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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 FRIDAY 11 OCTOBER, 2019

AT 10.00AM

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

MR ROBERTSON: Chief Commissioner, in terms of programming matters, as I have previously announced I won't be in a position to recall Mr Wong this week and it should be apparent to all there's a number of matters that have arisen during the course of the public inquiry in respect of which it's appropriate that I put to Mr Wong so as to give him an opportunity to respond, and plainly enough that will need to be done at an appropriate time. I also intend to lead some further evidence that touches on the competing version of the events that have emerged during the course of the public inquiry to date, as well as some further evidence that's relevant to the investigation, and in doing so it may be necessary for me to recall certain other witnesses in addition to Mr Wong. The practical consequence of that is that the public inquiry will need to reconvene to deal with those further matters. As I've already indicated it's not possible for this public inquiry to spill over into next week due to other commitments of the Commission. It's also necessary for Commission officers to be given an opportunity to review some of the documentary evidence that has emerged during the course of the public inquiry, for example, the material that was produced by Mr Wood concerning communications by or to Dr Liao that was only produced during the course of the inquiry in more recent time.

20

Unfortunately, particularly at this difficult time of the year, it's very difficult to find a spring of available dates that can accommodate the availability of both the Commission and those who assist the Commission, and the facilities as well that are necessary to conduct a public inquiry. But that having been said, in my submission it's certainly in the public interest for this Commission's investigation to be sought to be finalised as soon as it is practicable. In those circumstances, my enquiries have revealed that the least worst day for this public inquiry to reconvene is 9 December, 2019, and my submission is that that's when this Commission should adjourn after we adjourn for today. I appreciate that that is an inconvenient time for many people, including me, but the practical difficulties at this time of the year mean that, at least on my enquiries, that's the only date that is reasonably available unless one was to adjourn the inquiry into the new year, but in my submission, for the reasons of public interest I identified a moment ago, that's an approach that should be avoided if it is at all possible for that to be avoided.

30

THE COMMISSIONER: Just to clarify on that, are we talking about the week commencing 9 December?

40

MR ROBERTSON: The week commencing 9 December, 2019.

THE COMMISSIONER: So it will be five days set aside?

MR ROBERTSON: So my submission is that five days will be set aside but with a view and with a hope of not using the whole of those five days. I anticipate that at least two days, perhaps three days, would be required and it may well be that a further period of time. I certainly need to recall Mr

Wong, as I have indicated, and I do need to recall Mr Wood, because as you recall Mr Wood's examination hasn't completed. I also intend to reflect carefully on other witnesses who may need to be recalled as a matter of fairness to them, to put propositions that only emerged after they had been in the witness box before. So my submission would be that the whole of that week should be set aside but in the hope that, for example, we would be able to start on Tuesday rather than on the Monday and have, say, two or three days rather than the whole week.

10 THE COMMISSIONER: Yes. Well, it is the position that the public inquiry should complete as efficiently and as soon as practicable, both in terms of the public interest issues involved in the public inquiry, and of course the interests of various persons who have participated in it. Yes.

MR ROBERTSON: In terms of today, with your leave, I would like to ask Mr Clements a few questions about one of the documents that Mr Clements produced but that I hadn't had an opportunity to review before I completed my examination. That would be very brief.

20 THE COMMISSIONER: Yes.

MR ROBERTSON: And then I suggest that we proceed with Mr Dixon's further cross-examination and cross-examination by anyone else with leave to do so, and then re-examination and clarifications, but in the hope of finishing by lunchtime. It'll also be necessary, of course, in due course for you, Chief Commissioner, to rule on Mr Lawrence's application, but I don't presently know whether Mr Lawrence presses that application in light of the alternative proposal that I put forward. In fairness to him, I haven't had an opportunity to discuss it with him this morning, but you might conveniently  
30 deal with that now if he's interested to do so.

THE COMMISSIONER: Yes. Well, before Mr Clements is recalled.

MR ROBERTSON: In other words, whether it's still pressed or whether a more practical regime of the kind that I contemplated might be of interest to his client.

THE COMMISSIONER: Yes.

40 MR LAWRENCE: Yes, it's still pressed, and I have no further submissions about the matter but it's still pressed. We do require a ruling on it.

THE COMMISSIONER: Yes. That is to say the alternative proposal, which is referred to as the practical proposal, is not embraced?

MR LAWRENCE: Yes. And that's on the basis of a certain degree of technical advice that we have been able to obtain, if I could put it that way.

THE COMMISSIONER: I don't know what that means, but anyway. Very well, Mr Clements. Thank you. Mr Clements, I will have the oath re-administered.

THE COMMISSIONER: Yes.

MR ROBERTSON: Mr Clements, you said to me this morning you wanted to say something very quickly to the Chief Commissioner before we commenced.---Sorry, Commissioner, I only packed for two days of hearing and I live quite a way away and so I didn't have a shirt that goes with the tie, so I'm not having any disrespect to the Commission for trying to introduce casual Fridays here, sir.

THE COMMISSIONER: No, it's all right. Thank you for your explanation.

MR ROBERTSON: Can we have MFI 22 on the screen, please, and can we zoom in a little bit to the top left-hand corner. Mr Clements, is this the first page of one of the printouts of the text messages that you provided to this Commission via your solicitors on the first day of your examination?  
---That's right.

And is this a series of text messages between you and Sarah Adams, the then deputy chief of staff for Mr Shorten?---Yep.

And are these a series of messages that you have searched for and found on your mobile device with a view to finding any communications associated with the private lunch between you, Mr Shorten, Mr Huang and the interpreter, Mr Xu, on I think 21 April, 2015. Is that right?---Yes.

And is that a complete, have you given us a complete record of your communications between Ms Adams and you in the period from when the meeting was sought to be started, just sought to be arranged, and when the lunch in fact occurred? Or have you just looked at the exchange during the course of that period and sought to pick out the ones that appeared to be relevant?---So what, what I, because of the way, it's such an old set of messages, I, I did, I, what I did was go through my phone and, and do keyword searches, and this is one of the things that came up when I keyword searched "Huang". But what it does when you do that is it, it takes you to a spot in time, and it, and it kind of limits, it, it, it doesn't let you go back further or back, so this is from this period of time, the messages that I have on my phone.

And so is this one of the matters that you had regard to in refreshing your memory as to what occurred in April of 2015?---Yes.

And if we can then just turn the page, then we have a reference towards the middle to Master Ken, did you get some wine, and it's a reference to Grange. Do you see all of that there?---Yep. Yep.

And so, am I right in saying that as best as you can recall it, the private lunch with Mr Shorten and Mr Huang was on 21 April, 2015?---Yeah, oh, that, look, I can't see the dates on that, but if you're telling me that's what the dates are, yeah.

Well, if we just go back a page, do you see about halfway down, there's a reference to a lunch on the 20<sup>th</sup> or 21<sup>st</sup>? Do you see that there?---Yep, yep.

10 The 20<sup>th</sup>, for your benefit, was a Monday, the 22<sup>nd</sup> was a Tuesday.---So what was the 21<sup>st</sup>, then?

Oh, I'm so sorry, the 20<sup>th</sup> was a Monday, the 21<sup>st</sup> was a Tuesday.---Okay.

I'm so sorry.---That's no problem.

But is it your recollection that the lunch itself was on the Tuesday, noting that one of your messages seems to be, "Just let me know when to see Bill on Tuesday."---No, oh, oh, oh, I, I, that, that, that could be a reference to  
20 Bill coming at a different, like a, a separate meeting. That could have been, I saw Bill on a different day.

I see. So it was at least around that period.---Yep, yep.

It may be the 21<sup>st</sup>, it may be the 20<sup>th</sup>.---But I, but I think as you look at it, it, it seems to imply that I probably had a coffee with Bill somewhere.

Who paid for the lunch, by the way?---For the lunch?

30 Yes.---At Master Ken's?

Yes.---Mr Huang would pay.

Do you recall how he paid for it? Did he pay for it in cash, credit card, does he have an account, something along those lines?---He's got an account, I would assume.

So you didn't see the physical exercise of payment, is that right?---That's  
40 right.

I take it it was a fairly expensive lunch, given that we're talking about bottle of Grange and private meeting rooms, or private lunch rooms and the like. Is that right?---Yes.

Did you cause for any record to be made in the records of the Australian Labor Party to say that Mr Huang, a person associated with a property developer, had paid for a substantial lunch, or a substantial-cost lunch, between you, Mr Shorten, and Mr Huang?---No.

Is it right to say that your evidence is that this particular lunch that we're now talking about was the particular lunch that Mr Huang had requested, or at least the meeting that Mr Huang had requested, when he came to your office on 7 April, 2015?---I believe so, yes.

10 Are you aware of any reason why Mr Huang's request for the meeting with Mr Shorten could not have been made in some other way? For example, by making contact with you by telephone via Mr Xu, by requesting it at the dinner on 12 March, 2015, or by requesting it of you when you met with Mr Huang for lunch on the Sunday after the dinner of 12 March, 2015?---I think that's a question that would be better asked of the people that requested the lunch.

