement with the Chinese delegation. It was what we call, that was a big ask, wasn't it?---Yes.

And this is an example, wasn't it, of Mr Huang Xiangmo using his modus operandi to exert his influence here requesting in effect Mr Clements to make this happen, that is to get the Premier of Victoria to actually sign an agreement. Is that right?---Yes, Commissioner.

10

So Mr Clements was being asked to assist in this request of Mr Huang Xiangmo to execute an agreement with this foreign delegation. Is that right?---Yes.

Is that right?---Yes.

20

And was it part of Mr Huang Xiangmo's approach or pattern when he wanted to influence people to not only ask them, but to provide some form of benefit to make it worth their while?---At the time Mr Huang already donated millions of dollars to Labor Party so I think he's making that request, knowing that (not transcribable) an important donor to the party.

How long in all did you work as the executive assistant for Mr Huang Xiangmo approximately?---Approximately three and a half years.

And in that time you had the opportunity to see as his executive assistant the way in which he operated in terms of exercising his influence. Correct?---Yes.

30

And the way he did it when resident in Sydney was to use people in key positions to be able to achieve an objective. Is that right?---Yes.

And this particular entry on 29 May, 2015, as I think you agreed, is a prime example of that. Is that not right?---Yes.

40

So when you went to see Mr Clements in his office alone, it was more than likely, I think as you've said, it had something to do with that matter that's on the screen there which refers to getting the Premier to sign an agreement. Is that right?---Yes.

Right. Well, now, you wouldn't expect, would you, someone like Mr Clements to do something for nothing, especially something as big as this, to get the Premier of another state to enter into an agreement with a foreign association, you wouldn't expect him to do it for nothing, would you?---Hmm, probably not.

But from your own knowledge, it was Mr Huang Xiangmo's method, is to encourage people to do what he wanted by benefitting them in some way or other. Is that right?---Yes.

10 But are you saying you don't know what benefit there might have been for Mr Clements in going to these lengths of trying to get the Premier of Victoria to enter into an agreement?---Directly what's the benefit, I don't know. To me at the time even though I was the person sending this message, I think it's a big ask for the leader of state to do something on another state. I, I didn't know whether that was achievable, us merely sending text, whether we can make it happen or not, I have no idea. I understand that it was a big, big ask and I don't know whether it will happen or not.

Can I ask you this. When you discussed the matter in the office of Mr Clements with Mr Clements, did he indicate a willingness to do it, to try to make it happen, to get the Premier of Victoria to sign this agreement?---I know he didn't say no. I got the impression that it's probably an unusual request given to him, but he didn't say no or impossible.

20 Is this putting it too highly, he left you with the impression that he was going to give it a go?---Yep.

And after the day you spoke to him about this matter, did you get some feedback that he had in fact tried and either failed or succeeded?---I don't remember exactly but I know at the time he's spoken to Mr Bill Shorten's office several times, probably indicated that he's spoken to them and that's all I can remember.

30 MR ROBERTSON: Well, in fact in response to the message we can see on the top of the screen, he sent you a message within half an hour or so saying that he was working on it. Do you agree?---Yes.

And if we just go back one page and see that message, do you see there 584, now at 10.53am, so a little bit after the 10.21 message we went to before, he says to you, "I am working on it." Do you see that there?---Yeah.

40 So your understanding was that Mr Clements was doing his best to comply with and to carry out the request that you had given on behalf of Mr Huang. Correct?---Yes.

Is it fair to say that at least as at May of 2015, as you understood it, the relationship between Mr Clements and Mr Huang was transactional in nature, in other words, Mr Huang wanted things, such as assistance with the Jiangxi delegation, but Mr Clements wanted things as well?---I wouldn't say directly, possibly.

Well, it may not have been said in so many words, "I will help you with your request if you do X," but it was at least in a context where they were cultivating each other, would you agree?---I agree.

So Mr Huang was attempting to cultivate Mr Clements as a very senior person within the Labor Party, correct?---Yes.

10 And Mr Clements was seeking to cultivate Mr Huang as someone who could be a very substantial donor and had in the past been a substantial donor to the Labor Party, correct?---Correct.

And that was at least part of the context of the relationship between those two gentlemen as you understood it, correct?---Yes.

Just while we're on that page, if you have a look at item 583, we see you sending a message to Mr Clements referring to "departure FBO", you see that there?---Yes.

20 And that FBO stands for Field Base Office, is that right?---Yeah.

And so that's a location from which a private plane would depart, is that right?---Yes.

And so do we take it from that that around July of 2015, Mr Clements travelled on a private plane organised by either you or perhaps by Mr Gary Wong?---Yes.

30 And was that the only time that that occurred, or did it happen on more than one occasion?---I think possibly more than one occasion.

So is it right then that on a number of occasions, Mr Clements would have travelled on a private plane organised by or on behalf of Mr Huang?---Yes.

