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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 THURSDAY 10 OCTOBER, 2019

AT 2.00PM

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MR ROBERTSON: Chief Commissioner, just in terms of timetabling matters. In light of various events that have arisen, obviously enough, I won't be calling Mr Wong today. I also don't think I'm in a position to call Mr Wong this week because a number of counsel have indicated that they intend to seek leave to cross-examine Mr Clements. There's plainly enough some documents that should be made available to those counsel, such as, for
10 example, the documents that are subject of the, that have been marked for identification, including a couple of the documents that I have shown Mr Clements this afternoon. That means that at very best it would be possible to start with Mr Wong tomorrow for a brief period but certainly wouldn't be possible to finish with him. So in those circumstances my submission is the appropriate course is that Mr Wong will need to go over to another date. Plainly enough that is undesirable but it may be necessary for me to recall more than one witness because the Commission has today heard evidence of course that is inconsistent with certain evidence that's been given by other
20 witnesses, and it may be necessary, as a matter of fairness, something that I want to reflect on, whether or not additional witnesses need to be called. So in my submission, the Commission should now indicate that Mr Wong won't be called this week and that his evidence will need to be adjourned to a date to be fixed. As I understand it, the Commission can't continue into next week due to, at least in this investigation, due to other commitments.

THE COMMISSIONER: That's right.

MR ROBERTSON: Perhaps it can simply be indicated at this point that it will be a date to be fixed and I'll endeavour to do the diary gymnastics that
30 are necessary overnight with a view of providing at least a tentative indication tomorrow.

THE COMMISSIONER: Yes. Very good. Well, I think, Mr Robertson. The programming of the public inquiry has to have some flexibility, in particular, to ensure that various parties have the opportunity to put to witnesses that which they're entitled to, and for that purpose I think there seems to be little point in having Mr Wong come for an hour or so tomorrow and then return on another day. So we will consider further
40 hearing dates that may be allocated both for the purpose of taking Mr Wong's evidence and for other purposes.

MR ROBERTSON: I've had some preliminary discussions with my learned friend Mr Hale, and I'll do my best to meet various people's availability but I am limited, plainly enough, in the way in which I can do that in light of, in large part, other commitments of this Commission.

THE COMMISSIONER: So, in relation to tomorrow, what do you propose?

MR ROBERTSON: What I propose is that any cross-examination of Mr Clements and any re-examination and any clarification questions by me.

THE COMMISSIONER: Very good.

MR ROBERTSON: It may be possible for some cross-examination to start this afternoon, there may be some time because I don't anticipate continuing until 4.00pm, but in the event that any counsel who seeks leave to cross-examine wishes to start tomorrow rather than today, I think that would be an appropriate course to permit them to have overnight.

THE COMMISSIONER: Yes, okay.

MR ROBERTSON: But perhaps that's a matter than can be dealt with after I'm finished my examination.

THE COMMISSIONER: Well, we'll sort that out.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Yes. Mr Lawrence.

MR LAWRENCE: Thank you, Chief Commissioner. There is a couple of issues that I would like to raise in respect of the phone issue.

THE COMMISSIONER: Yes.

MR LAWRENCE: The first is that I am advised that order that was made yesterday was breached shortly after the Commission adjourned and that the investigator who sits at the bar table to my right, I am told, removed the phone from the drawer and was walking around with it. Those who instruct me, I understand, spoke with him about that and Counsel Assisting I think took some steps and it was ultimately returned to the drawer. I thought that appropriate to put on the record.

THE COMMISSIONER: Well, the position is, as I understand it, it was initially, it was to be detained and held until 10.15. You asked for an amendment until further order.

MR LAWRENCE: Yes.

THE COMMISSIONER: And there may have been some misunderstanding on the investigator's part that the 10.15 was not the required time for it to be brought into the hearing room today. Be that as it may it has been under the custody of the Commission throughout and there's been no security breach in that regard.

MR ROBERTSON: And can I assist by indicating this. Consistent with your directions, the phone itself was put in a sealed envelope with a signature placed across the seal, and immediately when I saw the envelope I had a look at the signature and the seal and I couldn't see it having been unsealed, as it were. So the phone may have been moved in an envelope but so far as at least I can see, no one has accessed the telephone.

10 THE COMMISSIONER: Thank you for that. And, Mr Robertson, I understand it is presently now back in the locked facility it was in overnight, is that right?

MR ROBERTSON: That's so.

THE COMMISSIONER: Right, thank you.

MR LAWRENCE: Yes, so moving from the earlier orders to the proposed orders - - -

20 THE COMMISSIONER: Yes, just pardon me a moment. I left my copy in Chambers. Could I have another copy of the directions, please? Thank you very much. Yes.

MR LAWRENCE: Chief Commissioner, you will see that at proposed order 1A(3), there's the name Wun Chi Wong.

THE COMMISSIONER: Yes.

MR LAWRENCE: We don't understand the relevance of that.

30 THE COMMISSIONER: Well, relevance is really not a matter that can be determined, as you would appreciate, by reference to pleadings and the like as in ordinary litigation. Relevance is, has to be and it is, a very elastic concept in an investigation inquiry. So that is not determinative of the matter you're raising. It may be at the end of the day it has no relevance, but I just can't tell at the moment.

MR LAWRENCE: Yes.

40 THE COMMISSIONER: Whether it may have relevance, does have relevance, or has no relevance, unable to determine that issue at this present time.

MR LAWRENCE: Yes, it's been - - -

THE COMMISSIONER: But it's open to you of course to raise it in a later stage.

MR LAWRENCE: Certainly. It's been a live issue in the proceedings in this respect as to the forensic purpose of handing over the phone with the privileged communications on it. And I suppose a subset of that is the forensic purpose of messages in respect of Mr Wun Chi Wong, and I would ask that Counsel Assisting explain that, so that we can respond to it.

10 THE COMMISSIONER: No, he's not required to, Mr – oh, look, in terms of any of these communications that are identified, Mr Lawrence, in 1A, it may or may not be at the end of the day, as I've said, any requirement for the material to find its way into evidence. We just simply can't determine in advance, and I'm not going to draw on, require Counsel Assisting to address the matter you've raised, simply because I don't consider it appropriate to do so at this point anyway, but as I've indicated to you a moment ago, it's always open to you to raise the point at some later stage, if we know a bit more about the material.

20 MR LAWRENCE: Certainly, thank you, Chief Commissioner. And lastly, it was ordered yesterday that we be provided with a certificate as to compliance by the Commission with the matters previously ordered.

THE COMMISSIONER: Yes.

MR LAWRENCE: Now, we know that one of them has been breached, but we would still ask for that certificate.

THE COMMISSIONER: All right. We'll attend to that, yes. All right.

30 MR ROBERTSON: Can I just say in respect of the second matter than my learned friend raises he should with respect reflect on what the Full Court of the Federal Court said in MFI, sorry, not MFI, MF1, the National Crime Authority, volume 33, Federal Court Reports 449, starting at page 461 and continuing on to 462, and referred to by the Court of Appeal to the Supreme Court of NSW in A, and the Independent Commission Against Corruption, which is a decision from a few years ago. I'll give my friend the citation if he requires it.

THE COMMISSIONER: That's in relation to the issue of?

40 MR ROBERTSON: Of relevance.

THE COMMISSIONER: Of relevance.

MR ROBERTSON: And how one assesses relevance in connection with matters such as notices to produce before an investigative body, as distinct from using phrases like "legitimate forensic purpose" of the kind that would be used on an objection for a subpoena in court, for example.

THE COMMISSIONER: There is a decision of then Justice Ellicott, I remember, of the Federal Court. I don't know if that's one of the cases you're referring to, but there is a line of cases in that area.

MR ROBERTSON: Quite so.

MR MOSES: I think it's your most recent textbook, Chief Commissioner.

THE COMMISSIONER: What's that?

10

MR MOSES: Those cases are in your most recent textbook on production agencies.

THE COMMISSIONER: Oh, I see.

MR ROBERTSON: I have a copy right here. I'm going to give it to Mr Moses.

MR MOSES: Yes, I'll have mine signed at the end of the day.

20

MR LAWRENCE: I'm not going to admit to whether I own a copy or not.

THE COMMISSIONER: You won't be disqualified if you haven't.

MR LAWRENCE: There was a final issue in respect of the certificate – oh, yes, sorry, the proposed direction, there was discussion between you, Commissioner, and Counsel Assisting as to a proposal that we who represent Mr Clements be given first access to the report, and that was a proposal that I think emerged after the drafting of this draft direction.

30

THE COMMISSIONER: Yes, right, it did.

MR LAWRENCE: So I would certainly, in the event that the order is made, endorse that proposal.

THE COMMISSIONER: Certainly. Very - - -

MR LAWRENCE: Though we still maintain our overall opposition.

40

THE COMMISSIONER: Yes, I understand.

MR ROBERTSON: On that approach, can I simply say this, and this might resolve the issue - - -

THE COMMISSIONER: Yes.

MR ROBERTSON: I have made some further enquiries with the technical people during the course of the luncheon adjournment. The objectives that I

seek to achieve for the purpose of this investigation would be sufficiently achieved if the particular WhatsApp groups to which my learned friend has drawn attention to, the ones that seem to have communications on them, were deleted by Mr Clements in the presence of a member of the Commission staff. If that's the extent of the privilege claim, which it appears to be, then that resolves the issue.

10 THE COMMISSIONER: Well, certainly, Mr Lawrence, that's a course, it's a practical course which would certainly protect privilege. It may be that you wish to consider that. It seems to me that if you if want to have the matter, that is the matter of privilege that you raised absolutely secured then the practical course suggested by Counsel Assisting would achieve that purpose. It would be an exercise which will be carried out by a senior member of staff with you, the instructing solicitor, present and that thereby may, well, has a practical effect too of being able to give the phone back to Mr Clements once the other material that's been identified and paragraph 1A has been removed. So if you could consider that and let Counsel Assisting know in due course.

20 MR LAWRENCE: Yes, I'll certainly consider that. It doesn't of course address our broader objection which I articulated yesterday, which was as to the scope of the downloading of the information on any proposed course of action in our submission is objectionable but also there will remain an issue as to whether any data deleted is actually deleted and whether it can still be retrieved.

THE COMMISSIONER: But that's not concerning privilege any longer, if privilege is, you're permitted to remove it.

30 MR LAWRENCE: Yes, but our understanding is that even if it's deleted it may still be retrievable in what is downloaded. I'd say that first, but that's a technical issue of course.

THE COMMISSIONER: Well, you say may, but I think we've earlier discussed the reality is that it would be encrypted, it would be secured, it would not be available for anyone to be able to, even if they got their hands on it, to be able to utilise it. Once it's encrypted that's the end of the line.

40 MR LAWRENCE: Yes. We don't accept that though.

THE COMMISSIONER: Well, it's a matter for you entirely, Mr Lawrence, but if you want to - - -

MR LAWRENCE: There's people whose jobs it is to break codes and encryptions.

THE COMMISSIONER: If you want to continue the argument - - -

MR LAWRENCE: We certainly do.

THE COMMISSIONER: - - - to save privilege, well, we'll continue on where we left off.

MR LAWRENCE: Yes.

THE COMMISSIONER: But it seems to me that it would both be in the public interest as well as your client's interest if the proposal suggested by Counsel Assisting be seriously considered as the way to obviate - - -

MR LAWRENCE: Certainly it will be.

THE COMMISSIONER: - - - the costs and delay, not to mention the fact that Mr Clements might be without his phone for a good long time, which we wouldn't want to happen.

MR LAWRENCE: Yes. I note too that there is emails on the phone too which might also be privileged, also that the destruction of documents is not always a course of action that people wish to take.

THE COMMISSIONER: Sure. Anyway, we'll leave it at that.

MR LAWRENCE: And I think Mr Clements wishes to communicate something to Mr Neilson.

THE WITNESS: No, it's okay.

MR LAWRENCE: No. Okay.

THE COMMISSIONER: All right. Yes.

MR ROBERTSON: Mr Clements, I take it from what you told us this morning that it follows that you deny that you told anyone in the lead-up to the 9 April, 2015 that you were expecting a large amount of money to come in. Is that right?---I'd remember something like that, yes.

So you deny saying anything of that kind to anyone within the Sussex Street office. Is that right?---Yes.

And so is it right to say that from your perspective you had no knowledge of a substantial amount of money hitting the Sussex Street office in April of 2015 until sometime after April of 2015. Is that right?---That's my recollection, yes.

Well, are you at least quite clear in your mind that you didn't know about that matter sometime in March or April, by which I mean you weren't told

by anyone that substantial amounts of money was coming in and you weren't told by anyone that substantial amounts of money had come in?
---I've got no recollection of being told that and I would recall that.

I just want to be quite clear about what you mean in the way in which you phrased that. I think you're saying you are denying the proposition, you're denying the fact that anyone told you that a substantial amount of money was coming in and was expected to be received sometime in April. Is that fair?---My answer to that question is, I have no recollection of that, and that is something I would recall.

I'm just trying to understand why you're qualifying that in that fashion. I just want to be very clear about what your evidence is because, as you'll appreciate, different people have sat in the very seat that you're sitting and have given a different version of events. So I think you're saying, as best as you can possibly assess, based on your recollection and even based in documents that you might have seen in preparation for this examination, your position is you weren't told by anyone that a substantial amount of money was going to be received in about April of 2015. Is that right?
---That's correct.

And you're quite clear in your mind that during the meeting with Mr Huang and with Mr Xu on what appears to be 7 April, 2015, you were not given a bag of cash?---I was not.

You're clear about that on your oath, is that right?---Yes.

And I take it from all of that you have no recollection of saying to anyone, "I'm expecting a whole lot of money to come in in April of 2015." Is that right?---That's correct.

And in terms of the meeting itself, your best recollection is that it was about organising a private dinner between Mr Huang and Mr Shorten. Is that right?---That's correct.

And a dinner between those two individuals in fact occurred, is that right?
---That's correct.

And that was a dinner I think at Master Ken Seafood Restaurant, is that right?---Yes.

Were there any other topics of discussion, as best you can now recall, in the meeting of 7 April, 2015?---Not, not that I can recall.

Was there any talk, for example, about Mr Huang wanting some assistance from you with some of your Victorian Labor Party colleagues?---So I don't recall that being discussed on 7 April but that became clear. I do know that that's what he wanted from Bill Shorten when we had dinner.