Well, at least from your perspective, you know of no reason as to why it couldn't have been requested in some other way other than physically attending your office and making the request. Do you agree?---Oh, he obviously felt that that was the way that he should request a, an important meeting like that.

20

Did Mr Huang say that to you?---No.

That's a matter that you're - - -?---Speculating on.

- - - as it were, speculating on, is that right?---That's right.

Do you deny that on 7 April, 2015, Mr Huang gives you \$100,000, and then says in the same meeting, "Can you please sort out a meeting with Mr Shorten?"---I deny that.

30

Thank you, Chief Commissioner. That's the further examination. Can I indicate that there was a separate document that you marked for identification, MFI 20 – I don't intend to tender that document at this point, because at least the version that I have is illegible and doesn't show the times and dates and things of that kind.

THE COMMISSIONER: That's the documents just shown to the witness?

40 MR ROBERTSON: Not the document just shown, it's a different document. So perhaps if I deal with it in parts. I tender MFI 22, being a series of messages said to be connected with a lunch between Mr Shorten, Mr Huang, Mr Clements and an interpreter in April of 2015.

THE COMMISSIONER: Yes. That will become Exhibit 327.

MR ROBERTSON: And in respect of MFI 20 which is a separate document - - -

THE COMMISSIONER: So MFI 20, sorry, MFI 22 now becomes Exhibit 327. Yes.

**#EXH-327 – SCREENSHOTS OF TEXT MESSAGES BETWEEN JAMES CLEMENTS AND SARAH ADAMS FROM 10 APRIL 2015 TO 20 APRIL 2015 (PREVIOUSLY MFI-022)**

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MR ROBERTSON: May it please the Commission. In respect of MFI 20 which is a different document, at least the version that I have is somewhat illegible, it's difficult to see messages, times, dates and the like. In the event that you refuse Mr Clements' application to vacate the order concerning the phone, I'm likely to ask for those messages to be produced in a form that's going to be more readable from the text of the phone, in the event that you permit that application, then I'll reflect on whether I either tender MFI 20 in the form that's been received or take some other steps such as asking for better copies that are more legible.

20

THE COMMISSIONER: Just on programming, concerning the question of the production of the phone and related issue of the rescission of it, of the orders made, I propose to deliver my ruling on that at 2.00pm on Monday.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: MFI 20 then in terms of whether or not those documents are produced in readable form or more readable form, will have to wait until that ruling is delivered.

30

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Yes. Now, Mr Dixon.

MR DIXON: Yes, thank you, Chief Commissioner. Now, Mr Clements, yesterday we were dealing with matters of process. You recall that?---Yes.

And I put to you yesterday that in 2015 Mr Cheah and the Finance section were reporting to Ms Murnain on a day-to-day basis.---Yes, yes.

40

That's what you understand, isn't it?---That's correct, yes.

And you rejected the proposition, didn't you, that Ms Murnain spent a considerable time outside of the office in the course of the 2015 campaign? ---That's right, yeah. Well, look, I, to, to be honest I wasn't watching where she was all the time but in a campaign period the assistant secretary would, would be in the office a lot.

Right. Well, what I want to put to you is that she spent a considerable portion of the time during the 2015 campaign outside of the office. Would you be in a position to deny that?---I, I, I couldn't rule that out.

Yes. Okay.

10 MR ROBERTSON: Can I respectfully invite my learned friend to clarify what he means by considerable, because it might make the answer a little bit more of assistance to the Commission.

MR DIXON: Yes.

THE COMMISSIONER: Yes.

MR DIXON: Ms Murnain would regularly go to Parliament House for example during the course of the 2015 campaign. Do you accept that? ---Look, I don't think that's true.

20 Sorry?---I wouldn't think that would be true.

Do you say that she went there from time to time?---Look, there would be no one there.

Well, there's another assistant secretary there, isn't there?---No, I mean there would be no one at parliament.

At Parliament House at all?---Well, there would be no MPs, I'm sure there'd be catering staff.

30 Yes. Okay.---They're all out in their seats trying to win them.

She was, well, she was regularly visiting them in their seats, the politicians themselves or the candidates?---That would be unusual I'd say.

40 THE COMMISSIONER: What would you expect the assistant general secretary to be doing during an election campaign? Everyone sounds as though they would be very busy, would that apply to her and if so what would she be doing?---Okay. So what, what you do during a campaign is called co-location, and what that means is the Opposition Leader's office moves into our office and we all share a big, you know, and it's, you know, chock full of people. So all of Foley's advisors other than the ones that are on the road with him are, are in the open area in the, what was the call centre and, you know, it's chock full of people and stuff's going on all the time and essentially Kaila is, is in, in the office making sure things are getting done. Now, if there's a problem in a seat, a particular problem in a seat that she needs to sort out, she may go out there, but it would be much more likely that the campaign organiser for the seat would come in to, to our

office, the co-location, because all the resources would be there, there would be Opposition Leaders, media staff, political staff, so all, all the brains of the operation are in that office.

MR DIXON: And given the, I take it, frenetic nature of the activities at that time, would it be fair to say that any supervisory responsibilities that Ms Murnain had over Mr Cheah and the Finance section would take a back seat to those principal activities?---She, she would be extremely busy, extremely busy in, in a period like that and her responsibilities would have  
10 been much, much, what she was doing on a day-to-day basis would be taking up much, much more of her time than in a normal period. That's a fair thing to say.

Is the answer to my question yes?---Yes.

And for example, from time to time apart from those activities within the office, she would go out and meet with advertising agencies from time to time. Is that the case?---No, I did that.

20 She would go out and meet with union leaders who would assist in the campaign?---I'm not sure about that either. I mean, no, I don't think so. They would, they, I mean if they needed to meet, they'd come to us.

She would attend the fundraising functions?---Yes.

Now, you gave evidence yesterday that it was your expectation that after a fundraising function, Mr Cheah would be responsible for collecting forms and bringing the money back to the office after that Labor Action  
30 Committee function. Do you recall - - -?---He'd, he'd be in charge of that process, yeah.

Well, you said I think it was your expectation that Mr Cheah would take on that responsibility.---That's correct.

Was that your evidence?---That's correct.

But you never communicated that expectation to Mr Cheah at any Labor Action Committee function, did you? You personally did not ever - - -?  
40 ---He didn't report to me.

No, but you said you had an expectation. What I'm putting to you is that you never communicated that expectation to Mr Cheah, did you?---I don't recall ever communicating that expectation to Mr Cheah.

Yes.---He didn't report to me.

And you don't know whether for example if Mr Cheah had any responsibility for collecting forms and money after a function, whether he

had a capacity to delegate that to the convenors of the Labor Action Committee itself?---Sorry, could you rephrase that question for me?

Well, for example, if we talk about the Chinese Friends of Labor fundraiser, there was a convenor for the Chinese Friends of Labor, correct?---That's correct.

And who was that, that was - - -?---Yes.

10 Who did you understand that to be, the convenor?---Ah, the convenor?

Yes.---Of Chinese Friends of Labor?

Yes.---Maybe it was Jonathan Yee.

20 So would you understand that there was any capacity on the part of Mr Cheah to expect that Mr Yee took on the principal responsibility for collecting forms and money at such an event?---I mean, look, it would be, it would not I think be outside of Mr Cheah's discretion to work with those people on those tasks.

Now, did you ever put in place any mechanism to ensure the safety of staff if they were responsible in your mind to bring forms and money back after an evening event such as the Chinese Friends of Labor dinner on 12 March, 2015?---Look, when, when, I know when money was for instance to be banked, this is from my knowledge from a long time ago, a couple of people would go if there was, you know, I remember when I was, okay, we'll talk about my time as general secretary.

30 Well, I want to stop you there. I'm not talking about money being banked, I'm talking about an event like the Chinese Friends of Labor dinner. It was held in the evening, wasn't it?---Oh, yes.

And your evidence was that you had an expectation that Mr Cheah would collect the forms and the money, including any cash, and be responsible for it after the dinner. Correct?---Yes.

40 And I'm asking you what mechanism you put in place to ensure the safety of someone that was potentially walking around with thousands of dollars after a function, in this occasion in Chinatown on an evening on a Thursday. ---Well, I, I, those dinners had been going on for a long time and I relied on the mechanisms that were already in place.

And what was that?---I'm not sure.

So the answer to my question is, no, you knew of no mechanism to ensure the safety of people - - -?---No.

- - - that you thought were responsible for carrying around large amounts of cash?---The answer to the question is no.

Okay. Did you ever arrange for Mr Cheah to have access to a safe within the office?---No.

10 Now, you said from time to time in your evidence that you would attempt to instil in the staff that any donation moneys received needed to be married up with a signed form. Do you recall saying that?---That they couldn't be banked - - -

They couldn't be banked?---Unless there was a form and that the details of the form could be verified to the position where we were reasonably satisfied that the money had come from the person and that the person was not a prohibited donor.

20 And this was something that you attempted to instil through orally speaking to these people as opposed to anything in writing, correct?---I don't recall putting anything in writing.

So what, for example, was the policy with respect to receiving photocopies of forms? Was there any policy that you understood, that if you received something that wasn't signed in the original, what was the Sussex Street office policy in respect of such a form?---I don't believe there was one.