And what were the purpose of journeys of that kind?---Probably meetings, and sometimes just entertainment. Sometimes there's a tennis match in Melbourne (not transcribable)

40 And so there were occasions while you were executive assistant and while Mr Clements was the General Secretary of the Labor Party that he had access to a private plane to travel somewhere for meetings but also perhaps for social events as well, is that right?---Yes.

Now Mr Xu, you're aware, I take it, that Mr Clements has given evidence to this Commission concerning being given a wine box that had some cash in it by Mr Huang.---Yes.

Were you present at or around the time at which any wine box was given by Mr Huang to Mr Clements?---Yes, I was translating for them on that day.

So could you just explain to us how that came about? So this is occurring at the Mosman premises of Mr Huang, is that right?---Yes.

10 And what was the occasion on which Mr Clements was at Mr Huang's property?---I think at the time he just lost, lost his job, and so he went to visit Mr Huang. And we were having a meeting in the tearoom, I think, and the three of us were having conversation. And probably close to the end of the meeting, Mr Huang ask Mr Clements to step out of the room. They, I think they went to his bedroom. And they returned to the, the tearoom probably a couple of minutes, a few minutes later. And Mr Clements was carrying a wine box.

And was that wine box opened in your presence?---No.

Did you know what was in the wine box?---No.

Did you think it was wine?---I assumed it's wine.

20 You assumed that it was wine in the wine box?---Yep. Yes.

When did you first find out that Mr Clements says that there was money in the wine box rather than wine?---When I first find out, when he left the property, I, I think I handed over the box to him, it was a bit light, I remember it was a bit lighter. And at the time I thought it might be, might not be wine in there.

30 So just to take us in stages, who was it that invited Mr Clements to Mr Huang's property on this occasion?---Oh, Mr Huang probably asked me to, maybe, maybe Mr Clements request the meeting, I can't remember, but probably Mr Huang invited him over, to come over.

And at some point in time, the three of you were in the tearoom, is that right?---Yes.

And that's pretty standard before a lunch or a dinner, the first place you will congregate in is the tearoom to have some tea, is that right?---Yes.

40 Do you recall whether it was a lunch or a dinner?---Lunch, I think it's lunch.

And are you saying that during the course of the initial time in the tearoom, Mr Clements and Mr Huang left you from the tearoom and were elsewhere?---Yes.

And did Mr Huang ask you to stay in the tearoom, or did you just decide to stay in the tearoom?---He asked me to stay.

Can you recall what words that he used?---I think he probably just used a hand gesture to tell me to, to stay in the room, something like that.

Was it unusual for Mr Huang to spend time with Mr Clements alone and without the benefit of you or someone else as a translator, in your experience?---It is unusual.

10 Did Mr Huang explain why he didn't want to come with you into, why he didn't want you to come into the separate room?---He didn't say anything.

Other than you and Mr Clements, who else was present in the tearoom before Mr Clements and Huang departed?---I don't think there was anyone else?

So it was just a private lunch or dinner between Mr Huang, Mr Clements and you there as the translator, is that right?---Yes.

20 And then Mr Clements and Mr Huang go into a separate room, correct?
---Yes.

And you can't see what's going on in that room, is that right?---Yes.

But ultimately they come back and Mr Clements has a wine box in his hands, is that right?---Yes.

And did you say that you eventually took possession of that wine box?---I briefly handed it over to him when, when he left.

30 I just want to try and understand that. So, Mr Clements and Mr Huang go into the separate room, Mr Clements comes back with the wine box. Is there then any discussion as to what's just happened in the separate room?
---No.

And then how is it that you had possession of the wine box for some period of time.---When they left, probably Mr Clements putting on his, on his shoes and I was walking him out. I think when he just say outside, I probably pick up the wine box and hand it over to him as we walked out the property.

40 And you're aware that Mr Clements says that that box contained something like \$35,000 in cash?---Didn't say it, no one said anything about the content of the wine box on the day.

When did you first find out that the wine box may have contained cash rather than wine?---Some stage later. I, I don't remember.

To your knowledge did Mr Huang have the practice of keeping substantial amounts of money in cash at his Mosman residence?---I think, I think I possibly know that but I, I don't know exactly what was the arrangement.

Well, when you say you possibly know that, how do you possibly know that?---A lot of Chinese wealthy people live in the area, they tend to keep a lot of cash on the property and when I was working there at the time, one of the property owned by one of the neighbours, the Chinese neighbour was burgled by someone and I heard that a lot of cash were taken and at the time that people were saying a lot of Chinese wealthy people kept, tend to kept a lot, keep a lot of cash on their property.

And are you saying there was no discussion after this series of events in which Clements and Mr Huang leave the room and then come back with the wine box as to what happened in the separate room?---No.

No discussion as to what was in the wine box?---No.

Have you had any discussions with Mr Clements or anyone else since about what was in the wine box?---Mr Clements might have mentioned something to me long after, long after that day.