So you recall, do you, that around about that point in time Mr Huang was interested in some assistance in relation to some matters in Victoria. Is that right?---Yeah. He, he, he, he wanted help getting a meeting between Dan Andrews and a delegation from Jiangxi. That's, I recall that being discussed at the meeting, at the, at the dinner.

So you recall that being discussed at the dinner?---Yes.

10 You don't specifically recall it being discussed at the meeting with you before the dinner. Is that right?---That's right, yep.

But I think you're saying it's possible that it was mentioned at least in passing. Is that right?---That's possible, yeah.

Because at least on your account, the purpose of the meeting of 7 April, or at least the topic matter of discussion, the key topic matter of discussion on 7 April was to organise the meeting with Mr Shorten, correct?---Yes, yes.

20 And at some point in time, perhaps during the dinner itself or perhaps beforehand, you found out that at least one of the reasons why Mr Huang wanted to meet with Mr Shorten was to discuss matters, discuss the Victorian matters that you and I just discussed a moment ago. Is that right? ---I recall, Tim Xu asking, on behalf of Mr Huang, translating that he had a delegation coming and would Mr Shorten be able to help him get a meeting with Dan Andrews.

Have you read Mr Xu's evidence that was given before this Commission a few days ago?---Yes.

30 Was it only after you had read that evidence that you had a recollection of matters to do with Melbourne, sorry, matters to do with Victorian matters of the kind you just identified?---No. That's in my phone as well.

Well, I'm just trying to be clear as to where this recollection arose. So before Mr Xu was in the witness box - - -?---Oh, no, no, no, no, no.

Did you have an independent recollection of at least what happened during the dinner with Mr Shorten?---Yes, yes.

40 And that recollection included Mr Huang wanting assistance in relation to what I'll call the Victorian issues that you discussed. Is that right?---Yes.

And that, I take it, has been fortified by your reading of Mr Xu's transcript from the other day. Is that right?---And, and, and the fact that when I look at my phone there are messages about the fact that Shorten hasn't delivered on that and could I do it.

And so there's at least two ways in which your recollection that you had before Mr Xu's evidence has been fortified. One is Mr Xu's evidence itself but the second is your review of your own messages around about that period of time and even after the dinner. Is that right?---Yes, yes.

10 And when you're referring to that last set of messages, are you saying those are messages that happened after the dinner where Mr Huang is indicating, well, he had this dinner, what's going on, words to that effect?---Oh, I, I think it was, I, I, I can't remember exactly what the message says but I know that I was the one that eventually fixed the dinner, the meeting with the Jiangxi delegation.

So there was inquiries from Mr Huang Xiangmo after the dinner with Mr Shorten concerning this issue. Is that right?---I don't know. I don't know what, if there was contact or what, I just recall, I recall when they asked, the reason I recall it is because when they asked at the dinner I remember thinking to myself, he's not going to do that and - - -

20 But I just want to be clear what we're now talking about. So we have the dinner and then you recall there being some contact from Mr Huang effectively saying well, how is the matter that we discussed at the dinner with Mr Shorten going. Is that right?---I don't, I can't, I don't, I can't recall exactly what the message said but I know the impression of it and it is that, you know, can I fix this thing or Mr Shorten hasn't fixed it or - - -

It was some sort of communication regarding the matter, the detail you can't now recall?---Yes, yes.

30 Can you remember the form of communication it was?---It was SMS.

And was that an SMS directly from Mr Huang or via someone else?
---No, from Mr Xu.

So you have a recollection the details of which are not clear in your mind, but it's some contact from Mr Xu after the dinner with Mr Shorten that raised the very issue that you and Mr Huang, through Mr Xu, had discussed with Mr Shorten at the dinner with Mr Shorten. Is that right?---Yes.

40 Other than you, Mr Shorten and Mr Xu, who was present at that dinner?
---I know there was staff there, Mr Shorten's staff, but they weren't in the room, they were in a separate room.

So at least in the room at the time that you're talking business as it were, we've got you, Mr Huang, Mr Xu and Mr Clements. Is that right?---Yeah.

Anyone else that you can recall?---Not that I can recall.

But you're saying that one or more of Mr Shorten's staff may well have accompanied him at least to the venue but not necessarily the room. Is that right?---Okay. So Master Ken's is a private room restaurant, so you eat in a little private room, depending on how - - -

10 You've anticipated my next question. You've anticipated my next question. Keep going. Yes?---And then next to that room is a tea room which I talked about before, which is another private room, and I think that his staff were sitting in the, no, I recall his staff were sitting in the tea room because I sent, actually Mr Shorten sent some glasses of Grange in for them to enjoy.

And so, and I think this is essentially what you've just said, Master Ken's isn't like in a sense an ordinary restaurant that has a large floor area and perhaps might have a series of VIP rooms or private rooms, it's a principally private room restaurant. Is that right?---It's an only private room restaurant.

20 Only private room, plus a couple of other ante rooms, maybe a tea room, something along those lines?---Yeah. So when, yeah, so it's got the ante rooms so, you know, in the tradition you come in, you have a cup of tea, maybe a couple of peanuts and then you move into the private room for dinner.

When was the first time that you were told by anyone that there may have been something that went awry or some cause for suspicion in connection with the Chinese Friends of Labor event on 12 March, 2015?---Oh, when Ernest Wong said it to me.

30 And was that at the meeting you told us about yesterday of the, I think 19 July, 2017, according to my note?---That's correct, yeah.

So is that, are you saying that's the first time that you had any inkling from anyone that something may well have been awry?---Yes.

No one came to you in 2015 to tell you that \$100,000 in cash had been received and there might be something awry about that?---No. I don't recall that at all, and I, and I do very strongly recall that when Mr Wong told me, Mr Wong told me about it on 19 July that I had no idea what he was talking about.

40 And is it your best recollection that you didn't even know about the \$100,000 in cash until you were first told about it when you were in a private hearing before this Commission?---That's the first time I recall. Oh, sorry, about, sorry, no. What I said was that, that it was banked on 9 April.

I see. So you were aware of the \$100,000 itself before the private hearing before this Commission. Is that right?---I was aware of the allegation of a bag of cash. I can't recall whether he said it was \$100,000.

Okay. Well, let's unpack that. So is it right that the first time that you knew anything about an allegation about a bag of cash being delivered was 19 July, 2017?---That's correct.

But what about the pure matter of the depositing of the \$100,000 in cash, was that something that you only found out about from this Commission or is it possible that you were told that the \$100,000 in cash had been received, although not necessarily accompanying with it, something's gone awry with that money or in connection with that money?---I, I don't recall that.

10

So you don't recall being told about the \$100,000 in cash, be it banked on 9 April, 12 March, whatever, until you were told by this Commission that that was part of the allegation?---Yes.

But I suppose you accept that it may have been something that at least appeared in a report that you might have seen, for example, in the Finance Committee, is that right?---Yeah, look, it, it may have appeared in, in a Finance Committee report.

20

It may well have been referred to in a meeting of the Fundraising Committee or fundraising group, is that right?---I think that's very unlikely.

But one way or the other, you don't recall ever either seeing a document or being told by anyone in advance of being at a private hearing here, that it was \$100,000 in cash that had been received in connection with the Chinese Friends of Labor event, is that right?---That's my recollection, yes.

30

At that point in time, you knew about a bag of cash, is that right?---I knew about a bag of cash on 19 July, 2017, yep.

And you knew about that because Mr Wong had told you that?---That's right.

But that's the first time you heard about that particular allegation, have I got that right?---Yes.

40

In terms of the Finance Committee that I just asked about, that sits as a fairly formal committee, I take it, that makes recommendations to the Administrative Committee, is that right?---It sits as a committee, is, well, I mean, it's formal in the sense that there's agenda, there's minutes, and there's often, you know, financial reports. And it, and it – so it's a formal meeting in the sense that it's open, it abides by the agenda, someone takes minutes, and those minutes are adopted.

And what about the fundraising committee or group? Is that a group that follows similar procedures, including has minutes?---No, it was just an ad hoc group.

So if one wanted to see things like agendas or meeting minutes and things like that, would they exist for the fundraising committee or group?---Oh, very, very, very unlikely.

You have no recollection of seeing things of that kind?---No.

But plainly enough, you've seen agendas, reports, and minutes in relation to the Finance Committee, is that right?---Yes.

10 Moving then to 19 July, 2017, you told us yesterday that it was Mr Wong who initiated that communication, is that right?---Yes.

I suppose I should just ask, I'm sorry, I was asking you about the meeting, or sorry, the dinner with Mr Shorten and others, and you told us about some communications that happened after that, after that event, which I think you said were probably by text message, is that right?---You're asking me about communications with Tim Xu?

20 Yes, Mr Xu saying, "We've had the dinner. What's going on with respect to the matter that we discussed?"---Look, but you, you, you're, you're – look, there's messages in relation to it, the, the, the tenor of which I can't recall.

And were those messages part of the ones that you printed out and provided yesterday?---I don't think – no, the only ones I gave – but you, they're, they're, they're in my phone, I'm happy to print it out for you.

30 Back to 19 July, 2017. Mr Wong organises the meeting, and you have the meeting at a Starbucks, I think you said, is that right?---Yes.

And did you tell us yesterday the extent to which you can recall what was said by you and what was said by Mr Wong during the course of that particular meeting?---Yes.

Was there anyone else present at that particular meeting?---No.

40 After 19 July, 2017, did you have any other communications with Mr Wong, whether that be in person, by text message, or otherwise, where you discussed any matter associated with the Electoral Commission's investigation, this Commission's investigation, or the Chinese Friends of Labor event more generally?---It's a very good question. Can you define "discussion" for me?

Well, any contact during the course of which – be that an oral communication, a written communication, or otherwise – in which Mr Wong either expressly or impliedly sought to communicate any matter to you in connection with the matters I've just identified.---Yes.

When was the first of those occasions after 19 July, 2017?---After, it was in June, 26 June, I believe, so almost exactly a month after my private hearing, 2018. In 2018? 2018.

So just to be clear, we're now, we've moved – the first one was in July, 2017?---Yep.

The one at the Starbucks?---Yep.

10 And we're now moving to 2018, is that right?---That's correct.

And you said it might be 26 June?---I, I think it's 26 June. It's in the WhatsApp messages.

Is it possible that it was the 27th?---Could have been.

20 And can you explain what happened on that occasion?---Well, he – on the day or the day after I got my summons from the ICAC, I started receiving phone calls from him, I think, or maybe him attempting to talk to me. I told him that I couldn't talk, that I was sick in bed and then I, I think there was a two week period or something where I just sort of brushed him and then I did my compulsory interview and then I went to China twice and I continued to brush him and then I heard through the grapevine that he was considering running as an independent against the Labor Party and he was continuing to try to wanting to meet with me. So I agreed to meet with him at a café in Kent Street in Sydney.

30 So let's try and unpack that a little bit. The summons that you received to appear in the compulsory examination was served on you on 16 May, 2018, just to help give you your bearings, and you came here on 25 May, 2018. I should indicate, Chief Commissioner, during the evening session yesterday you made a variation to the section 112 direction to allow me to say what I've just said so I don't need a further variation at this point.

THE COMMISSIONER: Yes.

40 MR ROBERTSON: And so are you saying that there was effectively radio silence between 19 July, 2017, and when you received the summons to appear in private hearing?---No, that's not - - -

Is that not right?---That's not correct. No, I'm not saying that.

So when, if we start with 19 July, 2017, the discussion at the Starbucks, when was the next communication with Mr Wong about any subject at the moment?---Oh, look, I think it was, it was the start of 2018 or maybe the end of 2017. I think it was the start of 2018.

And did that communication have anything to do with the Chinese Friends of Labor event of 2015 or any investigation by the Electoral Commission or this Commission?---No.

And do I take it then that even after the start of 2018 there was a couple of other communications?---Yes.

What were those - - -?---In fact, in, in the weeks before there, there were communications.

10

And did they have anything to do with the matters I have mentioned, the investigation?---No, absolutely not. No. He, he, after, between 19 July, 2017 and when I saw him on the 27th, if you say it was, of June 2018, he never mentioned any of it ever again.

Well, in those communications, in those opportunities, didn't you at least say, "You dropped a bit of a bombshell to me on 19 July, 2017. What's been going on"?---No.

20 You didn't discuss the matter at all?---No.

Well, surely you were interested in that matter?---(not transcribable)

The evidence you gave yesterday, at least as I understood it, was that it came as a shock or a surprise, the allegation that was being communicated to you with Mr Wong?---Yes.

It's an allegation that concerned you and concerned you directly, correct? ---Absolutely.

30

It's an allegation that at that time you regarded to be false, correct? ---Absolutely.

A matter you still regard to be false?---Absolutely.

40

Well, surely you checked in with Mr Wong or someone to say, "Well, what's going on about this? I don't want to be sitting in a public inquiry," for example, "where it's been alleged that I had something to do with a matter of potential illegality," agreed?---So my, I, this actually, the, the events of 19 July, coupled with what had happened just before that and the fact that my father almost died a week or two afterwards led me to a position by the end of July where for the first time in my life I consulted a psychologist, and his advice to me was that I had to stop investigating myself or I was going to have a nervous breakdown. And so I stopped talking, I didn't talk to anyone about it.

Well, you didn't talk to anyone at all in the wake of the July 2017 meeting with Mr Wong regarding the Electoral Commission's investigation or the

Chinese Friends of Labor dinner et cetera?---I talked to Tim Xu about it. I talked to my lawyer about it.

Don't tell me about the lawyer, but in relation to Mr Xu do you have any recollection of speaking to Mr Xu about the Electoral Commission's investigation at some time after the July 2017 meeting with Mr Wong?
---Yeah. On 26 July, 2017, a week later.

10 And tell us how that meeting came about.---I was in a highly distressed state and I'd been, as my psychologist said investigating myself, you know, trying to, and as part of that I, I'd, I'd found this message, you know, confirming that there had been a meeting in around April and, you know, and I recalled them coming to my office, I had no recollection at all of there being a bag or being given a bag. And so I went and saw Tim and I was also chasing up an invoice that hadn't been paid, he'd left Yuhu and he was the one who was getting my invoices paid and my invoice hadn't been paid, which was very unusual, and so I went and saw Tim to ask him about what Ernest had said.

20 So just taking a brief step back, one thing that you just mentioned as part of that response was the message regarding the April meeting. Did I get that right?---Yeah.

So are you saying that at some time between meeting with Mr Wong on 19 July, 2017 and meeting with Mr Xu on 26 July, 2017, you went through your records and messages to see what was going on in your life as at April of 2015?---As, as, as at – I looked at, you know, where and when and, you know, I'd had meetings with, in my office with Mr Huang.