30 But you understood, didn't you, that forms were sometimes faxed through or sent electronically such that you would receive a PDF, it wouldn't be in the original?---I'm not sure I ever thought about that. You've asked me that, I can see that that could happen.

There was no requirement, was there, to check forms to pick up anything that might have looked like fraud or an attempt to circumvent the electoral legislation, was there?---That's why you had to check the forms.

40 Other than checking the forms to make sure that they were signed and ticked off correctly, for example in the declaration, there was no requirement to check a form for potential fraud?---The entire purpose of those forms were to protect the party from, from such fraud or illegality and so checking them for any suspicious things on them would be a common sense approach that anybody was required to do that, as the key part of their job, would do.

And did any person that was responsible for looking at forms, such as Mr Cheah and the Finance Department, did they have any training in respect of what a fraudulent form might look like?---Not that I'm aware of.

Did they have any training at all in respect of their jobs?---I certainly made sure that when the law changed that we, that the Electoral Commission were

approached and came in and trained the staff and the staff were taken to the Electoral Commission after the law changed.

And what year was that?---2014.

And was that at a point in time when Mr Wong or Mr Cheah was - - -?---Mr Cheah.

10 Now, was Mr Cheah, other than that example, was he ever sent to any other form of training by your office?---Not that I'm aware of.

For example, to learn about best practice when handling moneys and regularising forms where the money is received?---Not that I'm aware of.

Was Mr Cheah ever assessed as to how he was performing in his tasks to determine whether his practices were in line with the organisations expectations?---He didn't report to me and so I couldn't tell you.

20 If you answer my question, was Mr Cheah ever assessed, to your knowledge, as to how he was performing his tasks and whether his practices were in line with what the organisation's expectations were?---I'm not aware but he didn't report to me.

Did he have, for example, KPIs?---No.

Sorry?---I don't believe so, no.

Did he undergo any performance reviews?---Not that I'm aware of.

30 Now, Mr Cheah gave evidence that he had a role in amending the donation forms to, based on a precedent, sorry, that was made up by someone else. Are you aware of that?---Look, the, the, what I am aware of is that the systems that were in place were designed by Brendan Cavanagh, who was the, who, who, who was the state organiser during Sam Dastyari's time and, and my time as assistant secretary.

So, for example, on a donation form, there's a declaration and certain matters that deal with compliance with the legislation and the like. You accept that?---Yes.

40

Now, that was something that was put in place before Mr Cheah ever assumed his position?---Yes, yes, yes.

And whenever there was a function, for example, the Chinese Friends of Labor, there was a requirement or there was an expectation that the form would be amended or manipulated so as to make it specific to that particular function?---I think the correct term is amended but yes.

Now, did anyone ever scrutinise the forms that Mr Cheah would amend in order to cater for particular events? Did anyone look over to see what he was doing?---He didn't report to me.

You have no system in place to ensure that the forms that were sent out were compliant?---I'm not sure if you heard from my earlier evidence but I made it clear that in the area that I supervised, being Business Dialogue, that every form that went out and signed off by me. I didn't supervise Mr Cheah or the Labor Action Committees and I am unable to answer your question.

10

So you had no input into the Chinese Friends of Labor form that was used on 12 March, 2015?---No, I did not.

I'm asking you.---No.

All right. Was there a checklist or some other process that Mr Cheah could access in order to guide him if difficult issues arose in his job? Do you know of anything like that?---No.

20 Okay. Well, you're - - -?---I don't know.

You find that humorous, do you?---No, you keep asking me questions about someone that I didn't, that didn't report to me.

I'm asking you about - - -?---And the answer to them is, is, is if I, he didn't report to me, then I don't know. But if you want to keep asking me the same question - - -

30 Mr Clements, I'm asking you about processes that were in place in an organisation that you were in charge of.---Yep.

Do you understand that?---Yes.

40 Okay. Now, if for example a politician rang up Mr Cheah and said – I want you to assume that this is what might have happened – one of the forms you've used, you have received, sorry, from the function was given to you in error. Please throw that out and replace it with a form that I have here, with the correct donor information on it. Now, if that example were to happen, what rule would be in place to deal with such an occurrence, do you know?---You're asking me to answer a question on a hypothetical situation.

I'm asking you whether there was any rules in place or policies - - -?  
---Well, you've asked me if there were rules or policies in place.

- - - in place that would deal with that.

THE COMMISSIONER: Just listen to the question.---And I've said no.

Would you listen to the question?---Sorry, Commissioner.

MR DIXON: Yes. I gave you an example. Do you want me to repeat it?  
---Yes, please.

10 Okay. So if a politician rang up Mr Cheah and said to him, “One of the forms you have from a function was given to you in error. Please throw it out, and replace it with this form that I’m going to give to you with the correct donor information on it.” Now, do you know of any policy or rules that were in place to deal with such an occurrence?---I’m not aware of any, but I think common sense would say that there, that you should at least raise some suspicious in those circumstances.

That’s even in the case of a politician ringing you up and telling you that?  
---Absolutely.

But you know of no processes in place as to - - -?---There’s no processes, but there’s not processes for everything. That’s why common sense exists.

20 Now, what if, for example, it was determined that a person had breached the \$5,000 cap – I’m talking about in 2015 – by say, an amount of \$100. Do you know of any system that was in place to assist someone like Mr Cheah or Finance to determine whether someone had breached the cap?---Yeah, look, this, this is an area which, which because of the way the caps work and people donate all over the place, it is quite a difficult thing to track that. And there are circumstances where, inadvertently, people will donate over the cap, and there are circumstances where that will not become apparent until much later in time.

30 And this is because all that happens, in the case of someone like Mr Cheah, is that they receive a form, they see an amount on it, and if that amount is under the cap, then that is processed with the money, correct?---Oh, from Mr Cheah’s point of view, there’s a box that you tick to say that you haven’t, that you haven’t gone over the cap. He would have to rely on that, unless he had some suspicion that the person may have gone over the cap, in which case he could go to Finance and ask all the disclosures, the, the disclosures person, and ask them how much this person had donated, and, and he could do that himself, if he had those suspicions.

40 So to answer my question, if the person in that same financial year had donated an, sorry, another amount of money, that would then put their second donation above the \$5,000 limit. There’d be no means for Mr Cheah to pick that up just simply by reading the form, would there?---No.

Now, for example, what would occur if a signature was missing from the declaration section of a form? Do you know of any system or mechanism in place to deal with such an occurrence?---You wouldn’t bank it.

You wouldn't bank it?---You wouldn't bank the money.

Are you now aware that two of the 20 forms that are in evidence in these proceedings, for example, Exhibit 192, were not signed?---No, I didn't know that.

Two of the forms were not signed in the declaration section of the form. You weren't aware of that?---No, well, look, I've been following the inquiry, but I haven't picked that up, sorry.

10

Are you surprised that that got through your finance department and was banked?---That's disappointing, yes.

Are you aware that another two forms – and sorry, just for the record, Teresa Tay I have as not completing the signature section of the form. Are you aware, Mr Clements, that another two forms were undated, being from May Ho Yee, in Exhibit 192? Are you aware of that?---No.

20

And that's a problem, isn't it, because you've got no means then of determining whether the donation was made in one financial year or another. That's the problem with an undated form, isn't it?---So you're telling me that Kenrick Cheah took a form that was undated or unsigned and, and handed it onto the Finance Department?

I'm putting to you, I'm asking you whether you're aware that there were two forms that were processed - -?---No, I'm not aware of that but if that happened and Kenrick saw it then he should not have handed it on to the Finance Department.

30

And was the responsibility of the Finance Department to also check the forms?---They should double-check the forms.

MR ROBERTSON: Can I just clarify. Is my learned friend intending to refer to Exhibit 152 rather than 192?

MR DIXON: I might have – sorry.

40

MR ROBERTSON: I just think to assist the Commissioner it would be desirable for my friend to identify the particular ones he is referring to. It doesn't necessarily need to be with the witness but I think it's appropriate that we draw particular attention - - -

THE COMMISSIONER: Are you able to - - -

MR DIXON: If the operator would bring up 152.

MR ROBERTSON: And I think there was a reference to Mr Tam, that's at page 10.

MR DIXON: Tay.

MR ROBERTSON: Yes, well, an invoice that said – it's a Ms Tam but wrongly put in as Ms Tay on page 10.

MR DIXON: Yes. Do you see that, Mr Clements?---Yes.

10 And do you see that there's a provision at the bottom right-hand corner of the form where the person is to confirm certain matters?---Yes.

And there's provision there for a signature to, in effect, declare the truth of those matters?---Yes.

And that's unsigned. Do you accept that?---I do see that.

And, operator, there's a second form there by Ms Tay.

20 MR ROBERTSON: Page 30, to assist my friend. Page 30.

THE WITNESS: And, and this is why the Tay thing went in as Tay not Tam because they've misread the M.

MR DIXON: Yes. And if, operator - - -?---Well, I mean that, that should have been, her, her, that should have been checked by Mr Cheah on Campaign Central to confirm that there is a Teresa Tam who is enrolled at that address.