THE COMMISSIONER: Well, did he?---I think he might have.

Well, he either did or he didn't. What is the position here? He said something, did he?---I think he said something.

Well, doing the best you can, what was the essence of what he said or the message?---He mentioned there was cash in the box.

MR ROBERTSON: And did you say before, the context of this particular lunch or dinner was difficulties that Mr Clements was having in his capacity as general secretary, is that right? I think you said he might have lost his job but at very least - - ?---Oh, yes, yes.

- - - there were difficulties that he was having in that capacity, is that right?
---Yes.

And is it consistent that at least part of the discussions during the course of that lunch concerned the situation that Mr Clements was in?---Yes.

And does it follow from that that part of the discussion was Mr Huang offering to assist Mr Clements?---Yes.

And so is that consistent with what you said before, what I described as the transactional arrangement or transactional relationship where Mr Huang is attempting to assist Mr Clements but he is expecting something in return from Mr Clements?---Yes.

And is that consistent with Mr Huang's modus operandi, as you understood it, that he would seek to assist people, not just Mr Clements but others, but would expect them to assist him in return?---Yes.

Did that sort of approach to business and politics and perhaps life make you feel uncomfortable as Mr Huang's executive assistant?---More or less, yes.

10 And was that part of the context in which you ultimately decided to no longer work for Mr Huang and to move on to other forms of employment?
---It was part of the reason, yes.

THE COMMISSIONER: Was this a decision you reached of your own accord?---Yes.

To leave, to finish your employment or engagement with Mr Huang Xiangmo?---Yes.

20 Was there any disaffection, if you know what I'm referring to, any disaffection between you and him at the time you decided to leave and did leave?---No.

Do I understand that you, from what you've said, decided that you would leave because you felt uncomfortable about Mr Huang's approach to things or his practices, or was it something else?---I think a lot of factors. His, his own approach is part of the reasons.

30 Sorry, part of?---His own approach on dealing with matters like this, arranging, making requests to officials, you know, is uncomfortable for me to act on his request sometimes.

Why was it difficult for you?---Well, sometimes I feel like he make request without knowing, without understanding of how things operate, for example asking the leader of one state make things happen in other state, I, I, I found a bit odd from time to time there when he made requests like that.

40 Are you saying, and don't let me put words in your mouth, but that you were concerned about the ethical content of what Mr Huang was doing from time to time?---Yes.

Is that the reason you were uncomfortable?---Yes, and also, you know, reading, learning about the story from the newspaper also make me feel uncomfortable, things that happened without my knowledge when I was working there, other arrangement with other politician, things like that.

I see. Thank you.

MR ROBERTSON: When you're referring to other politicians, you're referring for example to Mr Dastyari. Is that right?---Yes.

THE COMMISSIONER: That is the newspaper articles about Mr Dastyari. Is that what you're referring to or - - -?---Yes, his personal views and things like that.

MR ROBERTSON: And so the allegations that Mr Huang had paid for certain legal and other expenses of Mr Dastyari. Is that right?---Yes.

10

You said a moment ago part of what you were concerned about what Mr Huang not understanding I think perhaps how politics works in Australia. Is that what you meant by that?---That's what, what I mean.

And so perhaps assuming that the way politics might work in Australia is similar to the way in which it might operate in China. Is that right?---Yes.

20

And that conduct that maybe either considered acceptable or at least tolerated in China would not necessarily be considered to be appropriate in this country. Is that right?---Yes.

That's the examination, Chief Commissioner.

THE COMMISSIONER: Yes. All right. Is there any application to cross-examine the witness? No application. Any reason why Mr Xu should not be excused? Sorry, Mr Watson, I'll come to you in a moment.

MR ROBERTSON: I don't think so, no.

30

THE COMMISSIONER: No. Mr Watson, have you got anything you want to raise?

MR G. WATSON: No. I was about to rise to say I didn't wish to ask Mr Xu anything.

THE COMMISSIONER: Yes, thank you.

40

MR ROBERTSON: Can I actually suggest that he not be formally released, just in case something arises.

THE COMMISSIONER: Okay.

MR ROBERTSON: I doubt that it will, but just for abundant caution that will make life a little bit easier.

THE COMMISSIONER: All right. Mr Xu, you'll be informed in due course by the Commission if you're no longer required for any other purpose, but I'll have to leave the summons outstanding for the moment, but

otherwise you're excused today. Thank you for your attendance.---Thank you, Commissioner.

THE WITNESS WITHDREW

[2.54pm]

MR ROBERTSON: That's all I have.

10 THE COMMISSIONER: Does that complete today's evidence?

MR ROBERTSON: That's all for today. 10.00am tomorrow would be my suggestion.

THE COMMISSIONER: Very well. I'll adjourn till 10.00am tomorrow. I'll adjourn.

AT 2.54PM THE MATTER WAS ADJOURNED ACCORDINGLY

20

[2.54pm]