30 Well, as at 19 July, 2017, you knew that there was an allegation that Mr Huang had come to your office and had given you a bag of cash. Correct?
---That's right.

And so you were doing what you were eventually told not to do, you were investigating that particular matter to see what you could recall and what your documents might reveal as to what was happening in 2015. Is that right?---I was trying to work out whether or not there was any way that I could have forgotten something like that.

40 And as part of that exercise you found amongst other things the text messages that you and I discussed before the luncheon adjournment. Is that right?---Yes, yeah.

And so that confirmed in your mind that at least there was a meeting on 7 April, 2015. Correct?---Yeah.

And do I take it you also searched your memory at that time and also your records to see whether there may have been any truth to the concept that you were given a bag of cash on that occasion?---Yes.

Now, at that point in time you'd been given the \$35,000 in cash by Mr Huang but at his house. Correct?---Yeah.

You'd been given the \$10,000 or thereabouts in cash from Mr Xu at your office. Correct?---Yeah.

10

And is it right that those are the only two occasions in which Mr Huang has given cash either to you directly or via one of his associates, such as Mr Xu? ---That's correct.

You're quite clear in your mind that that's the case?---Yes.

Never been given another set of \$10,000, \$20,000, \$50,000, \$100,000? ---No.

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

So you looked through that material. You realise that a meeting has taken place on 7 April, 2015, but as best you can recall, both unassisted but also assisted with documents, you still have no recollection of the allegation that Mr Wong has communicated to you on 19 July, 2017. Correct?---That's correct.

Now, you then, do you, initiate a meeting with Mr Xu?---Yes.

30 Do you remember how you initiated that meeting, did you send him a message, call him up?---Called him, whatever, sent a message.

Is it right to say that at least by that point in time you were quite good friends with Mr Xu?---Yes, yes.

He wasn't just the interpreter who would sit behind and interpret and do nothing more, you'd seen him on many occasions as you were building your relationship with Mr Huang. Correct?---Yes, yes, yes.

40 But not only did you build a relationship with Mr Huang, you built a relationship with Mr Xu?---Yep.

And that relationship continues to this day. Is that fair?---It does.

So you've seen him from time to time, right up until relatively recently. Is that right?---Yeah, earlier this year, yeah.

Sorry, how did you say you organised the meeting with Mr Xu? I know you said it, I just didn't - - -?---Oh, called him or messaged him, something like that.

And then you arranged a time to meet with Mr Xu?---Yeah.

Can you remember where that meeting took place?---It was in a café in some, somewhere like, on the north shore.

- 10 It could have been North Sydney, somewhere around that general neck of the woods?---No, it wasn't North Sydney, it was, it was, because he lives in, he lives, you turn right on Ryde Road to get to where he lives and you come down Ryde Road, you come down to Ryde Road from where I live, and so we met somewhere just below Ryde Road, so I think it was Gordon.

Can you remember whether that meeting happened at the time when Mr Xu was still employed by Yuhu Group or did happen after that point?---No. He'd left, he'd left.

- 20 And part of the reason you know that is that you've got a recollection of one of the things you talked about was, "My latest invoice hasn't been paid"?
---Yeah.

"You used to sort it out for me. Who do you think I should speak to now"?
---Exactly.

Do you remember what the answer to that question was, by the way?---I think he followed up and said, "Email this person," or, "Call this person."

- 30 Do you happen to recall who that person is?---No. I don't know who that was.

So you have coffee with Mr Xu, 26 July, 2017. Have I got that right?---Yes.

And you talk at least in part about the matters that Mr Wong had communicated to you on 19 July, 2017. Is that right?---Yep, yep.

- 40 Doing the best you can, again accepting it's some time ago, what did you say to Mr Xu and what did Mr Xu say to you, or at least words to what effect were uttered during that conversation?---I think I said, "Look, Ernest came to me the other week and said something that Kenrick had said, that Mr Huang had come to my office with an Audi, as in the car, Audi bag full of cash and handed it to me." And I said, "Look, there's, there's, there's, you know, we had a meeting, you've been to my office before for a meeting. Do you remember that? Is that possible?" You know, and he, he, yeah, that's what I said to him.

And what did he say to you in response?---He said, "That's a made-up story." He laughed and he said, "That's a made-up story."

And what else did you say, what else did he say, as best as you can now recall?---He, he, he just sort of laughed and I might say, you know, "Are you sure?" He was like, "Oh, there's just no way that happened, no way."

10 Approximately how long did the meeting take. Do you recall?---Oh, so I had that discussion outside the café because I was pretty keen to have it, and then we went inside the café and just had a normal coffee and I talked to him about the invoices and stuff.

So are you saying that there was a brief discussion outside the café that concerned the matter of the investigation. Is that right?---(No Audible Reply)

Sorry, you need to answer out aloud.---Yes.

20 But that was a relatively short one. Is that right?---Yeah.

And then you ultimately did have coffee with him and you talked about matters other than anything to do with the Electoral Commission's investigation or Chinese Friends of Labor. Is that right?---Yeah.

Did you say a minute ago that you drove to that meeting?---It's a long walk.

Yes. Well, you could have taken a taxi. You drove yourself?---Or a train, there is a train line. No, I did drive.

30 You drove yourself, is that right?---Yes.

And Mr Xu did he, as far as you could see?---I assume so. It's harder to get from where he lives to there by train.

Now, did you mention, and just to be clear, did you mention during the course of that discussion anything about an Audi car bag or an ALDI shopping bag?---Yeah, the Audi, Audi, Audi. The car.

40 So you have a clear recollection during the meeting of 26 July, 2017, outside the coffee shop of telling Mr Xu about an Audi car bag?---Yeah, yeah, yeah.

And is that because at that point in time you had understood Mr Wong to have said to you on 19 July, 2017, that Mr Cheah had made an allegation to which an Audi car bag had some relevance. Is that right?---So, well, Wong said ALDI but he couldn't say, but, he couldn't say the L and so it sounded like Audi. Well - - -

Well, at least as at 19 July, 2017, you took Mr Wong to be referring to Audi car rather than ALDI shopping organisation. Is that right?---Yeah. Shopping bag, yeah, yeah, yeah. Yes.

But you've later come to the view that he must have been talking about an ALDI shopping bag in light of material that you've seen connected with this investigation. Is that right?---Yes.

10 Have you now exhausted everything you can recall about the meeting of 26 July, 2017, save that I'm not interested in knowing what you talked about if you were talking about getting invoices and things paid. I am only interested at the moment in anything that has anything to do with the Chinese Friends of Labor event or any investigations connected with that. ---Yep.

You've now exhausted your memory on that?---Yes, yes.

20 THE COMMISSIONER: Could I just, before you get to the next one. Just so I can understand. You initiated a meeting with Mr Xu which took place at the café, and do I understand you to say that the main point of, or just one of the main points of suggesting you meet up and have a discussion was to see if Mr Xu had any recollection of anything taking place at the meeting on 7 April, 2015?---Yeah, or any meeting.

Or any meeting.---Yep.

Involving events such as Mr Wong said and Mr Cheah said had occurred, is that right?---Yes, yes.

30 At that time is your position you had no recollection of anything like that occurring?---No.

Well, why were you asking Mr Xu if he remembered anything if, as far as you were concerned, nothing like that had occurred?---Because I just couldn't work out why Kenrick would say it. Like, it was just - - -

40 All right. I understand what you're saying, but if you'd just deal with the question I raised. Why would you be asking Mr Xu does he recall anything like Cheah had alleged if you were of the view that, so far as you were concerned, nothing like that had happened?---Because I was thinking maybe in some alternate universe I had forgotten something like this. But I was in a, I was, and can I just say that my, as my psychiatrist explained it to me, one of the things that depression can do to you is, is set you into this situation where you can't grasp reality, you know, you, and, and it leads into a pretty bad sort of paranoia to a point where you can't, you know, you just can't grasp, you know, like, thinking about it here today in the mental position that I'm in now, there's no way. But in the state that I was in then, Commissioner, I was very close to a breakdown. It was just - - -

So were you wanting to put this to Mr Xu because you had the possibility in your mind that, well, maybe something like this has happened and I have no recollection of it?---That's in my mental state at that time, yeah.

All right, thank you.

10 MR ROBERTSON: And in fairness to you, in relation to this period, this was a very difficult period of your life, July 2017, correct?---Well, I mean, I, I thought it was getting better.

But one of the things that happened in July 2017 is you were convicted of unlawfully accessing the electoral roll while you were general secretary, correct?---I was sentenced, yep.

I think the formal conviction may have happened in that period of time. ---Yeah, it happens at the sentencing time, yep.

20 You may have pleaded at an earlier point in time.---But the, but it, for me that was finalisation.

THE COMMISSIONER: When was the finalisation, do you remember, approximately?---It was maybe a week, maybe two weeks before 19 July. It was early July.

30 MR ROBERTSON: And so in that period of time, at least up until dealing with matters of sentence, plainly enough you were under a lot of stress and concern, is that right?---Well, at, at, after, after, after, after the sentencing was done - - -

The only reason I'm asking you these questions, Mr Clements, is to just understand the context in which you spoke to Mr Xu. If you'd like a minute, just say the word.---No.

THE COMMISSIONER: If you want to take a break - - -?---No, no.

- - - we're happy to give you that.

40 MR ROBERTSON: After the meeting of 26 July, 2017, which is my note, with Mr Xu, when is the next time you can recall having a discussion with anyone about the Chinese Friends of Labor event or the investigation by the Electoral Commission or this Commission?---Ernest came to me on 27 June, 2018, whatever the date is, 26, 27.

That's the next time you can recall? Did that include any further discussions with Mr Xu?---No, I never talked to him about it again.

Is it right, though, that in that intervening period you met with Mr Xu from time to time because you were friends, right?---Often. Friends, yep.

But are you saying that other than on that first occasion outside the coffee shop, you didn't have any discussions with Mr Xu?---No, never.

Not one in, say, September or October of 2017, for example.---No.

10 But you may well have met with him in, say, September or October of 2017, but discussed other matters?---Yeah, we did stuff together, yep.

In fact, I think he's been helping you a bit with your Mandarin. Is that right?---Yeah, look, he, and he translated, he translated stuff for my website, like when I set my website up, and I needed a Chinese translation, he, he did the Chinese translation for me.

20 So the next meeting that has any relevance to the Chinese Friends of Labor event or any investigations in it, is 27 or 28 June, oh, sorry, 26 or 27 June, 2018, is that right?---That's right.

And again, was that Mr Wong who initiated, or was that you who initiated? ---It was him.

And can you recall how that was initiated?---WhatsApp.

Another WhatsApp message?---(No Audible Reply)

And do you recall – but did that meeting ultimately occur?---It did.

30 And do you recall where it occurred?---It, it occurred at, oh, where I get my coffee in the morning, and it's called Part One Espresso, in Kent Street in the city.

40 And doing the best you can, what did Mr Wong say to you and what did you say to Mr Wong at that meeting?---So the discussion in the first place was, well, he was, oh, because he was just about to head to Hong Kong, and he was just desperate, he just wanted to talk to me. Someone had said that he was going to run against the Labor Party (not transcribable). So, he started talking about that, and we talked it through, and I explained to him why it was a bad idea for him to do that. And he then accepted that and said, "Thank you, I think you've given me the right advice." And then he said, he said – my, my phone was in front of me, I put it in front of me on the table, and he pushed the phone aside, and I pushed it back in front of me. And he said, "That Electoral Commission investigation has now gone to the ICAC." Of course I knew that already. "Has gone to the ICAC, and they're investigating." And I just looked at him and, like I just looked, like, just gave him a shocked look. And he, he said, oh, but it's all, it's all okay, it's

just that people paid in cash, and everybody's told the Electoral Commission that they paid in cash, and that was it.

Can you recall anything else he said to you on that occasion?---Nah.

Can you recall anything that you said to him on that occasion other than what you've told us?---I didn't say, I didn't, yeah, I didn't respond.

10 I'm just trying to understand what you said a minute ago about the phone. So are you sitting down at a table at the café, are you?---Yep. Yep.

And you've got your phone in front of you at that point in time, is that right? ---Yep.

Just sitting on the table?---Yep.

And are you saying that Mr Wong pushes it to one side?---Just sort of moves it out of the side, you know?

20 So he's just – do any words accompany that or - - -?---Nah.

- - - does he just simply push it to one side?---Yep.

Now, I think you said you then just pushed it back to where it originally was, is that right?---Yep. Yep.

And so does that now exhaust the memory you have of that particular discussion?---Yep.

30 Did Mr Wong say to you anything about a Mr Leo Liao or Quanbao Liao? ---No.

Quite sure he didn't refer to that?---Yep.

Did he tell you that Dr Liao had died just two days or so before the meeting that you had with him?---No, the first I've found out about that was when I read it in the portal.

40 When you say "the portal", you mean the - - -?---ICAC. The ICAC portal.

- - - the documents that were provided to - - -?---The brief.

- - - to parties who have leave to appear in advance of the hearing?---Yep.

That's the first time you found out about Dr Liao?---That's the first time I found out about that.

Did you discuss at all during that meeting with Mr Wong the fact that you had participated in a compulsory examination about a month or so before, little bit more than a month before?---Absolutely not.

Didn't say a word about it at all?---Not a word.

10 You said a moment ago, "He told me about the investigation, but I already knew about it." I take it you already knew about it at least in part because you'd been summonsed and participated in the private inquiry, is that right?
---That's correct.

Is that the first time you found out about this Commission's investigation, or were you aware of that prior to that point in time?---Oh, when Mr Vickery called me.

That's the first time you found out about this Commission's investigation?
---Absolutely.

20 The first time you found about the Electoral Commission's investigation was 19 July, 2017, when Mr Wong told you, correct?---That's correct.

And the first time that you found out about this Commission's investigation is when you were told that you were required to participate in a compulsory examination, is that right?---Like, I was told, Mr Vickery said, "I've got a summons for you."

And my note at least was that would be about 16 May, 2018, just to assist you to get your bearings.---Yep.

30 When was the next discussion you had with Mr Wong, Mr Xu, or anyone else, if there was one, concerning the Chinese Friends of Labor event or any investigation by this Commission or the Electoral Commission?---At the start of this year in January Mr Wong told me that he, because the office that I had in Pitt Street, I never had a pass to it or anything, I just knew the code to the door, what had been my office had been given away to somebody else to sit in.