30 And, operator, if you could just bring up May Ho Yee's form.

MR ROBERTSON: Page 22 of the exhibit.

MR DIXON: Mr Clements, do you see that form there?---Yep.

Do you see that there's no date associated with it?---Yeah.

40 And you accept, don't you, that the problem with an undated form is that you have got no means of determining whether the moneys were donated in one financial year or another?---Well, it does say that, "You have not exceeded the \$5,000 cap." So I suppose you could read from that that, that, you know, the \$5,000 cap isn't an indefinite thing, it's, it's restricted by time.

Now, I just want to learn something about the size of the task confronting someone in Mr Cheah's position during an election campaign. Would you accept that during a campaign, Mr Cheah was dealing with potentially hundreds of thousands of dollars in donations over the course of an election campaign?---Oh, look, look, I don't know the exact amount and I will say

that he was, I, I do understand as well that he was, he, he, he was suffering health problems at the time. I acknowledge that.

And what health problems were they, you understood?---I now understand that he was, he was suffering from, from narcolepsy.

But you understand that during the course of the 2015 election campaign, he was handling potentially hundreds of thousands of dollars in donations?  
---Yeah. He was, he was, yeah.

10

Yes?---Yes.

And he was also dealing with potentially thousands of forms because, forms even in small – sorry. Donations, even in small amounts, were required to be accompanied by a form, correct?---That’s right.

So you don’t, you wouldn’t refute the proposition that Me Cheah had an extremely busy time during the March 2015 campaign?---We all did, but yes, he would have.

20

Now, you said in your evidence yesterday that Labor Action Committee functions often run at a loss. Do you recall that?---I said sometimes they can or they have in the past, some of them.

Sorry, when you say at a loss, you mean that the cost of running the function itself - - -?---No, sorry. I, I think I said some of these things don’t even make money but - - -

30

If you just listen to my question. If you just listen to my question. Is it the case that they often cost more to run a function that the money brought in, is that what you say?---No. I’m not saying often, I’m just saying it’s not unknown that, yeah, sometimes dinners don’t raise money.

And when you say don’t raise money, you mean, don’t you, that money comes in but that’s not enough to defray the expenses involved in setting- - - ?---Sometimes people get a little bit overly ambitious and don’t get enough people there, that’s right.

40

So for example - - -?---What we refer to as a “fundloser.”

- - - if you hire a restaurant – if you’d just listen to my questions, please, Mr Clements. If you hire a restaurant, it’s the case, isn’t it, that the cost of hosting the function at that restaurant will be paid for out of the proceeds received?---You can ask, you’re asking me technical questions about how those things work and I don’t know the answer to them.

Would you accept then, just to give it some sense of understanding here, if you go to a restaurant and hire it for a function and it costs, say, \$10,000 for

that restaurant for that night, do you have any sense of where that money's coming from to pay for that?---At, at, at, I don't know at these dinners technically how that side of it worked, no.

Would your, would you expect that the moneys would be paid out of the funds that come in through donations on the night?---Look, I, I, I just don't know the technical details of how that works. I don't know how the restaurants look at it, I don't know how the Electoral Commission looks at it, I just don't know the answer to those questions.

10

Well, it's not the case, is it, of the ALP writing a cheque from its own funds to pay for the dinner for example?---I don't know the answer to the question.

I'm asking you a different question. It's not the case - - -?---Well, you're asking me the same question in a different way.

20

You know of no system where the ALP actually pays for Labor Action Committee functions?---I'm not aware of the way that the, the technical details of these things work.

Now, you said yesterday, I think yesterday or the day before, that you knew of at least one example where an action committee, I think it was the Hellenic Labor Action Committee, decided to raise money for a non-Labor Party cause. Do you recall that?---Look, I've heard that, yeah.

Well, your evidence was that they raised money for a charity.---Yeah, I was told that, yeah.

30

And I think your evidence was that you expected that if someone was doing that, it would be at least made clear to those present that they were donating money to a non-Labor cause. That's your understanding, isn't it?---So the rules of the Labor Party make it very clear that any fundraiser which is put on or advertised to raise money for the, for, for the Labor Party, that those funds go to the Labor Party. So I would expect that if Hellenic Friends of Labor wanted to do a fundraiser for a Greek, Greek charity, that they did not advertise that or make any assertions that the money raised would be going to the Labor Party.

40

And when you say the rules, do you mean the ALP NSW Branch rules? ---NSW rules, yes, yes.

In the current iteration of the ALP Branch rules of NSW 2018 in section K.3(c) it provides that, "All funds raised or claimed for campaign or election purposes are the property of the NSW Branch of the Australian Labor Party." Is that the rule that you had in mind?---I think that was – 2015 rule I think is the same iteration of that, but I don't know it off the top of my head.

But that is the rule you had in mind?---That's it, yep.

That is, once funds are raised or claimed for campaign purposes, they become the property of the NSW Branch. That's what you understand?  
---That, my understanding of the effect of that rule is that if you're going to use our name, the money comes to us. And I shouldn't say us because it's not me anymore, but that was the understanding of that rule.

10 So for example if there was a Labor Action Committee function and a person stood up and said, look, we've been raising money for the ALP all night, but the next raffle will be for a separate cause, for example a charity or the like, the next raffle will be for a different cause, in your mind does that, would that be compliant with what your expectation is, in other words, to make it clear that it's not raising money for the ALP?---No. I think if you'd invited people to a function in, in, in the light of, in, in the light of it being a Labor function and you started raising money for something else, that that would be, that wouldn't be acceptable. Whether it would be a direct breach of that rule, I don't know.

20

But other than that rule, you know of no other hard or fast rules that were applicable to those sort of circumstances, do you?---No.

Now, turning now to Mr Huang. You say that you became very close to Mr Huang in late 2015. Do you recall that evidence?---Yep.

And it was the case that at least by that time, he gave you the \$35,000 in cash in August I think of 2015. Correct?---Yep.

30 And you say that from that time or around that time, you became very close to him?---No, I was already close to him by then.

You were already close to him by then?---I was already close to him by then. I was already friends with him by then.

And you were -- you'd been to his house, I think, once or twice before the March 2015 election?---That's right.

40 And you accept, don't you, that you were becoming quite close to him by that stage, March, 2015?---Nah, it was post that. It was, it was the, it was, it was the, it was the, the Jiangxi thing, and the fixing of that, that really triggered off our relationship.

What date was that?---Oh, it was in April or May, 2015.

And of course by May, 2015, when you came back from Israel, you had asked Mr Huang for the \$10,000, which he gave to you in cash, you recall?  
---That's right, yep.

Now, as to the \$10,000, the union secretary that you referred to asked you for assistance with a union election challenge because, and your words were, “general secretaries were supposed to have access to cash for these things”, correct?---Yes.

And just to clarify, was this an election challenge, or - - -?

10 MR LAWRENCE: I object. The identity of that person has not been revealed I think quite designedly. Perhaps people have refrained from enquiring into that matter, perhaps for quite good reasons. This is a question that in my respectful submission would tend to identify that person.

THE COMMISSIONER: Well, I’ll allow the question, but we’ll see where it goes and whether there’s a need for any suppression orders.

MR LAWRENCE: Okay.

20 MR DIXON: Mr Clements, I’ve got no desire in learning the identity of the person. My question, which I hadn’t quite finished yet, was this. In order to clarify, was it a legal challenge to the result of an election, or was it a, an - - -?---It was an election.

- - - a challenge by a dissident ticket within the union, in effect.---Yes.

And you then spoke to Mr Dastyari about that?---Yes.

30 And you presumably asked if there was indeed an obligation upon the ALP to provide moneys to unions faced with election challenges, is that - - -?---It wasn’t on behalf of the ALP. It was, it was in my role as the convenor of the NSW Right, and it, it was that there was all this pressure being put on me by the old-timers, that you know, that the way things worked were that I, you know, as convenor of the NSW Right, that I needed to get these things, you know, I needed to help. And I said to Sam, “Mate, what do I do?” And he said, “Well, go and see Mr Huang.”

40 Well, your evidence at transcript 2356 was that the union secretary had put to you that general secretaries were supposed to have access to cash for these things. They were your words.---Yeah, well, general secretary and convenor of the NSW Right are exactly the same thing.

So it’s your evidence that you were acting outside of the capacity of your office when you were dealing with the \$100,000, is that correct?

MR LAWRENCE: I object.

THE WITNESS: Sorry?

THE COMMISSIONER: Now, just a moment, what are you talking about?  
Are you talking about that \$100,000, or - - -

MR DIXON: No, the \$10,000, Chief Commissioner.

THE COMMISSIONER: Well, you said 100,000.

MR DIXON: Oh, I beg your pardon. I beg your pardon. Is it your  
evidence that you were acting with a different hat, so to speak, outside of  
10 the capacity of the office of the General Secretary to the ALP, when you  
approached Mr Huang in respect of the \$10,000?---The, that's a very  
murky, very murky question and, and, and it, yeah, it's going to go to the  
way the NSW Labor Party works, and I just don't know how to answer that.