40 So this is the one on level 7 of the building that you and I discussed a moment ago. Is that right?---Yeah, yeah, yeah, yeah. And Mr Wong told me that he needed to see me and he was going to get me a pass, a pass to the, to the building, because I couldn't, I couldn't come in and out, out of hours. So he told me that there was paperwork I had to fill out to get a pass and he, and he was going to, and I said, well, I'll be in Sydney on this day, so - - -

So sorry, are we talking now about a pass to access the building in which you had your office in Pitt Street. Is that right?---Yeah, that's correct, yeah, yeah, yeah.

And Mr Ernest Wong was speaking to you about that?---Yep.

Why is Mr Ernest Wong speaking to you about that building as opposed to someone associated with Mr Huang Xiangmo or Yuhu Group?---So the, I came in one day in 2017 and all the electricity was off, no electricity.

10 THE COMMISSIONER: Sorry, I couldn't hear that?---There was no electricity. And so I had a meeting with Mr Huang about something else, a business matter, and at that I gave him the slip of paper that said the electricity had been cut off and said, you know, they've cut off the electricity to your, to your, to this office.

MR ROBERTSON: You gave that to who, I'm sorry?---To, to his interpreter, to Mr Huang's interpreter.

20 Do you remember who that was? Because it's not Mr Xu by that point because he'd left.---No. Look, there was a, there was a string of them after Mr Xu, he just couldn't settle on a good one, so I can't remember which one it was. But I recall after I did that, within days of that, Ernest asked to see me about the office, about my office, about the office and I went and saw him and we had a coffee and he said that there was a new, that the electricity was going to get switched back on. He, he had – so the office was previously occupied by the Guangdong Association, of which I think he was some sort of officeholder or something and the Guangdong Association I believe were the ones that should have been paying the electricity bill.

30 I'm just trying to understand though, what was Mr Wong, Mr Ernest Wong's connection to the building or at least the - - -?---So the Guangdong Association.

- - - level of the building in which you had the office. Is that the only connection that he had?---I'm coming to it.

40 Yes, I'm sorry.---I'll come to it. So the Guangdong Association is the one that's supposed to be paying the electricity bill, as it turns out. So he's come to me to talk to me about getting the electricity turned back on and he's told me that there's this other mob that's moving in called Digilink or, you know, some sort of WeChat marketing thing, he didn't tell me he had anything to do with it, but that Mr Huang had offered them this, but you know, he'd get the, they'd get the electricity fixed and he told me that the bloke from the – and I said, “Oh, that's okay, I don't mind, you know, fair enough, I'm not in there that much, you know, they can use the open area and we can share the boardroom.” And he said, “Oh, no, no, no, this guy's a big deal and he's going to need the office.” And, and I said, “Well, that's my - - -”

This is Mr Wong saying this to you, Ernest Wong?---Yeah, Mr Wong said that. And I, I'm like, "Well, all my stuff's in that office." And he's like, "Oh, you guys can share it and when you need to be there you just let him know," and so on and so forth. And so he, he had a – that never happened by the way, the bloke was always in there.

10 So is this Mr Wong, at least as you understood it, is this Mr Ernest Wong acting as some kind of an agent or intermediary for Mr Huang on that day, is he, or - - -?---It's was more just for Digilink, it was more, it was more – the link as I saw it was the fact that Huang had given that office to the Guangdong Chamber of Commerce but it just never used it and so I'd sort of moved in because it wasn't using it, but the Guangdong Chamber of Commerce, whatever it's called, was paying the electricity.

Did you ever have a formal lease in relation to that suite, Suite, I think it was 702?---No, all I had was the access code.

20 But what was the \$1 peppercorn rent you referred to before?---No, that was the other office.

That was the preceding office we talked about before?---Yeah, yeah, yeah.

So in terms of the Suite 702 office, there wasn't a formal lease in place. Is that right?---No. Tim Xu just gave me the code.

And you didn't have a pass to access the building?---No.

30 And I take it from what you've just said the electricity bills for that particular suite were not in your name or your company's name.---No.

And hence the problem of - - -?---I think it was in the Guangdong Chamber of Commerce's name.

And hence the problem of the lights going out, is that right?---Yes.

40 So is it right that, at least as you understood it, Ernest Wong regarded that space as essentially being under his control?---Well, under the Guangdong Chamber of Commerce's, yep, but the, the conversation that I remember having with him about these other chaps moving into the office was that Mr Huang had, you know, that he was sorry the electricity was off but he'll get that fixed, but that Mr Huang had organised, had agreed to give this Digilink use of the office.

So Mr Huang had effectively decided we'll get rid of the notional idea that it's Guangdong Chamber of Commerce or the Guangdong organisation, we'll get rid of the idea that Mr Clements is allowed to be there on the rent-free basis - - -?---No, no, no.

- - - and we're going to bring in Digilink. Have I got that right?---No. No, no. It was more like, well, I was sharing with the Guangdong Chamber of Commerce and the Shenzhen Federation. We all sort of shared it. I wasn't there that much, didn't use it that much, and they only used it once in a while. I only saw Ernest there once. And so it was like, well, somebody else is going to move in and we're all going to share. Like, there's a new tenant moving into your room. But he did tell me that I, you know, they were taking the office.

10 And when you say you shared the office space, we're talking about the suite 702, is that right?---Yes, yes.

You weren't sharing the space with the next-door neighbour, Australian Council for the Promotion of Peaceful Reunification of China, is that right?
---No, no.

That's a separate office but on the same level, is that right?---That's right, yeah.

20 But 702, at least while you were there, was a shared office space between at least three organisations.---Yep.

Yours and the two organisations you've just identified, correct?---Yes. And then Digilink came as well.

But a decision had been made, Digilink's going to be the new tenant.---Yep.

30 Everyone else out. Is that right?---No, no, no. We didn't have to move out. We didn't have to move out of the office. We all still had access to the office and the boardroom. It was just that the bigwig from Digilink was going to sit on my chair.

I see. So it would still be notionally your office, but where you might actually go in the said office, other than perhaps the boardroom and the bathroom - - -?---I was to let him know if I needed to use my office.

I see. And Mr Ernest Wong was making some logistical arrangements in connection with that exercise, is that right?---Yep. Yep.

40 And the particular meeting that we're now talking about, the January 2019 meeting, where did that take place? Was that at the building or was that in some other place?---Yeah, this, this, the one we're talking about right now - - -

Yes.--- - - - it was at the Pendolino Caffè in the Strand Arcade.

And during that discussion with Mr Wong, Mr Ernest Wong, was anyone else present?---No.

And did you have any discussions about the 2015 Chinese Friends of Labor event - - -?---No.

- - - or any investigation connected with that event?---No.

10 So it was purely about logistical arrangements in terms of offices and the like.---Yeah. Sorry, just to be fair to Mr Wong, the office that I was in had been effectively the office he used as the Guangdong Chamber of Commerce. So he, he was in that office before me and then I'd gone in there. So, you know - - -

And that all worked fine when you had three tenants that didn't need to use the office space very much.---That's right. Exactly.

But when the bigwigs come in, that makes it a more difficult exercise, is that right?---Yeah. Yeah, that's right.

20 But you're quite clear in your mind that in January 2019 with having coffee at Pendolino in the Strand Arcade - - -?---No, no, no. No, this is before that.

I'm sorry.---This is before that. This is before that. So this is, and it's in the phone. I can't remember the exact time but I think it was mid-2018 or 2017 or - - -

So the coffee at Pendolino we're now talking about?---Yeah, yeah, yeah.

30 So let's just try and get our chronology in order. We've got the meeting with Mr Wong on 26 or 27 June, 2018.---Yep.

That was within a month or a little bit more of your private hearing that you and I have talked about at some length.---Yeah. Mmm. Mmm.

When's the next one?---I think it's after this one, yep, but before 3 January.

So between that one and the 3 January "there's a new tenant in the office" meeting, there's a meeting between those two, is that right?---At Pendolino, yep.

40 And that's the one that's at Pendolino, is that right?---Yep, yep, yep.

And so that's, just to be clear, that's somewhere between June of 2018 and January of 2019, is that right?---Yes.

And could it have been in August of 2018, perhaps?---Look, it could have been.

And so that meeting over coffee, did you talk about this Commission's investigation or the Electoral Commission's investigation or the Chinese Friends of Labor event of 2015? Not at all.---No, no, no.

And have you discussed any of those matters with Mr Wong on any other occasions other than those that you've talked to us about?---When you say have I discussed, I haven't but he has raised it with me on one other occasion.

- 10 And what was that occasion?---Oh, actually, that's not true. I, well, on the 3rd, I think it was around 3 January this year, when he set up the meeting to give me the pass or the application for the pass which he somehow forgot to bring to the meeting, he never gave to me, we had a discussion – it was also a discussion about what he was going to do after he left office, you know, and what I had been doing and, you know, maybe we could, you know, tic tac toe off each other, you know? And, you know, what had I been doing and, you know, how, you know, how, how, you know, what had been a success for me in terms of my dealings with China and we had that discussion. And then he said, “Why don't we go down for a coffee
20 downstairs?” And I said, “Sure. I'm on my way out.” And I think he indicated to me that I should leave my phone and I said, “I'm not leaving my phone,” and I put it in my jacket pocket and we went downstairs to the café downstairs.

Downstairs from the Pitt Street building, is that right?---Yep. There's a really good café down there, Toby's Estate, and he said, he said, “Have you heard anything from the ICAC?” or “Have you spoken to the ICAC?” I said, “I haven't heard a word.”

- 30 Did you so you agree anything else other than that?---We might have had, well, there was a coffee sitting there so we must have talked about something else but that was the extent of the, he didn't tell me anything about the ICAC. He simply asked me if I had heard from, if I had heard from them.

Now, that was obviously a lie at that point because you had participated in a private hearing, correct?---If I was not to have lied on that stage, I would have been facing criminal charges.

- 40 That was my next question. Is it the case that there reason you lied to Mr Wong on that occasion was that you were concerned to ensure that you didn't breach direction that was made of you when you appears in a private hearing on 16 May, 2018?---That's correct.

And is it right that your best recollection is that that was happening in connection with the, what I'll call the new tenant type arrangements around about the 3rd of - -?---Oh, it was about the pass.

Or the pass arrangements early in this year, perhaps 3 January. Is that right?---It was, yeah, it was the start of the year, yep.

So have we now - - -?---It could have been later. It could, could, could have been maybe 6 January, I just can't remember.

10 Have we now exhausted any communications, be they unilateral in the sense of Mr Wong saying something to you and you not responding, or you having a discussion with Mr Wong – be it in writing, be it by telephone, whatever – that had anything to do with the Chinese Friends of Labor event in 2015 or this Commission's investigation or the Electoral Commission's investigation?---Yes.

So 19 July, 2017, at Starbucks, 26 or 27 June, 2018, 3 January, 2019.---Or 6 January. Sometime around there, yep.

20 Somewhere around January of 2019 and another one in between 26 and 27 June meeting and the January meeting. Is that right?---Yep. Well, that's, thought, there was only two occasions, well, there's three occasions he's asked me about either the Electoral Commission or the ICAC. 19 June, 2017 at the Starbucks café in Capitol, opposite the Capitol theatre, 26 or 27 June, 2018, at Part One Espresso in Kent Street, Sydney and the final one in January of this year, the first week of January this year, I believe it was, at the café under my old office, of which I cannot recall the name.

30 And then there a meeting between the two, maybe August of 2018, but that had nothing to do with any of the investigations or the 2015 dinner?---And, look, I had met with him more than that. You know, there, there, you know, but that's, yeah.

And what about with other people, are there any other communications, conversations et cetera that you've had in relation to the investigations, don't worry about lawyer, I don't want to know about that, but other than lawyers, any communications other than the ones that you've told us so far? Again, whether they be unilateral or not responded to, attempts to communicate, you sending a message not responded to or anything of that nature?---I, I, I talked to my psychologist about it but I did get permission from my solicitors - - -

40 I don't want to know the detail of that.---- - - before I did that to make sure it was exempt.

I don't want to know the detail of that at the moment. Other than that, any more examples?---No.

So in terms of people other than Mr Wong, it's just Mr Xu on one occasion, excluding for present purposes lawyers and medical practitioners, is that right?---Yes.

That's your best recollection of - - -?---Yes, yes.

- - - those kinds of matters, is that right?---Yes.

During the I think January meeting with Mr Wong over coffee, connected with getting the pass, you said to us a moment ago you think he might have said, "Leave my phone." Did I get that - - -?---He told me to leave my phone.

10

So do you have a clear recollection of him saying that?---Yeah, but it wasn't, yeah, he did, yeah.

Well, when you first proffered that, you seemed at least to me to be a little bit unclear. I just want to see whether you do have a specific recollection of some reference to leaving the phone. It may not have been those words but something along those lines.---It was kind of mumbled. It was, "Oh, you can leave your phone," you know, something like that. And I recall saying, "I'm not leaving my phone."

20

But there was certainly a reference to leaving the phone. It may have been in the form of a direction or it may have been in the form of a request or it may have been in the form of a suggestion.---Or a suggestion.

May have just been a suggestion, is that right?---Mmm, mmm.

But you do have a clear recollection in your mind of something to that effect being said, is that right?---Yes.

30 THE COMMISSIONER: And did it occur to you as to why he was asking you to leave your phone?---Well, he was probably going to tell me something or ask me something, you know.

And didn't want it recorded.---But, but, but, yeah, everybody thinks that you can, you know, yeah, record people's phones.

40 At that meeting and/or any other meeting, it'd be true to say he's expressed concern over the investigations both by the Electoral Commission and by this Commission?---I would, I would actually say the opposite. He, he, he hasn't, he hasn't expressed concern - - -

He's been happy about the investigations, is that what you're saying?---I'm not saying he's doing cartwheels, but it wasn't like he came to me and, he didn't, for instance, yeah, okay, concern, yes, yes, concern, yes.

Sorry, just to be clear about it, just based on chit-chat you've had with him, different occasions, but overall have you taken from what he's been saying to you, so far as the investigations, either by the Electoral Commission or

this Commission, that he exhibited concern about those investigations?
---But what he was actually trying to say is - - -

Sorry, just answer the questions and then you can add something to it.
---Sorry, I, no, I wouldn't characterise it like that.

So it's not concern? I thought you - - -?---Sorry.

10 - - - I thought you said that it would be true to say he demonstrated concern.---Well, he's obviously coming to see me because he's got concerns, but when he sees me and talks to me about it, the things he says and the way he says it is as if there's no reason for concern.

You understood, you took from his request to leave your phone to indicate to you that he didn't want you using the phone to record the conversation that would shortly happen, is that right?---Yeah, yeah, yeah, yeah, that's right.

20 And indeed it was in that conversation when you went to the coffee shop underneath your office that he raised the question of the ICAC in terms of "Have you heard anything from the ICAC?"---Yes.

And I'm just simply asking for your assessment, from what you divined or assessed from what he said, perhaps the way he said it, whether he exhibited concern about what was happening with the investigation in the ICAC.
---The words he used were clearly intended to try and give the impression that there was no reason for concern. But the fact that he asked me to leave my phone, that he raised it with me, would in my judgement be an
30 indication that perhaps he was concerned, but I couldn't, he didn't say, you know, he, what he said to me was that he, that nobody should be concerned. It's not a concern, it's not a problem, it's, you know.

MR ROBERTSON: In preparing for your examination over the last few days, you've closely reviewed things like messages and emails and the like that are available to you, is that right?---Yep.

And you've endeavoured to put together and inform yourself as best you can as to matters that you thought may be of assistance to this Commission.
---Yep.

40 Have you been giving honest evidence during the course of your evidence today and yesterday?---Yes, I have.

And do you say that you've been forthcoming with all of the material of which you're aware that you think may be relevant to this investigation?
---Yes.

Other than the matters that you and I have discussed and the documents that you provided yesterday evening, the printout of messages, are there any other matters of which you are aware which when you engaged in the exercise we've just discussed, struck you as matters that may be of interest or relevance to this investigation?---No.

That's the examination at this point in time. Obviously enough there's the matter of the mobile telephone which may yield further matters that should probably be put to Mr Clements.

10

THE COMMISSIONER: Yes.

MR ROBERTSON: I should also indicate that I've not yet had an opportunity to closely review all of the documents that were marked for identification yesterday evening. I have read them but I haven't had an opportunity to consider where they fit in the case. It may be that in due course it will be appropriate for me to tender that material as matters that are relevant to the investigation. That's a matter that I'd like to reflect on overnight.

20

THE COMMISSIONER: Well, I think what I might do is just find out what applications for cross-examination there are, what are the estimates as to how long cross-examination may take, and if it seems appropriate then we could adjourn shortly and any cross-examination can commence tomorrow, would have to finish tomorrow, being a short day. So firstly is there any application for cross-examination? Mr Moses.

MR MOSES: Yes, Chief Commissioner

30 THE COMMISSIONER: Have you got some idea of how long you might be?

MR MOSES: Probably outer limit could be an hour. It would be somewhere between 40 minutes to an hour, Chief Commissioner.

THE COMMISSIONER: All right. And have you been able to speak to Counsel Assisting about the areas you want to cross-examine on?

40 MR MOSES: No, because he's been on his feet of course and - - -

THE COMMISSIONER: I'll come back to you then.

MR MOSES: Thank you.

THE COMMISSIONER: Yes, Mr Dixon.

MR DIXON: Yes, Chief Commissioner. I would have thought about the same estimate, something around an hour but probably less.

THE COMMISSIONER: Okay. Again if you'd speak to Counsel Assisting and let him know what the areas of cross-examination are in due course.

10 MR DIXON: I will.

THE COMMISSIONER: Anything else, anybody? Yes.

MS WILLIAMS: Commissioner, we indicate 20 minutes, and I understand my counsel will talk to Counsel Assisting regarding - - -

THE COMMISSIONER: Yes. 20 minutes on behalf of?

20 MS WILLIAMS: On behalf of Ms Murnain.

THE COMMISSIONER: Yes, very well. Mr Hale?

MR HALE: And probably about 45 minutes, half an hour to 45 minutes.

THE COMMISSIONER: All right. Thank you. Well, again if you wouldn't mind speak to Counsel Assisting and let him know the areas you propose to cross-examine on.

30 MR HALE: Yes.

THE COMMISSIONER: I think we in light of that should press on this afternoon. So, Mr Moses, perhaps you could start.

MR MOSES: Yes, thank you, Chief Commissioner. Mr Clements,, you told the Commission that you were appointed general secretary in August 2013. Correct?---They asked me and I said yes.

40 THE COMMISSIONER: Mr Moses, if you could just move that microphone towards you.

MR MOSES: Yes, thank you, Chief Commissioner.

THE COMMISSIONER: Thank you. That's much better.

MR MOSES: And prior to that you were assistant secretary. Correct?
---Yep.

And in the role as assistant secretary, part of your functions were to be responsible for fundraising. Is that right?---Yeah.

As general secretary your duties were to be the campaign director for state elections?---Yeah.

10 To be responsible for parliamentary liaison?---Sure, yeah.

Yes. And to be responsible for fundraising. Correct?---Yes.

And in your role as general secretary, you understood, did you not, that the laws pursuant to which fundraising for political parties is governed in this state was pursuant to the Election Funding, Expenditure and Disclosures Act?---Yeah.

20 And did you familiarise yourself with the obligations of a political party under this Act?---Broadly.

Okay. You've told the Commission in respect of your role as general secretary that you were responsible in essence for the day-to-day running of the party, but in respect of the minutiae of the running of the party, you relied on others. Correct?---The day-to-day running of the office was in the hands of the assistant secretary, the overall administration of the party was in my hands.

You were ultimately responsible?---That's correct.

30 And just to be clear, in respect of your role as general secretary, you reported to the Administrative Committee each month, correct?---Yes.

And you provided what is known as the officers' report?---Officers A.

And in that report to the committee on the activities of the party, you would set out a number of issues including campaign activities?---You're going to stretch me now, but officers A, there was an officers A and there's an officers B. Officers A is the general secretary.

40 Correct.---Officers B is the Right Wing general secretary. And when Albo turned up to work, he was looking for officer C, but there wasn't one for the Left Wing general secretary. And there was a division between, there was a division between officers A and officers B, and I – the, the sort of headline matters were in office, officers A, and the, the mechanics, I suppose, were in officers B.

Matters of importance that you regarded should be drawn to the attention of the Administrative Committee you would report to them, correct?---Of course.

And in between meetings of the Administrative Committee, the party is managed and administered by the party officers, correct?---Correct.

And they met on an ad hoc basis, correct?---Yep.

10 There would be frequent meetings sometimes, that is more than one a week?
---Yes.

And the party officers included the president, correct?---Yep.

Senior vice president?---Yep.

Two junior vice presidents?---Correct.

20 The two assistant secretaries?---Correct.

And yourself, as the general secretary?---Yep.

And in relation to the party officers meetings, if an issue arose as to a conflict of interest concerning your role, would that be something that you would expect to raise with the party officers?---I've never seen that done before.

30 Had you ever thought to do that, to raise with the party officers that if you had a conflict of interest in respect of an issue, that you would disclose it to them?---(No Audible Reply)

If you can't remember, say so.---Oh, no, oh, I'm, I'm just stretching my - - -

That's okay.---I'm stretching my mind about when you'd do that.

40 No, that's okay.---Okay, so, let's say for instance there was a matter that involved a dispute, for instance, that you were involved in the dispute. And then I think you would preclude yourself from discussions on that. I don't recall whether that happened or not. But, yeah.

As a member of the Australian Labor Party, you accept, I think, that you had an obligation to act honestly and with integrity in the best interests of the party?---Yep.

And that also included in your role as general secretary?---Yep.

Now, acting honestly and with integrity, do you agree, also meant not being involved or initiating a scheme to subvert the operation of the Election Funding, Expenditure and Disclosures Act?---Of course.

As general secretary, do you accept that you had a duty to ensure that the ALP did not accept donations from individuals or corporations that were prohibited donors, contrary to the state Act?---Yes.

10 Or being involved in a scheme to circumvent the provisions of the Act?
---Yes.

And as general secretary, do you accept that you had a duty to ensure that you did not act in a manner that would be dishonest?---Yes.

As general secretary, do you accept that you were the custodian of that role, in order to serve the interests of the party?---Absolutely.

20 And as general secretary, do you accept that you had a duty not to bring the party into disrepute?---As a member I had an obligation not to bring the party into disrepute.

And as general secretary?---Yes.

And as general secretary, had a duty not to engage in any conduct that would result in a conflict of interest between the party and you, correct? Do you accept that?---Broadly, yes.

30 You were aware in April, 2015, that property developers were prohibited from making political donations to political parties in this state?---I was.

You were aware that it was a criminal offence to hide the true source of a political donation to a political party?---I was.

And you were aware as to the reasons why parliament had prohibited certain persons, including property developers, from donating to political parties?
---Broadly.

40 Well, that it was to stop their influence or apparent influence over decisions of political parties, correct?---Ostensibly, yes.

Well, you understood, did you not, that one of the concerns raised when the prohibition was put in the legislation was because there was a concern that property developers were influencing political parties in this state?---They were influencing state and local government decisions, planning decisions.

And you understood the purpose of disclosures of political donations is transparency, correct?---Yes.

Because the electorate, via the Electoral Commission and the media, are entitled to know who is donating to what party in order to ensure that they understand if there are any possible motives for a political party acting in a particular manner, correct? You understood that?---Yep.

And the members of the Australian Labor Party are entitled to know the entities or persons that are funding it, correct?---Yes.

10 And again, one of the reasons is to ensure that any contributions that come with strings attached will be deterred because both the politicians and the entity that may have donated the money will know that the public know of the link and will ensure that proper probity processes are implemented, correct?---I'm going to have to ask you to repeat that question. I got lost about halfway through.

20 Well, let me be blunt about it. One of the reasons for transparency is so that people know who has donated to a political party so that if a step is taken for the benefit of that individual or corporation, the public will know of the link?---Yes.

Now, you told the Chief Commissioner yesterday that in May of 2015, you approached Mr Huang and asked him to provide you with money, being I think it was \$10,000, in order to deal with a request that you had received from a trade union leader. Do you recall that evidence yesterday?---I asked him to provide money for the trade union leader.

Do you recall that evidence yesterday?---I do.

30 Now, Mr Huang, of course, was not your personal ATM machine, correct? ---No.

So what made you think, in May 2015, out of the blue, you could approach this person and ask him for \$10,000?---Somebody suggested that I do it.

And who was that?---Sam Dastyari.

Thank you. And in respect of Mr Dastyari, when you were assistant state secretary, did he introduce you to Mr Huang?---No.

40 When you were assistant state secretary?---No.

What about the time when you came to take over from Mr Dastyari in or about August 2013, was there a handover between Mr Dastyari and yourself, of the role of state secretary? I know you've got a smile on your face. Was there a meeting in which he briefed you, "These are the important people, Mr Clements", or Jamie, "that you need to know in relation issues"?---If there was a briefing then it would be accompanied by the sort of laxness that we've, we've been discussing in this investigation.

No, I understand that but let's be blunt about it. In respect of Mr Dastyari, did he introduce you to Mr Huang?---He, he repeatedly badgered me to meet him.

And did you meet him?---I did.

10 And did you meet him in Mr Dastyari's company?---I don't recall if Sam was there at that first meeting or, or if it was Ernest but I know that Sam kept badgering me that I should meet him.

And did Mr Huang – sorry, I withdraw that. Did Mr Dastyari ever introduce you to Mr Huang, that is take you to him and say, "This is the man who will be taking over from me"?---No.

20 And in relation to, if I can go back to the May discussion with Mr Huang where you were provided with this cash, the \$10,000 cash, you say, and I just want to remind you of your evidence in relation to this issue yesterday. What you said in relation to that was that it was something that you wanted to, in effect, that is the money, get rid of pretty quickly to give it to the individual because it was something that you knew, this is words to the effect of, that your members would not have expected of you. Do you recall that?---It was below the standard of behaviour that my members expected of me as general secretary.

And in terms of that issue, again just reflecting on this, do you accept that that compromised you - - -

30 MR LAWRENCE: I object.

MR MOSES: Well, can I finish the question and then you can object? May I finish the question, Chief Commissioner?

THE COMMISSIONER: Yes, yes, go ahead.

MR MOSES: Thank you. No, the Chief Commissioner asked me to finish my question.

40 MR LAWRENCE: I'm sorry, I thought Mr Moses said he had.

THE COMMISSIONER: Let's get the question first.

MR MOSES: Do you accept that taking that money from Mr Huang compromised you in your role as the general secretary of the Australian Labor Party? That was the question, Chief Commissioner.

MR LAWRENCE: There's no dispute in these proceedings that that event occurred. It's been accepted. Now, Mr Moses, I can only assume from the

question, wants to put a particular characterisation on it which he sees as being in the interests of his client, whether in a substantive sense or maybe as a question of reputation. But how does that, I ask rhetorically, make it relevant to any matter of fact to be determined by this Commission or relevant to any other aspect of the inquiry?

10 THE COMMISSIONER: Well, the issue is not so much characterising of the conduct to which he admits, as you say, Mr Lawrence. Rather it's seeking to establish the extent of any breach of duty, the culpability in other words, which is put in terms of compromising, if you like, loyalty or fealty to the obligations he owed to the ALP. We have a situation here where it's an ALP party fundraiser that's at the centre of the inquiry, with lots of players and different people, different responsibilities involved. It so happens that the witness, Mr Clements, held a very senior position within the branch. I think it is relevant to the issue of determining in the mix of events involving lots of people what the level of culpability of their conduct – in this case of Mr Clements as general secretary – was. I think the level of his culpability in relation to the receipt of the \$10,000 from Mr Huang, who in effect was the manager, if you like, owner anyway, not legally, but the
20 controller of the Yuhu Group, was a prohibited donor, a senior representative of a prohibited donor. All of that goes to, as I see it, the issue of culpability. Whether the culpability in relation to this particular episode is germane and relevant to the facts surrounding the fundraising dinner is another question, but it may or may not have some linkage.

MR LAWRENCE: Yes, and that's my, the thrust of my objection, Commissioner, that there may well be a question of culpability in respect of this. Whether that is ethical, moral or legal is a number of discrete and separate questions, but how does that, or my submission is how does that
30 tether it to a matter of relevance in this inquiry, which obviously relates to the events from January to April of 2015 in respect of the \$100,000, and in my submission there is no relevance.

THE COMMISSIONER: Well, here we come back to the question that you raised earlier on, the concept of relevance as it's applied in other proceedings doesn't apply to proceedings, investigative proceedings of this kind. At the end of the day sometimes the threads come together. I liken them to pieces of a mosaic. It's not until you get the pieces together that you can see whether they are relevant, whether they do constitute part of the
40 mosaic or if they don't. That's the inherent difficulty with the process that we're dealing with, investigative. We're on a journey and not quite sure what turns in the road are going to come up or where you're going to end up. That's the reality, of course. So I do think there are boundaries. I think you've heard questions put on a matter which might be seen to be totally vexatious and it's beyond limits. I don't see the question here exceeding or certainly going anywhere near that.