Now, you then spoke to Mr Huang, and you said, your words were, I had  
this secretary who needed \$10,000, and he said, "Yes, okay."---Yeah, it was  
a bit more than that.

Well, what did you say to him?---Oh, I explained why he needed the money.  
20 I explained the way these things work, the history of how union elections,  
oh, have been funded in the past, and he said yes.

There was no doubt in your mind, was there, that Mr Huang was intending  
to pay the money over to assist you, as opposed to a person he'd never met  
before?---I don't know exactly what his intentions were. I asked him and he  
said yes.

But what I want to put to you is that you couched your approach in terms of  
a favour that would be something that you would appreciate personally as  
30 opposed to someone else you'd never met before? That's the way you  
couched it, isn't it?---I, I explained the circumstances and what, what view  
he came to, I am not sure.

Mr Wang, I want to put it to you – I'll withdraw that. When you received  
the money, you say that you didn't count it?---No.

This is in the A4 envelope. You wouldn't have a clue whether there was  
\$9,000 or \$11,000 in that envelope?---I assumed there was 10, but no I  
40 don't, no.

And did ever make any receipt or lock the money under anything recorded  
in the ALP?---No.

But that's what happened, isn't it, that the union secretary expected the  
money to come from you, through your position as general secretary of the  
ALP?---As convenor of the NSW Right.

Yes. And so when you gave the money to the union secretary, he was left – I’ll rephrase that question. You put it to him on the basis that this was money that you had arranged as he had asked. You didn’t tell him what the source of the money was or what source - - -?---I didn’t tell him where the money came from, no.

It was more of a don’t ask, don’t tell situation, wasn’t it?---He didn’t ask, I didn’t tell him.

10 The secretary of the union didn’t need to ask you about the source because he understood the money was coming from the ALP. That’s the impression you left with him, isn’t it?---No, no. He, he would well know that the ALP could not do that.

And that was notwithstanding that you say that he asked you for the money?---Well, he asked me a convenor of the NSW Right.

20 And did you have any discussions about where you were supposed to source that money from?---I had no idea where I was supposed to source the money from. He just kept saying, “You guys are supposed to me able to – you guys are supposed to have money for, for these sorts of things.”

When you say, “You people,” he meant the ALP did he? Is that what he said to you?---No, no. He meant the, the, the convenor of the NSW Right.

30 THE COMMISSIONER: And as a matter of practice or convention, did convertors of the NSW Right have a cash facility or a funding facility for such matters?---As a matter of legend, Commissioner, there was supposed to be a Centre Unity safe in the general secretary’s office which contained money for these sort of things, but there was not a safe in my office. It, that practice had, had, had gone before I became general secretary but the people, you know, the sort of old-timers that have been around a long time had this idea that, you know, that was still there and - - -

40 But as at 2015, there wasn’t operative any convention or practice of having funds available for the purpose of expending it upon union election matters such as the one you are talking about now?---So, we, we had a, we had a faction fund which was, but it was, it was all banked money and it was all, it didn’t have much in it and it was all used for, for, for other faction stuff.

But there was no faction fund available as at 2015 for the purpose of meeting the request of the person you were assisting about the election issue?---There was, there was \$10,000 in that account. Arguably that could have been used but it wasn’t.

But that fund wasn’t used for that purpose as I understand it?---It has been in the past. I, I, I never used it for those purposes.

Well, before your time.---Pardon.

Before your time.---Before my time but I, I had, I had never used it for those purposes.

10 So coming back to what I was asking you, as at 2015 there was no convention or practice which validated using any particular funds for providing moneys on request by another union official dealing with an election dispute issue such as you're now talking about?---That's correct.

So this was, as it were, a one-off transaction for which you utilised the \$10,000?---That's correct.

MR DIXON: Yes, thank you. Now, do you understand that unions have their own reporting requirements, don't you?---Not for those sorts of things.

20 Well, are you suggesting that moneys received in the circumstances you've described wouldn't be required to be accounted for by the union?---That's exactly what I'm saying.

And that's because you say that it goes to the campaign as opposed to the entity itself. Is that right?---That's correct.

Now, did you ever consider asking or did you ask Mr Huang to ever fill out a form to account for the moneys that he gave to you?---No.

30 Now, I just want to then deal with the \$100,000. Now, your evidence was as I understand it, you had lunch with Mr Wong and Mr Huang at Mr Huang's house in, on 15 March after the Chinese Friends of Labor dinner. ---Yeah.

That was on a Sunday. Correct?---That's correct.

And this was, I think you had lunch, you had a bottle of Grange at that lunch?---I didn't have a bottle, I was driving, but I had a glass, yeah.

40 Now, you don't recall, do you, whether there was any discussion about the Chinese Friends of Labor event that had just occurred?---No, I don't recall any discussion.

You just don't recall.---No.

And you don't recall, do you, whether there was any discussions about donations to the Labor Party?---I don't recall that either, no.

So you might have discussed at this meeting the fact that Mr Huang was going to bring in some money to the ALP offices?---No.

You just don't recall that though.---No, I'd know that.

When you say you would know that, I'm asking you whether those matters were discussed or whether you recall them.---I don't recall them being discussed and I would recall that being discussed.

10 Well, when it was put to you that you were informed that Mr Huang was coming in with \$100,000, I think your answer was similar, you said, "I think I'd recall that." Yes?---Yes.

But you just can't categorically deny that, can you?---(No Audible Reply)

You can't categorically deny that you were informed that Mr Huang was coming in with \$100,000?---I'm 99.9 per cent sure that that didn't happen, but I cannot absolutely categorically deny it, no.

20 On 7 April, 2015, you received a text from Mr Xu at 10.04am asking him, asking for you to call him. Do you recall that?---Did you get those dates right, sorry?

7 April.---7 April, yeah.

2015.---Yeah.

Mr Xu sent you a text?---That's correct.

30 He called you to arrange a time and a place for you to meet with Mr Huang? ---He, yeah.

You don't recall, I think your evidence was you don't recall at all what the meeting was supposed to be about?---I don't recall being informed before the meeting what the, what the meeting was going to be about.

Yes. And what I want to put to you is that the meeting that you had with Mr Huang was actually arranged by Mr Wong. Do you have any knowledge of that?---Why would Mr Xu call me to arrange something that had been arranged by Mr Wong?

40 If you just listen to my question. Other than details as to time and place, which was arranged with Mr Xu, what I'm suggesting to you is that Mr Wong as the person that precipitated the meeting between you and Mr Huang.---The only – no, I don't believe that's true.

And so you met at around 2.00pm at the Sussex Street offices.---Yep.

And it was during that meeting that Mr Huang said to you that he wanted to meet Mr Shorten for the first time. That's your evidence, is it?---That's right, yep.

You don't recall what else was spoken about?---No.

You just don't know if you were given anything during the course of that meeting?---I, I, I, I don't recall being given anything, no.

10 But you don't know one way or another whether you were or whether you weren't given anything. You just don't recall?---I couldn't, I don't recall being given anything.

But you don't deny, do you, that you might have been given something?  
---I could have been given something like a bottle of wine.

You can't categorically deny that Mr Huang was carrying a bag on 7 April when he visited you?---Oh, no, I can't, I don't recall that.

20 You just don't know. And you don't know, you can't categorically deny whether a bag was given to you during the course of that meeting?---That would be very unusual and I would remember it, a bag.

My question was, you cannot categorically deny that a bag was given to you during that meeting, can you?---I, I, I've got no recollection of being given a bag at that meeting.

Can you sit here and deny it?---I can't recall ever being given a bag at that meeting.

30 What's the answer to my question?---That I can't recall ever being given a bag at that meeting.

Do you deny it though?---Do I deny being given a bag?

Yes.---I don't recall being given a bag at that meeting.

Now, you gave some evidence of Mr Wong informing you on 19 July, 2019 of the investigation into Mr Huang giving you a bag with \$100,000 in it.

40 ---I think you've got the dates mixed up there.

It was 19 July, two thousand and, sorry, seventeen?---That's correct.

Yes, I beg your pardon. And your response at the time was, "I'm sitting here thinking, you know, could this have happened and I've forgotten about it." Do you recall giving that evidence?---Yeah, that was one of the things that I was just blown away thinking, yeah.

So there's a possibility that something might have happened that you've just simply forgotten about. That was something that passed through your mind, wasn't it?---For a very brief period of time.

Now, what I want to suggest to you, Mr Clements, is that, and I'm putting this to you, that you had a discussion with Mr Huang and Mr Wong about the delivery of \$100,000 in cash to the Sussex Street offices in April of 2015.---No.

10 I want to put to you that you walked out of your meeting with Mr Huang at the offices on 7 April of 2015 and gave a bag to Mr Cheah.---No.

You just don't recall doing that?---I didn't do that.

You categorically deny that you did it?---Why would I give a bag to Mr Cheah?

I beg your pardon?---Why would I give a bag to Mr Cheah?

20 I'm putting to you that you gave a bag to Mr Cheah for him to count the contents of that bag.---No.

And what I want to suggest to you is that the contents of the bag were a quid pro quo for you to arrange for Mr Huang to meet with Mr Shorten.  
---Absolutely not.