MR LAWRENCE: Yes. I would simply put on the record that Mr Moses, in my respectful submission, ought be careful impugning Mr Clements for a purpose that could be considered extraneous to the facts in issue here.

MR MOSES: I won't be lectured to by my learned friend.

MR LAWRENCE: Well, I'm entitled to make submissions and I won't be interrupted.

10 MR MOSES: No, I will not be lectured to. Sorry, I won't be lectured to by my learned friend.

MR LAWRENCE: I won't be interrupted.

MR MOSES: And my friend should resume his seat because you've ruled on his objection.

MR LAWRENCE: Well - - -

20 THE COMMISSIONER: Yes, look, I think if you would just - - -

MR LAWRENCE: I haven't sat down because I wasn't finished, but - - -

THE COMMISSIONER: Well, I thought you had finished but you were then going on to provide a warning, as I understand it, to Mr Moses - - -

MR MOSES: I won't be taking warning from Mr - - -

30 THE COMMISSIONER: - - - about future questions that he might ask impugning your client. Those questions haven't been asked and I can't deal with those until we hear what they are.

MR LAWRENCE: Yes.

40 THE COMMISSIONER: But I have to say, Mr Lawrence, I don't regard it as in order for you to, as it were, give warning or to publicly announce that Mr Moses has an obligation to put questions in a certain way or not put them in a certain way. I'm fully confident that all members of the bar appearing here would observe the appropriate conduct rules of counsel, that's as they apply in a forum such as this, unless of course there's some event or something happens to dissuade me from that point of view. I certainly don't think that it is appropriate, with great respect to you, for you to be forewarning or warning or making comment of the kind you did.

MR LAWRENCE: Yes. I certainly wouldn't - - -

THE COMMISSIONER: Having said that we can move on I think and get on with the hearing.

MR LAWRENCE: Yes.

MR MOSES: Yes, thank you, Chief Commissioner. Mr Clements, do you remember the question I asked you?---No, you're better off asking again.

Do you think taking the money from Mr Huang compromised you in your role as general secretary?---I never felt like that, no.

10 You never felt like that. So you took \$10,000 cash from Mr Huang to give to a union official. Correct?---Yes.

And you didn't think that that compromised you?---No.

So you didn't think that Mr Huang at some time could come to you and ask for a favour in relation to the Labor Party and hold that over you, that he'd given you that \$10,000 cash?---How would he hold it over me?

20 So you can't see that?---Oh, I don't, I don't agree with that. He donated all the time.

Right. Are you saying that that was a donation?---No, I'm saying that he, he, he was a donor to the party. If you were going to, if you were going to, if you were going to put forward that people donating is a way of holding things over a party, I don't agree with that.

30 Do you understand the difference between donating to a political party in accordance with the law and otherwise providing money to a political party that circumvents the law? Do you understand the difference?---That's not circumventing the law.

Do you understand the difference - - -?---I do.

- - - between those two concepts?---I do.

So the money that you took, the money that you asked for and took from Mr Huang, what did you regard it as?---A donation to a union campaign.

40 Thank you. Which you didn't tell the union leader where you got the money from.---He didn't ask.

No. He asked, the union leader asked you for the money?---Yes.

And you gave it to the union leader?---Yes.

And the union leader thought you got it from where?---Didn't ask.

No.

THE COMMISSIONER: Did you disclose the \$10,000 payment by Mr Huang to anyone in the ALP?---No.

MR MOSES: Now, let's move on to the \$35,000 that you stated yesterday in August 2015. You told the Chief Commissioner that Mr Huang gave it to you because you were friends and that he was concerned about you.--- Yes.

Did you ask for the money?---No.

10

No. And you say that you turned up to his house where Mr Xu was. Correct?---Xu, yes.

Yes. And there was a box, a wine box that was given to you with a message inside it. Correct?---No, no, no, no, no, no.

No?---There was a wine box and a piece of paper.

Inside the wine box?---No, not inside the wine box.

20

Outside the wine box?---That's right.

And it said, "For legal fees?"---"For your legal fees."

Yeah.---"For your legal expenses," or, "Your legal fees."

And you didn't disclose the fact that you'd received this gift from him, did you?---No.

30

No. And are you aware of the provisions of section 249B of the Crimes Act?---Not off the top of my head.

Well, are you aware of the provisions of corruptly receiving benefits and other corrupt practices?---Not off the top of my head.

No. Okay. Well, in relation to the money that was given to you, you didn't disclose it to the party officers, did you?---No.

You were still an employee?---I was, I'd stepped - - -

40

Were you still an employee?---I was an employee but I'd stepped aside from my duties as general secretary.

And did you go back to those duties?---I did.

And you never told anybody that Mr Huang had given you \$35,000?---It was a personal gift.

Again, you say it's a personal gift. You didn't disclose it to the party officers, did you?---I, no.

No. And Mr Huang was somebody who was donating to the party. Correct?---He had in the past, yeah.

How would the party know whether what you were doing as general secretary was being influence by Mr Huang as a result of this gift?---It wasn't being.

10

So you say it wasn't being but the party had no visibility on this, sir. Do you agree with that? Do you agree with that? Did you tell the party - - -? ---The party, well, the party had no visibility on something that wasn't happening.

Did you tell the party that you got \$35,000 from him?---No, I did not.

No. So you say it didn't influence you but you didn't tell the party about the gift, did you?---No.

20

So the party for itself could not make a decision about whether you were doing anything in your role as general secretary that was for the benefit of Mr Huang. Do you accept that? As a result of the gift. Do you accept that?---Yes.

Because you may, for all intents and purposes, have been his stooge and they wouldn't have known because - - -

MR LAWRENCE: I object.

30

MR MOSES: No. Well, let me finish the question. Because they had no visibility on the gift that he had given you, sir.---What's stooge?

MR LAWRENCE: It's been asked and answered about three questions ago. It's descending into personal abuse and I wonder if Mr Moses might stop shouting also.

THE COMMISSIONER: Could I just ask you this before you go back to the question. I think you've given evidence yesterday that you understood that Mr Huang Xiangmo was in effect cultivating a friendship with you. ---Yeah.

40

And at least one part of his objective was that that would be a means of facilitating through you being introduced to various people in power. Is that right?---That was a, that was a facet of it.

Yes. I'm not suggesting it was the only reason, but you understood he was courting your friendship because you were in a position of power as we

discussed yesterday, and it was evident that he saw you as a means of affecting introductions to others and so on. Is that right?---That's a small facet, but in being a friend of mine himself that was something I think that he valued, probably as much, if not more than the others.

All right. I understand that. But did you consider that receiving a large sum of money, I'm talking about \$35,000 as being a large amount of money, which I think you would agree it is.---Yeah. For me it is.

10 This was payment of a substantial proportion which put you at risk in the sense that he was increasing his power to be able to ask you to do things for him that he might want, such as meeting a union leader or meeting with the party leader at the time?---I honestly never felt that way, Commissioner.

Now, but you did say you understood what he was about, in part, apart from what you say was a genuine friendship, that he was cultivating the friendship with you because you were in the position of power and he wanted to be able to, through you, as it were, spread his influence?---Yeah.

20 Did you consider that that potentially put you in a position of being compromised if, for example, he asked you to ring somebody up on his behalf, somebody in power, which you didn't want to do, and he would say, "Now, look, I've been very generous to you. I'm asking you to do this as a favour." Do you realise at least there's a risk of that occurring?---There's a risk of that occurring in relation to the donations as well but I never felt - - -

I'm just dealing with this situation, not donations generally, but that he having conferred private benefits on you as a person who did hold an important office within the ALP, that it did create a risk that he could call in a favour and remind you, if you resisted, "Look, I've been very generous to you"?---I can see why you would say that, Commissioner.

Yes. Well, it must have occurred to you that an additional problem with that was that a person who at least potentially had the power to influence you or manipulate you into doing something he wanted was that he was a prohibited donor, which added to the seriousness of the relationship you were getting into with him?---But the, the, the, the fact that I was so close to him at that I was so close to him at that point in time is because was cultivating him to become a federal donor, in full knowledge that he was a property developer. But if he had ever asked me for any assistance on any matter involving planning, I would not have done it and I would have reassessed my relationship with him.

40 But it's not just planning. It's a question of influencing in ways perhaps you might not have been able to foresee. That was the risk, wasn't it? You'd accept now, anyway, in hindsight.---Commissioner, it's a risk, but the way that you deal with it is this. That it's because there is this, this ability to continue to take federal donations from developers, and the party does that,

and so you have to be careful in that position that if you do take those donations that you never cross a line and do anything for them in relation to anything to do with planning or property development or council.

Please, I'm not dealing with planning, I'm not dealing with donations in general or the risks associated with people in the property industry affecting decision making or planning at all. I'm dealing with the relationship between two people, you and Mr Huang, and that's all. You understand?
---Ah hmm.

10

But we're in a situation where he's just surprised you in a way, although you said you weren't particularly surprised, with a gift of \$35,000 in cash, right?---Mmm. Mmm. Yes.

And you did benefit from that gift. You were able to spend it and - - -?
---Yes. I paid my legal fees with it.

20

But you realise now, if only in hindsight, that that was potentially putting you at risk of him calling in a favour and reminding you, if you resisted, that he had been very generous to you personally.---I can see that there could be some risk. I didn't feel the risk.

And there was an increased risk of things going wrong if he was insisting that you do something for him, because he was a property developer, and the whole aim of the legislation was not to allow property developers to influence decisions by political parties.---Yes.

30

This wasn't a gift to a political party by Mr Huang. It was a gift to you.
---That's correct.

But you were general secretary of the union at the time.---Of the ALP.

MR MOSES: Of the party, Commissioner, yes.

THE COMMISSIONER: I'm sorry, yes, of the ALP at the time, correct? On receipt of the 35,000.---Yes, yes, yes, yes. Well, no, actually, well, I was an employee but technology speaking I had stood aside from my duties and I was not exercising them.

40

Yes, but you still held the position.---I held, yep. I mean, yep.

Bearing in mind those two factors, you were getting yourself into potential conflict of interest if not an actual one.---It was a silly thing to, it was a silly thing to do, Commissioner.

I know it was. You said that yesterday. But we're talking about conflicts of interest - - -?---There was a potential conflict, yes.

- - - and we're talking about influence in the exercise by property developers, in this case not by way of a donation to a political party but a gift to somebody who heads up the party branch, you understand?---Yep.

And you can see now, can't you, looking at it, his generosity did pose risk to you in being manipulated.---There was a risk.

10 But didn't that occur to you at the time?---Commissioner, if I was thinking straight at the time, it would have, you know, but I just wasn't. I was, I was, as I said yesterday I was in all sorts. I, I honestly, honestly felt when I took that money that I was never going back to be general secretary.

All right. Well, back to you, Mr Moses.

MR MOSES: Yes, thank you, Chief Commissioner.

THE COMMISSIONER: Actually if we could substitute another word for "stooge" if you wouldn't mind.

20 MR MOSES: I can move on, if I can move on, yes, well, let me ask this question. Do you accept, Mr Clements, that by taking the money and not disclosing it to the party officers you put the Labor Party in a most difficult position because they had no way of knowing whether Mr Huang was exercising influence over you which could not be checked by them? Do you accept that now sitting in the witness box?---I accept I should have disclosed it in those circumstances.

30 Now, can I just go back, if I can, to the issue of April 2015, and that is the ALDI bag issue, if I can. Mr Cheah, you have worked with him for quite some time as an employee of the Australian Labor Party, correct?---He was in the party office at the same time as me, yep.

And he's not somebody that you've ever had any animosity towards whilst you were an employee of the party, correct?---No, I liked him.

40 And to be polite about it if I can, he's somebody who has a nature which is not malevolent at all? He is somebody who is generally well liked, correct?---I'm not going to make a judgement on his nature.---I'm not going to make a judgement on his nature.

No, okay. But can you think of any reason, sitting here today, at all, why Mr Cheah would say - - -

MR LAWRENCE: I object.

MR MOSES: Well, can I finish the question?

THE COMMISSIONER: Please. Mr Lawrence, Counsel should not object
- - -

MR LAWRENCE: It's very clear where it's - - -

THE COMMISSIONER: - - - partway through a question. Would you please try and observe that?

10 MR LAWRENCE: I will, but it's very clear where he's going.

THE COMMISSIONER: Thank you. Yes, yes.

MR MOSES: Can you think of any reason why Mr Cheah would say that Mr Huang came into the office and delivered or had with him an ALDI bag which he gave to you, and that you then came out – let me just finish – and that you then came out and provided the bag to Mr Cheah? Is there any, can you think – can I just finish – can you think of any reason why he would suggest that?

20 MR LAWRENCE: I object.

THE COMMISSIONER: Mr Moses, is this the point perhaps that should be, if you're going to go down this path put, is he aware of any reason as why Mr Cheah would falsely - - -

MR MOSES: I'm coming to that.

30 THE COMMISSIONER: Well, I think – because if it's left in the broad manner which it's put - - -

MR MOSES: No, no, but I'm – yeah.

THE COMMISSIONER: - - - there could be reasons that could explain his conduct which he's unaware of. So that's why - - -

MR MOSES: Of course. No, of course, Chief Commissioner, but I thought I'd go with the wider question, to be fair to the witness, and then go with the more narrow question. That's what I was - - -

40 THE COMMISSIONER: Well, I think it's something - - -

MR MOSES: But I'm happy to go straight to the point.

THE COMMISSIONER: Yes, all right, thank you.

MR MOSES: Can you think of any reason why Mr Cheah would falsely state that he saw Mr Huang go into your office and that you come out with

the ALDI bag and provide it to him with \$100,000 cash in it?---If you want me to speculate, I can speculate for you.

Please. Yes. Please. Can you say, can you think why he would falsely - - -

THE COMMISSIONER: I think it's a question of not speculating, did, would you - - -?---Well, how, how - - -

10 No, just let me finish. Let me finish. The question is asking you, are you aware of any reason or matter that would provide a motivation in Mr Cheah to give a false account? Do you understand the point of the question?---Do I have any direct knowledge - - -

MR MOSES: Let's start with that first, yes.--- - - - as to why he did it, as to why he made that up? No, I don't.