This was a - - -?---The bag didn't exist. There was no quid pro quo.

30 This was a person that you say you weren't close to at that time. Correct?  
---That's right.

He came in and asked you to meet with the Leader of the Opposition of the ALP.---That's right.

And later that day you then took steps to arrange that meeting. Did you not?  
---That's right. In fact I took steps while he was sitting there.

40 And would that be a usual thing for you to do, for someone to walk in off the street and ask to meet the Leader of the ALP without anything coming the other way from the person making the request?---Depends on who the person making the request was I suppose.

And what was it about Mr Huang that made you put him in a different category and act upon his - - -?---The fact that he'd donated half a million dollars to the 2013 election campaign and, and was the sort of person that could donate that or more in the future.

And you knew at this stage that he was a prohibited donor, did you not?  
---Absolutely. Not for federal purposes he wasn't.

No, but this was in the context of a state election campaign, was it not?  
---No, it wasn't.

It was within some weeks after the election campaign?---The election campaign was over and done with.

10 So all the moneys that you understood were coming from Mr Huang were to be treated for federal election purposes only. Is that right?---Absolutely.

THE COMMISSIONER: So are you saying that a big donor to the political party by virtue of the donation is perceived by you as now having influence in meeting people upon request, be they senior members of the party or otherwise?---Yes, yes, yes.

20 So that's, in your mind anyone, one of the benefits to the donor, a generous donor, it's in effect a price or an amount paid for influence. Is that right?  
---Commissioner, I have to say that's correct.

So you say the reason you immediately responded to this request for a meeting to be arranged between Mr Huang Xiangmo and Mr Shorten was the fact that Mr Huang had donated generously to the ALP?---In the past, yep. And, and it was obviously in my mind that he was a, he was a very good potential donor for the, for the 2016 federal election.

30 MR DIXON: Thank you. You said in your evidence that you rarely, if ever, spoke to Mr Cheah during work. Is that correct?---I'd say g'day to him.

You spoke to Mr Cheah, didn't you, two days after the meeting on 7 April with Mr Huang at a function at The Rocks. Do you recall that? A staff function, sorry.---Sorry.

You don't recall that?---I don't recall.

40 You recall the you spoke to Mr Cheah and told him that he would be moving full-time to Parliament House to work for Shaoquett Moselmane?  
---I recall getting him a job with Shaoquett. Those discussions would have been earlier than that, I would say, but sure.

And I want to suggest to you that on 9 April, 2015, you told Mr Cheah that he would be winding up his job at Sussex Street offices and then moving full-time to work with Shaoquett Moselmane?---That's something that happened and so it's a conversation that could have taken place, yeah.

And you also made contact with Mr Cheah, didn't you, in or around January of 2016 by phone to discuss Mr Huang's daughter's wedding. Do you recall that?---No.

You were invited to Mr Huang's daughter's wedding in or around January of 2016?---I was.

10 And what I want to put to you is that you rang up Mr Cheah and just asked him whether there was any protocol or the like that you should be aware of when you attend a Chinese community wedding. Do you recall that?---I don't think I would have done that. I, I, I do recall ringing him after I left as general secretary. This might be what he's referring to. To, I do recall a conversation after I left.

And in that conversation you said if he ever needed assistance with raising money for the Chinese community, to call you. Do you recall saying that to him?---I don't recall saying that to him, no.

20 You might have done?---I could have.

So you were invited to Mr Huang's daughter's wedding in January of 2016. You sat at the head table?---No.

Mr Shorten was there?---Yes.

You sat at the same table as Mr Shorten?---I did. The Liberals were at a better table than us.

30 What I want to put to you, Mr Clements, is that you are still here today doing the bidding of Mr Huang in order to assist him in minimising his involvement in this matter of \$100,000 donation.---I'm here today to answer questions honestly on the basis of the things that I know and that's what I'm doing. I am not doing the bidding of anybody.

40 I want to suggest to you that because of your close association with Mr Huang that your evidence has been specifically tailored with that in mind, that is to repay the favours that he has meted out to you over time and that you in turn are minimising or supressing his involvement in the matter of the \$100,000 donation.---That's absurd.

THE COMMISSIONER: Sorry, I couldn't hear that.---That's absurd.

MR DIXON: You said yesterday that after you met with Mr Wong on 19 July, 2017, that, and these are your words, "I was trying to work out how I had forgotten something like that," when he referred to the fact that you he'd been accused of receiving \$100,000 in cash from Mr Huang. Do you remember saying that?---I think I said, how I, if I could, if I could have forgotten something like that.

Yes. And did you ever work that out?---Pardon.

Did you ever work out how you forget it?---I didn't forget it. It didn't happen.

That's the cross-examination. Thank you, Chief Commissioner.

10 THE COMMISSIONER: Yes, thank you. Yes. All right. Who's next? Mr Neil, or - - -

MR HALE: I was thinking of going last, if that's appropriate.

THE COMMISSIONER: Mr Neil, what do you - - -

MR NEIL: I am very happy to do so now. We have an application for leave to cross-examine and I think, Commissioner, you have seen that document.

20 THE COMMISSIONER: Yes. Thank you. I've received your application and you may proceed.

MR NEIL: Thank you. Mr Clements, I appear for Ms Kaila Murnain. You gave some evidence that you had given a general delegation to her to take responsibility for fundraising. That evidence was not correct. Do you agree?---No.

30 You gave some evidence that you had given a general delegation to Kaila Murnain to take responsibility for matters pertaining to finance. That evidence was not correct. Do you agree?---I, in terms of the finance, the way the actual finance, financing of the state campaign, that is correct. I did give that delegation.

You gave some evidence that you had assigned to Kaila Murnain day-to-day responsibility for fundraising during a state campaign. That evidence was not correct. Do you agree?---That evidence was correct.

40 You accept that there's no document constituting such a delegation or assignment, correct?---I accept that.

You accept that there's no document reflecting such a delegation or assignment, correct?---As far as I am aware, that's correct.

The reason why there is no such document is that there was no such delegation or assignment. Do you agree?---No, I do not agree.

Fundraising meetings, or meetings of a Fundraising Committee were held from time to time in connection with state campaigns. Correct?---I understand that to be correct.

You understand that to be correct because you attended meetings of that kind. Is that right?---I think I, I think I called in on one or two.

10 When you attended, in fact, when you attended meetings of that kind, you chaired them. Do you agree?---I don't think they were the sort of meetings that were chaired.

And you chaired them, I want to suggest to you, even when Ms Murnain was present. Do you accept that?---I just answered a question in which I said that those meetings weren't thought that they were chaired.

Now, whether – do you remember the question I asked you?

20 THE COMMISSIONER: Just put it again, please.

MR NEIL: You chaired meetings of that kind, I want to suggest to you, even when Ms Murnain was present. Do you agree?---No, I don't.

Now, one of the matters that was discussed at fundraising meetings or meetings of the Fundraising Committee was the revenue that was estimated to be received from fundraising events. Do you accept that?---I don't recall being at a meeting when such things were discussed, but I would assume that that would be the sort of thing that would be discussed.

30 The practice was that the estimated revenue to be raised at fundraising events was a matter that was put to and specifically approved by you. That was the practice. Do you agree?---I don't agree.

So far as LACs were concerned, the practice was that you would set targets for LACs in terms of fundraising. Do you accept that?---That is incorrect.

The practice was that you would approve targets for revenue to be raised by LACs. Do you accept that?---I don't accept that.

40 One of your responsibilities as the general secretary was to make sure that there was enough money for any given campaign. Do you agree with that? ---At the end of the day, if there wasn't enough money, I was ultimately responsible for the affairs of your branch, and so you could say that ultimately, that if there was not enough money, that it was me that was responsible.

And being so responsible, one of your tasks, as you understood it at the time, was to make sure that there was enough money for the campaigns. Do

you agree?---That was not my task. I delegated that to Kaila, in full trust of her significant abilities.

The approach that you have taken in giving evidence about that – and indeed, I want to suggest, every other matter about which you’ve given evidence to this Commission – is to deny responsibility for anything that might give rise to questions about your conduct. Do you accept that proposition?---I do not accept that.

10 And to assign responsibility instead to someone else. Do you agree with that?---I don’t agree with that.

Anyone but you - - ?---I don’t agree with that.

- - - do you agree with that?---And I am not suggesting that Kaila is responsible for this.

Now, Mr Cheah had responsibility for at least those LACs that involved particular ethnic groups, is that correct?---Yes.

20

He reported on that aspect of his responsibilities to fundraising meetings, is that right, or meetings of the Fundraising Committee?---I assume that that would have been one of the things that were reported into those meetings, yes.

LACs during the time when you were general secretary essentially or largely ran themselves, is that right?---They were, they were reasonably autonomous but they were much more overseen by my office, in the sense of Kenrick, than, for instance, a local branch would have been or a local SEC or FEC.

30

One aspect in which they were autonomous during the time when you were general secretary is that they were permitted to run or conduct their own accounts, is that correct?---I don’t recall exactly what the rules said about that, but I do recall that Kaila was very, very strict on making sure that those LACs did not do that.