20 If I may be permitted by you, Chief Commissioner, do you have any indirect knowledge? Has somebody told you something, as to why Mr Cheah would falsely make that up?---No.

No. See, because I just want to suggest something to you, and I want to be direct about it, so I will be direct about it. The reason why you felt comfortable in approaching Mr Huang in May for the \$10,000 cash for the trade union official was that you knew that he was good for it, because he had already delivered to you, on 8 April, 2015, the \$100,000 cash. Correct?

MR LAWRENCE: I object.

30 THE WITNESS: Incorrect.

MR MOSES: Okay. Thank you.

MR LAWRENCE: For the record, I object, because there, in my submission, is no basis to put that as a firm and positive proposition.

MR MOSES: Okay. I thank my friend.

THE COMMISSIONER: Yes. Mr - - -

40 MR LAWRENCE: Especially - - -

THE COMMISSIONER: Yes, all right.

MR LAWRENCE: Especially, if I might complete - - -

THE COMMISSIONER: Yes, go on.

MR LAWRENCE: - - - in circumstances where Mr Cheah himself does not even know if Mr Huang brought anything into the office. He was very clear about that. Very clear, Chief Commissioner.

THE COMMISSIONER: I'll have another look at the transcript about that question in context. We'll deal with it tomorrow.

MR MOSES: Now, Chief Commissioner, if I can – I'll put the question this way, just so there's no mistake about this. The reason why you went to Mr Huang to seek the money in respect of the trade union official, being the \$10,000 in May, 2015, was because you knew he was good for it, because on the 7th or 8th of April, 2015, he had delivered \$100,000 cash to you at Sussex Street.

MR LAWRENCE: I object. That's the question again, in the same terms I object to it.

THE COMMISSIONER: Yes.

MR MOSES: It's the date, I put the 7th and the 8th there, because there's an issue about which date it was, Chief Commissioner.

THE COMMISSIONER: You're putting the – when you say “he was good for it”, Mr Moses, what are you putting?

MR MOSES: That Mr Huang was good for the money in May, because he had already delivered \$100,000 cash to Mr Clements in April.

MR ROBERTSON: Well, in my submission, properly phrased, the question should be allowed.

THE COMMISSIONER: Yes.

MR LAWRENCE: An extraordinary proposition in my submission, not least given that it was only some time into this inquiry that Mr Moses' client, as I understood it, put on the record that the money was to be returned in circumstances where Mr Cheah said it to the Electoral Commission over two years ago, and in cross-examination from me he said he doesn't even recall if Mr Huang brought anything into the Labor Party office. Again in my submission no reasonable basis to put the proposition as a positive affirmative fact.

THE COMMISSIONER: Mr Robertson, you want to have a say about this?

MR ROBERTSON: The question should be allowed. My learned friend, Mr Moses, plainly enough needs to reflect for himself as to whether he considers there's a proper basis for the question, but in my submission if senior counsel is of the view that there is a proper basis for the question the

Commission would not intervene and prevent that from occurring, provided that the question is properly phrased and is not phrased in a way that's unfair to the witness.

THE COMMISSIONER: Mr Lawrence - - -

MR MOSES: I put the question, Chief Commissioner, thank you.

10 THE COMMISSIONER: Yes. Mr Lawrence, the answer stands. If you want to take it any further by re-examination and any other way, you should speak to Counsel Assisting.

MR LAWRENCE: Certainly. Thank you, Chief Commissioner.

THE COMMISSIONER: All right.

20 THE WITNESS: The answer to the question is no, and the reason why I knew that Mr Huang would be amenable to making such a donation was because Sam Dastyari suggested to me that that's what I should do.

MR MOSES: Is the reason why you're not admitting to it is because the truth is too awful for you to admit, sir?---No. The reason I'm not admitting to it is because it's not true.

Okay. Thank you. I have no further questions, Chief Commissioner. Thank you.

THE COMMISSIONER: Now, who's next. Mr Dixon.

30 MR DIXON: Yes.

THE COMMISSIONER: Perhaps you could get started.

MR DIXON: Yes, I shall, thank you, Chief Commissioner. Mr Clements, my name is Dixon. I act for Mr Cheah. Do you understand that?
---Good afternoon, Mr Dixon.

40 I'm just going to ask you some questions first about process. And when I talk about process, I'm speaking about what was involved in receiving campaign funds and the regularising of that activity, in other words, matching up the campaign funds with forms and the like, and your role as general secretary in overseeing that process. Do you understand?---Sure.

Sorry?---Yes.

Okay. Now, under your stewardship, I think you've admitted that the administration of the, at the head office was lax. Do you recall that?
---I think you're going to have to go back and see that that's not what I said.

Your words were, "Was lax," at transcript 2207. Do you recall saying that?
---I, I, I think I said that I objected to the, to the, I objected to the suggestion
that any laxness in written procedures in, in that office was somehow
isolated to my time as general secretary.

Well, that wasn't my question. My question was do you accept that in your
time as general secretary, I'm not talking about any other time, that the
procedures in the administration were lax?---In written procedures, yes.

10

Yes. Now, the forms used in March of 2015, when I say the forms I'm
talking about the forms that people are required to fill out when they donate
money. You understand that?---Yep.

The forms were themselves described by you as an abomination, and I take
it that was because they referred to firstly the wrong campaign, being the
Prospect campaign, and they did not have any provision for donations to
either the Country Labor party or the State Labor Party. Is that correct?
---That, if I could take you through the problems with those forms, first of
all - - -

20

If you answer my question. Is that part of the reason why you characterised
those forms as an abomination, because of the matters that I just put to you?
---That includes them, yes.

Yes. And so when for example two forms were received that together the
sums involved or referred to on the forms breached the cap, in other words
they together added up to more than \$5,000, assuming that two forms were
filled out by the same donor, is it true that it was left up to people like Mr
Cheah to divine where the person's intent was, in other words, some of the
money would go to the Country Labor Party and it was to be assumed that
the other moiety was to go to the Australian Labor Party?---I don't see it
that way, no. Mr Cheah shouldn't have done that, no.

30

And so - - -

THE COMMISSIONER: Well, how do you say it should have been
resolved?---Well, if you've got a situation where you've got a form that
doesn't make it clear where the money should go to, there's \$10,000 but two
forms and neither of them say who the money should go to, he should have
come to either Kaila or me and asked.

40

MR DIXON: Mr Clements, this is in circumstances where all of the forms
used at the function – I take that back. None of the forms used at the
function had a provision to indicate where the money was to be directed to.
You accept that?---Yeah. Well, I haven't looked at every form but if you're
saying that, yep.

So it was a fundamental problem that Mr Cheah was left to resolve of his own accord. Is that he case?---Yeah, he wasn't left to resolve it of his own accord. Mr Cheah should have gone to his direct supervisor or me and sought clarification.

Was there any process in place for situations like that where the employee in question would know the chain of command to follow in order to arrive at the correct solution for the problem?---Well, he knew that he reported to Kaila.

10

And so that was the answer, is it? All questions like that he would have to go to Kaila?---Well, he could have come to me if he wanted to.

Yes. And what would you have said if there were two forms with \$5,000 each from the same donor?---“Do you have any indication from the donor as to where the money should go, where they want the money to go?”

Well, you've seen the forms, haven't you?---Yes.

20

There was no indication, what would your answer have been?

MR ROBERTSON: Sorry, I object. I think my learned friend, in fairness to the witness, should draw the witness's attention to the fact that the form, in the bottom right-hand corner, referred to ALP NSW Branch. I'm not suggesting that this isn't an appropriate like of cross-examination but I think, in fairness to the witness, that should be draw to attention. It's Exhibit 152, if my learned friend wants that to be brought up.

30

THE COMMISSIONER: You got that point, Mr Dixon?

MR DIXON: Sorry?

THE COMMISSIONER: You have the point that - - -

MR DIXON: Yes, I understand do. I heard that, yes.

MR ROBERTSON: And my friend might just get a little bit closer to the microphone, if you wouldn't mind, or at least get the microphone closer to you.

40

MR DIXON: Yes. Well, if the operator can bring up Exhibit 152. So you heard Counsel Assisting, Mr Clements. The form did not have a provision for a person indicate on it whether they wanted to donate to the Country Labor Party, is was a form in the name of the state entity only. Do you accept that?---Yep. Well, I mean at the bottom of the form, I believe, as I recall from my private investigation, it says NSW ALP but in the body of the form it says Prospect state campaign account.

Yes. But it was understood by all that they weren't donating to the Prospect campaign, that's your understanding, isn't it?---Well, I, I'd have to talk to 600 people and ask them.

MR ROBERTSON: I'm not sure – I'm sorry. I object again. I'm not sure what my friend meant by "all". Do you mean within the Sussex Street office or the work or some subset? I'm sorry to intervene but - - -

THE COMMISSIONER: That's all right. I think, yes, reformulate it.

10

MR ROBERTSON: The evidence says otherwise.

MR DIXON: Yes. It was – yes, thank you, Chief Commissioner. Did you see a form on the night of the dinner?---No.

You didn't ever read one of the forms?---No. First time I've seen this form was when Mr Johnston showed it to me at my private investigation.

20

There were forms on the dinner table that you were sitting at?---I, oh, there could have been.

Now, although you say you worked well with Mr Murnain during the 2015 campaign, you made that statement in circumstances because you trusted her and you delegated significant functions to her in order to oversee the process of receiving money. Is that the case? That's whether you said it worked well because you basically delegated functions to her and let her run the show herself?---No. The reason why I said it worked well is because it worked well.

30

Well, it didn't involve any constant dialogue between yourself and Ms Murnain in order to - - -?---Didn't require it.

It's not like you sought her out to sit her down and have a lengthy dialogue about governance matters with her in a regular basis, is it?---No.

And it's the case that Ms Murnain, in her position, was extremely busy in her job?---Oh, yes.

40

It took her out of the office on a regular basis?---Look, no, no. I wouldn't say that. I'd say that it took me out of the office on a regular basis but no, her, she spent most of her time in the office.

And would you say that her role was a supervisory role over people like Mr Cheah and people like Ms Zhao in Finance?---No, Ms Zhao, well, Ms Zhao reported to Maggie and Maggie reported to Kaila but she also had dialogue with me and, yeah.

Would you describe Ms Murrain's role as a supervisory role?---She'd supervise staff, yes. They reported to her.

And a person, do you accept that a person in Mr Cheah's position, in the absence of written processes and procedures, was required to exercise a considerable amount of discretion to get the job done?---I don't think his job was that complicated to be honest with you.

10 No, his job was, I'm not saying it's complicated. I'm saying that whenever a situation would arise where he had to exercise some discretion, then that was something that would fall upon him and he wasn't guided by any policies or procedures in order to exercise that discretion.---He was guided by the way things had been done. Before there were no written policies or procedures as I understand, but on questions where there were, where he had to exercise judgement that he felt was beyond his remit, he could go to Kaila.

20 How do you know that? How do you know it was up to him to determine how things were done before?---Sorry?

Well, you've said that he was to act in accordance with what had been done before.---Well, that's what his job was.

But how do you know that he was, to understand what had been done before? How do you know that?---Well, that, that, he came in to do a job that had been done before, and he did the job.

And it was done by Mr Wong before that, wasn't it?---Yeah, correct.

30 But there was no, sorry, Mr Cheah did not replace Mr Wong while Mr Wong was still in the position, did he? It was sometime afterwards.---Yeah, that's right.

There was no handover by Mr Wong. Mr Cheah didn't have the benefit of - -?---Not, no, not, not that I'm aware of.

THE COMMISSIONER: Mr Dixon, we might call it a day and we'll resume it tomorrow and you can continue.

40 MR DIXON: Thank you.

MR ROBERTSON: There's more housekeeping matters I need to deal with.

THE COMMISSIONER: Yes, yes. You may step down, Mr - - -

THE WITNESS: I'm supposed to be in Cessnock for my mother-in-law's 70th tomorrow afternoon. Do you reckon I'll - - -

THE COMMISSIONER: Well - - -

THE WITNESS: It's my mother-in-law.

THE COMMISSIONER: There's every likelihood we'll finish by 1 o'clock tomorrow. I can't give you that as a gilt-edged guarantee but we'll do our best.

10 THE WITNESS: Okay. And can I get my phone. Well, maybe I'll call on someone else's phone. It's okay.

THE COMMISSIONER: Yes, all right. We'll, talk to Mr Robertson about that in a minute, yes.

MR ROBERTSON: Can I have page 2403 of the transcript on the screen, please, which is the transcript of what I'll call the evening session yesterday. Immediately after lunch my learned friend Mr Lawrence made a very serious allegation concerning the conduct of Commission officers. In
20 particular, he alleged - - -

THE COMMISSIONER: Sorry, what page? 2403.

MR ROBERTSON: 2403.

THE COMMISSIONER: At line?

MR ROBERTSON: At line 4. It's now on the screen.

30 THE COMMISSIONER: Line 4.

MR ROBERTSON: Line 4 and following. He made a serious allegation, namely that there had been a breach of directions that you, Chief Commissioner, have made. I'll put up on the screen the terms of those directions. You directed, Chief Commissioner, that the phone is to be placed in a secured, locked facility of the Commission overnight and it was. My learned friend took objection to the fact that during the course of the day, and in circumstances where there was argument on the point of privilege that he raised, that a Commission officer took the phone that was
40 in a sealed envelope with a signature across it and brought it to this hearing room and gave it to your associate. Obviously enough when that happened it was not night. The suggestion that there was a breach of that direction, in my submission, was wrongly made. In fairness to my learned friend, perhaps he didn't reflect on the terms of the order before he made that allegation. It's true that order 2 referred to 10.15am or further order. That was an amendment that you made, Chief Commissioner, at line 32. But the suggestion that it was any breach of an order requiring a secured, locked facility overnight, to bring it to the hearing room and to be held in the

possession of your associate, Chief Commissioner, was a submission that ought not have been made without at least reflecting on the transcript. I'm sure no doubt my learned friend simply overlooked that aspect of the transcript, but he should at least be given an opportunity to withdraw the allegation that was made immediately after lunch, in my submission.

THE COMMISSIONER: Mr Lawrence.

10 MR LAWRENCE: Chief Commissioner, at line 29 I asked the order to be amended so that - - -

THE COMMISSIONER: Yes, my attention was just drawn to that.