There was, during the time when you were the general secretary, no policy that governed fundraising by LACs, is that right?---Not that I recall.

40

And nor was there any control exerted by you over funds raised by fundraising events conducted by LACs, do you accept that?---We had a full-time staff member at this time whose job it was to supervise those LACs, and in particular the fundraising activities of those LACs.

And that officer is someone else who had responsibility rather than you, is that right?---Well, it would probably be something that was below my pay grade, yes.

What do you accept responsibility for?

MR LAWRENCE: I object.

MR NEIL: What did you do?

MR LAWRENCE: I object.

10 THE COMMISSIONER: I'll allow that.

THE WITNESS: I've accepted responsibility for failings at different times of my questioning, Mr Neil, and I, I, and I have been forthcoming with details about things that I have done that have been particularly embarrassing and, and the subject of news, of news, and I have not sought about those things to attribute blame to anybody but myself.

MR NEIL: Perhaps you've misunderstood my question. What did you do while you were general secretary? What did you actually spend your time  
20 on?---Well, in, we have a parliamentary democracy in New South Wales, and as part of that parliamentary democracy you have seats, you have local elections, and the party that wins the most seats gets to form government, and so a large part of my role was to oversee the selection of candidates for those seats and the Upper House. We also design campaigns because the way that you win those elections is that you persuade voters to vote for your party by running TV ads, putting pamphlets out. I ran those campaigns. I oversaw the preselection of candidates. I oversaw the administration of the party. I sorted out problems in between grown-ups who should have been  
30 able to sort their own problems out. My job was wide-ranging and very busy and I did a lot of things.

One of the things you did not do was to institute any policy that governed the way in which LACs raised funds and then dealt with funds that they had raised. Do you agree with that?---Oh, yes, I, I agree with that.

THE COMMISSIONER: You said that, in relation to the LACs and the funds raised by them, that you had at the time a full-time staff member to supervise in that area, is that right?---Yes, that's correct.

40 And did that staff member provide any reports on a regular basis to you or report to anyone?---No, he, he would have, he would have, he reported to Kaila.

But would she in turn report to you on LAC fundraising?---Only if there was an issue.

Only if there's an issue. But what, in terms of general administration and governance, would you receive by way of regular reporting from those

delegated with various functions, including the one we're talking about, fundraising by LACs?---So there was in fact in, when we talked yesterday about the way the Administrative Committee works, there was this thing called officers A, and in the officers A there would often be a line item in there about Labor Action Committees, about what they were up to and what they were doing.

10 Sure. But how did you keep abreast, as it were, and in the loop on a regular basis as part of the administration of the branch on fundraising, whether it be by LACs or otherwise, and sufficiency of funding for elections, that sort of matter, how was it, was it a regular, was there some form of regular reporting system, be it written, electronic or otherwise, back to you?---Yes, okay. So when, when we would get ready for Admin Committee each month there would be a line item in the officers A I believe, and it would say, "Labor Action Committees," and it would be an update on what they're up to, and Kaila would come in and talk to me about, you know, this is what's in this report and that's what this is about, and it might say, you know, Irish Friends of Labor is being established, or you know, Chinese Friends of Labor is, is, is doing a walkthrough in, in, in, in the, in  
20 Chinatown, or something like that. That, that was the sort of level of reporting. And so the only really formal way that Kaila and I sort of worked on a reporting basis in a formal sense was that we would get together before admin every month and talk through these things.

But do you mean that there wasn't any form of reporting system in terms of an accountable system of finances that came through to you on a regular basis?---Well, I believe - - -

30 No, just a minute. From Kaila Murnain or anyone else?---I don't recall any such, no.

Well, that meant you couldn't be in the loop if you weren't regularly receiving reports from those who had delegated responsibilities, including Ms Murnain?---As I say, as I've said a few times, if there were issues it would be brought to my attention. And I do recall Kaila - - -

40 I understand that and you said that a number of times, if there was a problem or now you're saying if there was an issue it would be brought to your attention. I'm not talking about an ad hoc situation like that, but I'm talking about ongoing governance responsibility, as you say, in so many words I think you've indicated yesterday, the buck stopped with you. ---That's right.

Well, if the buck stopped with you, how could you be assuming responsibility of other than the line item issue as to what they were doing, there was no reporting on how they were doing, the financing detail, the assessment as to whether or not funding was at a certain level, the integrity of the processes and so on, if you had no reporting on any of those matters

then how did you discharge your responsibility?---I accept that that is something that should have been in, in place, Commissioner.

But it wasn't.---And it wasn't.

MR NEIL: Indeed, in addition to the matters that the Commissioner has raised with you, there was during your time as general secretary, no system whereby you asked for or received regular reports about particular donations, their source or amount, or the general level of donations. Do you agree with that?---There was a Finance Committee which, and I did ask regularly Maggie how we were tracking in terms of the state campaign account and the federal campaign account. That's right.

Apart from that, nothing else. Is that right?---Not that I recall, no.

Now, you did of course keep yourself in the loop so far as fundraising activities of Chinese Friends of Labor were concerned. Is that right? ---I was in the loop at times, people would come to me about, about, when they needed something, yeah.

20

It was your practice in 2014/2015 to discuss with Mr Ernest Wong fundraising activities of Chinese Friends of Labor. Is that right?---It was his practice to try and talk to me about what he was doing, yep.

And it was the practice in that time, 2014 and 2015, that Mr Wong would discuss with you his plans for fundraising dinners to be held by Chinese Friends of Labor. Is that right?---He would tell me that he was, you know, well, the fundraising dinners were things that were regular, they happened every year, and he would tell me things like, well, I'm thinking of doing it in March this year, or I'm thinking of doing it in June next year or whatever, yeah.

30

And it was your practice to regularly catch up with Mr Wong in 2014 and 2015 to discuss with him plans for fundraising activities of Chinese Friends of Labor. Is that correct?---I don't accept that.

Do you deny that?---I don't deny that I have caught up with him, had caught up with him and during that time that we would have discussed that, but not regularly.

40

Well, let me put it this way. If not regularly then as a matter of course in 2014 and 2015, at Mr Ernest Wong's suggestion, you caught up with him to discuss with him plans for fundraising activities to be conducted by Chinese Friends of Labor. Do you accept that?---No. Well, first of all, as a matter of course, could you define what you mean by that?

It was something that happened in the ordinary course of business in your role as general secretary of ALP NSW.---It was something that happened. It

was something that happened but it was more the case that he would be keeping me up to date about what he was doing in terms of trying to, trying to get the best in terms of the Chinese vote for the Labor Party.

And you kept up to date – I'll withdraw that. You received Mr Ernest Wong's reports, keeping you up to date about his fundraising activities because you had a particular interest in the funds that could be raised by Chinese Friends of Labor. Do you accept that?---If Ernest asked to speak to me or sent me a message, I would read the message and I would meet with  
10 him and talk to him about what he wanted. I didn't seek meetings with him.

You set fundraising targets for Mr Ernest Wong, did you not?---That is not correct.

You made it plain to him that his political ambitions were linked to his capacity to raise money. Do you accept that?---That is, that is absolutely incorrect.

So far as Mr Huang was concerned, you preferred that dealings between  
20 your office and Mr Huang were to be conducted by you. Is that correct?  
---Excuse me? I, I don't understand.

Your preference was that it was you who dealt with Mr Huang during your term as general secretary rather than anyone else in your office. Do you accept that?---Well, when he wanted to meet Kaila in April 2014, I, I happily brought her along to the lunch at Master Ken's.

With you, is that right?---Yes.

30 And your preference was, I went to put to you again, that dealings with Mr Huang were to be with you rather than with anyone else from your office. Do you agree?---That wasn't my preference. If Mr Huang wanted Kaila to come along to something, I would happily bring her along.

On a number of occasions you discussed with Mr Ernest Wong fundraising specifically for the campaign to be conducted by Mr Chris Minns. Is that right?---No.

40 Do you deny that?---I do.

On several occasions this morning you've spoken about common sense as a substitute for policy. Do you remember doing so?---Well, not as a substitute for policy but it's something that I suppose everybody needs to use in their day-to-day life and they have to make decisions of discretion that are outside written rule.

When it came to asking Mr Huang for \$10,000 to aid a union official, what did common sense tell you about that?

MR LAWRENCE: I object.

THE COMMISSIONER: Why?

MR LAWRENCE: It's not a matter, in my submission, that is capable of going to that question of a person being compromised and to what degree that arose yesterday. It's rather, in my submission, a question that is empty of any real content and is more advanced as a question of rhetoric or something of that nature. It doesn't lend itself to any real answer.

THE COMMISSIONER: Well, I think it does go to the question, though, of his role as general secretary and whether or not a payment requested of this kind comes within, in any sense, the realms of what might be called policy matters or operational matters for that matter. So I think it's - - -

MR LAWRENCE: Yes, it was more of a common sense issue that I was expressing concern about.

20 THE COMMISSIONER: Yes. Well, it may be common sense but it's also I think relevant in the other respects I have mentioned so I'll allow the question.