MR LAWRENCE: Yes. So that the item would remain in the secure locked facility until further order. That is the natural reading of orders 1, 2 and 3 together. It's notable that at the time I made what my friend now characterises as this very serious allegation there was no dispute raised about it. My friend has gone away, looked at the transcript, and tried to construe some interpretation of it which renders what I said wrong, but - - -
20

THE COMMISSIONER: Just be careful what you say.

MR LAWRENCE: - - - in my submission it's wrong.

THE COMMISSIONER: Be careful what you say. You may be exacerbating the situation. You're suggesting that Counsel Assisting now might have gone away to put on another interpretation.

MR LAWRENCE: Well - - -
30

THE COMMISSIONER: Be very careful, Mr Lawrence, that you – let's be clear about this. The phone was secured overnight in locked, a locked facility.

MR LAWRENCE: Indeed (not transcribable)

THE COMMISSIONER: It had been placed in an envelope and it had been sealed with a signature on the seal.

40 MR LAWRENCE: Indeed.

THE COMMISSIONER: It had then been removed and brought here by the principal investigator who's been involved in this matter, and it was left in the custody of the Commission through my associate. By no construction or interpretation of the events has there been any breach of security whereby there has been the possibility that the phone has been released from the secretary of the Commission. It has always been in the possession of the Commission. It was in the locked facility overnight in a sealed envelope.

To say that – and as you did publicly, and I must say I was concerned when you said it – that there has been a breach of security, and now you’re pointing to an amendment which you later sought after the order was made which changed the time to “until further order” - - -

MR LAWRENCE: Yes.

10 THE COMMISSIONER: - - - if there is any scope for saying that there was any technical breach, it was by no means a breach of security of that phone. By no means was there any basis for suggesting publicly that there had been a breach of security of that phone. It has been in the custody of the Commission through its officers. It has been totally secured. Even if you could say, well, it doesn’t technically conform - - -

MR LAWRENCE: Yes.

THE COMMISSIONER: - - - with the amended wording - - -

MR LAWRENCE: Yes.

20

THE COMMISSIONER: - - - that’s not a breach of security.

MR LAWRENCE: Well, I don’t have the transcript.

THE COMMISSIONER: It might be a technical breach of the words of the order, but - - -

MR LAWRENCE: Indeed.

30 THE COMMISSIONER: - - - it was not a breach of security.

MR LAWRENCE: I don’t have the transcript.

THE COMMISSIONER: Do you, now, do you acknowledge that?

MR LAWRENCE: Well, I don’t have - - -

THE COMMISSIONER: And, no, just please don’t talk over me.

40 MR LAWRENCE: I’ve been asked a question.

THE COMMISSIONER: Please don’t talk over me.

MR LAWRENCE: Yes.

THE COMMISSIONER: Do you acknowledge that and do you withdraw what you said, as Counsel Assisting invited you to do, in which case it will

be the end of the matter and I don't propose to take it any further, or do you want to now argue the point?

MR LAWRENCE: Well - - -

THE COMMISSIONER: That's your option.

MR LAWRENCE: The order was made in order to guarantee the security of the phone.

10

THE COMMISSIONER: Correct.

MR LAWRENCE: The order was breached. That's what I understand I said.

THE COMMISSIONER: But the security was not. That's the point. You are quibbling.

MR LAWRENCE: Well, I'm, I'm not sure, Commissioner, that I said that.

20

THE COMMISSIONER: You are quibbling, Mr - - -

MR LAWRENCE: Well, I'm, I'm genuinely not sure if I said that.

THE COMMISSIONER: You are. Now, that's the end of it. You will not withdraw your remarks?

MR LAWRENCE: If I made a suggestion - - -

30

THE COMMISSIONER: No, not if. Are you going to withdraw the charge you made earlier in public?

MR LAWRENCE: Well, I would ask for the opportunity to review the transcript of what I said.

THE COMMISSIONER: You know what you said.

MR LAWRENCE: No, I don't, Commissioner. With the greatest of respect, I - - -

40

THE COMMISSIONER: Mr Lawrence, I am unimpressed, very unimpressed. I'm going to leave it at that.

MR LAWRENCE: Certainly. Thank you, Commissioner.

THE COMMISSIONER: Don't thank me. Yes, Mr Robertson.

MR ROBERTSON: I do need to respond to one aspect of what was just said in circumstances not withdrawn. Order 2, it is not to be accessed, the phone is not to be accessed by any person.

THE COMMISSIONER: "Accessed" was the word, that's right.

MR ROBERTSON: Nor was it. It's in a sealed envelope. If my learned friend wishes to review the seal and have the seal forensically analysed, then I'm quite happy to do that.

10

THE COMMISSIONER: The only thing I will hear from Mr Lawrence on in the morning about this matter is if he withdraws his previous remarks in public about the security aspect of this (not transcribable)

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: But if he doesn't wish to withdraw it, then it'll stay where that is and with my comments about the matter.

20

MR ROBERTSON: May it please the Commission. Can I then deal with a practical issue that arises out of that. In my respectful submission, the appropriate place for the telephone over this night is not in Mr Vickery's locked drawer, which was the practical place last night, given that this was a matter that was dealt with after ordinary hours. This Commission does have, as I made submissions about this morning, a secure evidence holding facility. That's the appropriate place essentially for two reasons. First, a secure place to store it is – I withdraw that. For two reasons, first, that is a facility that's specifically designed for the secure holding of evidence. That's the first point. The second point is it's desirable in particular in light of the submissions that my learned friend has made during the course of the day, that it at least overnight be in the physical custody of persons other than those involved in this particular investigation. So to the extent that there needs to be any variation to the directions, I seek those. In my submission the appropriate practical course would be for Mr Vickery to take it out of his locked drawer, give it to your associate and ask your associate to have it registered with the Property Division of this organisation in the ordinary course and with your direction that it be secured in the secure evidence holding facility that this Commission has.

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THE COMMISSIONER: All right. Well now I'll have my associate inquire as to whether it's still possible to register it this afternoon and secured. Is it?

MR ROBERTSON: Mr Vickery's nodding. I think it is, because we're now before 5.00pm.

THE COMMISSIONER: Of course you outlined, which I'd ask you to have drawn up as a formal order, I think for the two reason you've mentioned it is

desirable that the security of the phone be transferred through the registry and secured by registry in the normal facility to secure evidence. And my associate will do that immediately after we adjourn. Now, Mr Lawrence.

MR LAWRENCE: I've just been asked by Mr Clements whether he might have access to his phone briefly in the presence of Commission staff, because he has information in it about where he's booked to stay tonight and he has forgotten where he's staying.

10 THE COMMISSIONER: Yes. Well, I'll appoint Mr Vickery to supervise that. Now, there remains the question as to whether or not you wish, Mr Lawrence, to proceed along what I'll call the practical course, that is to have all the material which you say is covered by legal professional privilege, and I accept your judgement as to what you say falls into that category, the objective being to remove it entirely from the phone so that there can be no question or any legal professional privilege material ever coming into these proceedings at all. Are you in a position to indicate?

MR LAWRENCE: No, I'm not, no.

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THE COMMISSIONER: Well, it's a very simple process, it's a practical process, but if you don't want to avail yourself, or more importantly, if your client doesn't want to avail himself of what is obviously a practical suggestion which will absolutely deal with the position on a final basis favourably to him, but if he doesn't want to do that, then we'll go through the whole process of dealing with it as a statutory interpretation question rather than go down that path.

MR LAWRENCE: Yes.

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THE COMMISSIONER: That would be regrettable because it may have unintended practical consequences, not the least of which is the impounding of the phone for an indefinite period of time, which is undesirable, and I've indicated before, it's not the wish of the Commission to deprive Mr Clements of his phone - - -

MR LAWRENCE: Certainly.

40 THE COMMISSIONER: - - - longer than need be, which could be confined to a mere matter of hours if the process we've suggested as the solution be followed. But if Mr Clements doesn't want to avail himself of that opportunity then of course there is the real possibility that he may be inconvenienced both in terms of time of course and maybe in terms of cost.

MR LAWRENCE: Yes. I wonder if I might have until tomorrow morning to advise in respect of that, because the option of the destruction of the records or the potential destruction of the records was only raised I think

after lunch and I just do need some time to consider the technical issues that arise.

THE COMMISSIONER: Well, do bear in mind the whole argument turns on protecting legal professional privilege. What's proposed will protect legal professional privilege.

MR LAWRENCE: Yes. I'm not sure about the last proposition, Chief Commissioner, with respect, so that's a matter that I need to think about.

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THE COMMISSIONER: Well, you say that. The technical advice available to me is what I'm relying upon. I don't know what technical advice you're relying upon. Are you relying upon some technical advice on that matter?

MR LAWRENCE: I intend to do all I can to seek technical advice on that matter, but it was only raised reasonably late in the day, Chief Commissioner, so I think you understand my position.

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THE COMMISSIONER: All right.

MR ROBERTSON: There's one other matter I need to deal with. During the course of Mr Clements' examination there was some passing references to not just the fact of the compulsory examination but some aspects of it. I think in fairness to those who are reading the transcript and those who may be publishing based on the transcript I should seek a further amendment to the section 112 direction. I seek one in these terms. I apply for the direction that was made under section 112 of the ICAC Act on 25 May, 2018, in relation to the compulsory examination of Mr Clements be varied insofar as it would otherwise prohibit the publication of question asked or answer given in this public inquiry.

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THE COMMISSIONER: In respect of the order made pursuant to Section 112 of the Independent Commission Against Corruption Act made on 5 May, 2018, I vary the order so as to permit the references that have been made to questions and answers insofar as that would otherwise be prohibited by that direction.

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VARIATION OF SUPPRESSION ORDER: IN RESPECT OF THE ORDER MADE PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT MADE ON 5 MAY, 2018, I VARY THE ORDER SO AS TO PERMIT THE REFERENCES THAT HAVE BEEN MADE TO QUESTIONS AND ANSWERS INsofar AS THAT WOULD OTHERWISE BE PROHIBITED BY THAT DIRECTION.

THE COMMISSIONER: Does that cover - - -

MR ROBERTSON: Yes, it does. And then, Chief Commissioner, in terms of the practical arrangements in relation to the phone, can I respectfully submit that you make an oral direction in relation to that matter. I know you contemplated a written direction. My concern is that that may cause some difficulties in timing and I would like it in the custody of people other than those associated with this investigation.

10 THE COMMISSIONER: So just give me again the recipient my associate will take it to - - -

MR ROBERTSON: So, you should direct that Mr Vickery is permitted to remove Mr Clements' telephone from his locked drawer, that's step one. Step two is that Mr Clements will be permitted to make I think a telephone call, I think is what Mr Lawrence asked for in the presence of Mr Vickery.

THE COMMISSIONER: Yes.

20 MR ROBERTSON: Step three is it will be provided to the Chief Commissioner's associate, and step four, the associate is directed to deliver the matter to the property section of this Commission on the basis that they are directed to store the same in the Commission's secure evidence facility until further direction of a Commissioner. Just pardon me for a moment. Sorry, Chief Commissioner, I mentioned Mr Clements wanting to make a telephone call, I got that wrong. It was in fact an email, Mr Lawrence reminds me, to check I think a combination of arrangements, or something along those lines. So he should be permitted to do that in Mr Vickery's presence.

30 THE COMMISSIONER: Yes, very well. Thank you. I make the following directions in respect of the mobile phone device of Mr Clements, which was handed, under direction by the Commission, to the Commission yesterday, 9 October, 2018. I make the following further directions for securing the device. One, that Mr Vickery be permitted to recover the phone in question from his locked drawer. Secondly, that Mr Clements then be permitted, in the presence of Mr Vickery, to send an email using his mobile phone.

40 MR ROBERTSON: I think it was view an email, Chief Commissioner.

THE COMMISSIONER: What's that?

MR LAWRENCE: Yes, it was.

MR ROBERTSON: View an email, I think it was.

THE COMMISSIONER: Oh, it was to view an email. I thought he wanted to make a communication.

MR ROBERTSON: No, I think he wants to know what his accommodation arrangements, or something along those lines.

THE COMMISSIONER: Oh, I see. Well, I'll amend that to view an email on his mobile phone. The phone then is to immediately be provided, handed to my associate. My associate is directed to then take the phone to the property section of the Commission, and hand it to the responsible officer of that section, and direct that person to secure the phone by storing it in a secured facility, being a facility employed in the normal storage of evidence obtained by the Commission, and I direct the property section responsible officer to act accordingly to secure the mobile phone until further order.

COMMISSIONER'S DIRECTION: I MAKE THE FOLLOWING DIRECTIONS IN RESPECT OF THE MOBILE PHONE DEVICE OF MR CLEMENTS, WHICH WAS HANDED, UNDER DIRECTION BY THE COMMISSION, TO THE COMMISSION YESTERDAY, 9 OCTOBER, 2018. I MAKE THE FOLLOWING FURTHER DIRECTIONS FOR SECURING THE DEVICE. ONE, THAT MR VICKERY BE PERMITTED TO RECOVER THE PHONE IN QUESTION FROM HIS LOCKED DRAWER. SECONDLY, THAT MR CLEMENTS THEN BE PERMITTED, IN THE PRESENCE OF MR VICKERY, TO VIEW AN EMAIL ON HIS MOBILE PHONE. THE PHONE THEN IS TO IMMEDIATELY BE HANDED TO MY ASSOCIATE. MY ASSOCIATE IS DIRECTED TO THEN TAKE THE PHONE TO THE PROPERTY SECTION OF THE COMMISSION, AND HAND IT TO THE RESPONSIBLE OFFICER OF THAT SECTION, AND DIRECT THAT PERSON TO SECURE THE PHONE BY STORING IT IN A SECURED FACILITY, BEING A FACILITY EMPLOYED IN THE NORMAL STORAGE OF EVIDENCE OBTAINED BY THE COMMISSION, AND I DIRECT THE PROPERTY SECTION RESPONSIBLE OFFICER TO ACT ACCORDINGLY TO SECURE THE MOBILE PHONE UNTIL FURTHER ORDER.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Anything else?

MR MOSES: No, thank you.

MR ROBERTSON: Not from my part.

THE COMMISSIONER: All right. Well, then, Mr Vickery then can recover the phone from where it's now stored, bring it in here. Mr Clements may then immediately make his email search or whatever he wants to view

on the phone, and then it's to be immediately handed to my associate, and I'll ask you to take it directly, as I've directed.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Nothing else?

MR ROBERTSON: Nothing from my part.

10 THE COMMISSIONER: We'll adjourn until 10.00am.

THE WITNESS STOOD DOWN [4.36pm]

AT 4.36PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.36pm]