MR LAWRENCE: Yes, thank you.

THE COMMISSIONER: Yes.---Oh, in the, in the context of, I, I, I, I didn't, I didn't think there was a written policy that says that I should or shouldn't, I should or shouldn't seek a, a donation on behalf of a, a, of a union from a, from a, from a billionaire, no, and, and therefore I had to move to common sense on that. I've, I've made it clear that that was something that I, I do regret having done, and I do accept that it was below the standards of, expected of me by the members of the Labor Party.

MR NEIL: And is that the answer you want to give to the question I asked you?---Yes, that's it.

And what about when it came to accepting \$35,000 from Mr Huang, what did common sense tell you about that?---Well, I suppose common sense is something can be affected under extreme, extreme pressure, and again, looking back on that, whilst, looking back on that, that's something that I also see as being well below the standards that were expected of, of me by the people that I represented.

If it please, that's the cross-examination.

THE COMMISSIONER: Yes, Mr Hale?

MR HALE: Mr Clements - - -

MR ROBERTSON: Sorry, does the Commission intend to take a morning break? If so, now might be a convenient time, if - - -

THE COMMISSIONER: Yes, that might be a convenient time to do that. We'll get - - -

MR ROBERTSON: I'm content to sit on, but I just thought I'd draw that.

10 THE WITNESS: How long's he going to be?

THE COMMISSIONER: Yes, we'll take the morning tea adjournment.

THE WITNESS: If he's, if he's not going to be – sorry.

THE COMMISSIONER: Sorry, are you talking about something?

THE WITNESS: No, I'm, I'm just under a bit of pressure to get back to my mother-in-law's 70<sup>th</sup>, sir.

20

THE COMMISSIONER: Yes, all right. We'll take the morning tea adjournment.

#### **SHORT ADJOURNMENT**

**[11.32am]**

THE COMMISSIONER: Mr Hale.

30 MR HALE: Yes, Mr Clements, I appear for Mr Wong.

THE COMMISSIONER: I'll ask you just to move forward, move the microphone closer to you. Thank you.

MR HALE: Yes. Yesterday, Mr Clements, it was suggested to you that you had a bad memory, a proposition I think which you rejected. Can you recall that?--I, I rejected it in the, in the, in the context that it was put, yeah.

40 Yes. And during the period of March 2015 I think you told us that you were particularly busy with the forthcoming state election and other matters.  
---Correct.

And that in the scheme of things what happened at the Chinese Friends of Labor dinner did not loom large.---No, not at all.

And therefore you have very little recollection of the events surrounding the Chinese Friends of Labor dinner in March 2015, is that correct?---That's correct.

And that's why you say you didn't have a bad memory at that time, but rather there were much more important things that occupied your mind. Would that be fair?---I, the, look, the suggestion I had a bad memory was not put in the context of that. They're separate conversations. But I do agree with you that given everything that was – I think the comment I made was I was so busy at the time, I would have forgotten the dinner even happened.

10 All right, yes. Now, also in August 2015, about the time when you met with Mr Huang and he was kind enough to provide you with the money for legal expenses, I think about that time you said it was a very stressful time for you.---Yeah.

And your recollection about events concerning the Chinese Friends of Labor dinner, might we take it, was not large or did not loom large at that time. ---In April, in August 2015?

20 Yes, you weren't thinking about Chinese Friends of Labor and donations in August 2015?---No, I was thinking about a lot of other stuff.

Yes. Again, your recollection of events – this is in August of 2015 – your recollection of events in August of 2015 of what actually occurred in relation to the Chinese Friends of Labor dinner in March 2015 was very thin.---Yeah.

30 And then also in the middle of 2017 there was another stressful period for you I think where, that you were about to be sentenced for matters relating to the use of the electoral roll, is that correct?---No, no, I'd been sentenced, yep.

Oh, you had been sentenced?---Yep, yep, yep.

But again it was a time in which you were not focusing in your mind on what occurred back in March 2015 in relation to Chinese Friends of Labor. ---The period before 19 July, 2017, the two-week period, was a period of elation for me, absolute elation.

40 Now, yesterday you were asked – and this is at page 2375, we don't have to put it up – when you first became aware of the Electoral Commission's involvement in respect of events concerning Chinese Friends of Labor, and I think you immediately responded, 19 July, 2017.---Yes.

And might we take it that you immediately responded with that date because you had in some recent days been looking at your phone to ascertain when you might have had some contact with Ernest Wong?---No, that, no, that date was burnt in my memory.

19 July, 2017, do you say? You say it was burning in your memory?---It's burned in my memory.

And would it be fair to say, even though it was burned in your memory, at no occasion during the compulsory examination that you had in 2018, did you make any reference at all to the events of 19 July, 2017?---No, I didn't.

10 See, what I suggest to you is – I withdraw that. And you say it burnt in your memory because you say you first learned about the suggestion of your involvement with a donation made in March 2015?---And it then led me into a period of deep depression.

And so you say that's why you recall the particular date?---Yes.

So from, do you say, from 19 July, 2017, from hereafter, it has been embedded in your mind, that date and that meeting? Is that what you say? ---That's right.

20 What day of the week was it?---Thursday.

It was a Thursday. Now, just going back to that meeting. Mr Wong sent you a message by WhatsApp suggesting you meet.---Yep.

And then you had the meeting at the coffee shop, Starbucks.---Yep. Yep.

And Mr Wong told you it was, I think he just said, "Let's catch up," is that right?---Yep.

30 And what I'm suggesting to you is that towards the end of the conversation that Mr Wong said to you that the Electoral Commissions are conducting interviews of donors in the Chinese community about money they donated at the Chinese Friends of Labor dinner. Would you agree that he said that to you?---He may have. I don't know.

And could I also suggest to you that he, that's Mr Wong, expressed some concern about those donors and said to you, "I think they need legal advice."---No.

40 You deny that or you just can't remember?---No, that was not the context of the conversation.

All right. Well, didn't you say to him that, "The statutory declarations are more than two years ago therefore there won't be any trouble?"---No.

Well, you deny that, do you?---Yes.

And what I'm also suggesting to you, that Mr Wong when referring to the Electoral Commission inquiry, said, "You will remember that Mr Huang delivered the money to you at head office."---Absolutely not.

Well, if I could just go back a bit. You've I think accepted that your recollection of events in March 2015 concerning the Chinese Friends of Labor dinner is not strong?---That's right.

10 And what I suggest to you is a few days after that dinner, either the following day or the day after, Mr Wong telephoned you or contacted you and said to you that Mr Huang is going to deliver the money from the dinner, to you.---No.

All right. Firstly you can't recall such a conversation?---I would recall a conversation like that, yes.

20 What, do you think there's the possibility that having regard to the circumstances that we've described leading up to the election he might have said that and it slipped your mind?---No.

Because what I'm putting to you is that that is in fact what Mr Wong said. He said to you either the day after the dinner or maybe two days after the dinner that Mr Wong [sic] would be delivering the money to you.---I was at Mr Wong's house, Huang's house with him three days after the dinner.

I'm suggesting to you that Mr Wong said to you, probably on the Friday after the dinner, that Mr Huang would be delivering the dinner, the money from the dinner to you at head office.---That's absurd.

30 Right. And also that you also, what I also want to suggest to you, at no stage did Mr Wong make any mention of any ALDI bag or Audi bag. Do you deny that? This is, this is going back to 19 July, 2017 meeting. What I'm suggesting to you, that at no stage did he ever mention an ALDI bag or an Audi bag. I'm suggesting he never said any such thing at that dinner, at that meeting.---He did, at, he did.

Right. And what I'm also suggesting to you, at no time did he say that he, Mr Wong, left the dinner early.---Oh, yes, he did.

40 So you say you have instant recall of all the words that were said at this meeting on 19 July, do you?---My recollection of the - - -

Sorry, do you?---No, no, not all the words, but of a certain portion of the conversation I have a very, very good recollection. The, the words at the time he said about the ALDI bag or Audi bag, my response and his response, which then sent my head into a complete spin, I have an exceptional memory of. It is burned in my mind. What happened after that, because my head was spinning, I can't tell you exactly what happened.

So it is fair to say, the only thing that you have any clear recollection of in relation to the donations from Chinese Friends of Labor dinner is what was discussed at the meeting over coffee with Mr Wong on 19 July, 2017, is that what you say?---Sorry, that's a very long question and I've got lost in the middle of it.

10 All right. What I am saying to you, you have agreed haven't you, that generally in relation to the events concerning the Chinese Friends of Labor dinner of March 2015, you have very limited memory?---That's correct.

And however, you do, you tell us, have a vivid recollection about what was said about that dinner in the meeting with Mr Wong on 19 July, 2017. Is that - - -?---I have a very vivid memory of what he first said when he talked about the allegation that Kenrick had made and, and the exchange that came after that, before my head basically exploded.

20 Well, what I also suggested to you, that he made no mention of Kenrick at all on that particular occasion.---Of course he did.

Oh, you say of course he did.---He did.

You say of course he did because that, you say, is your recollection?---That, that, that he said that.

And what I also suggest to you, at no stage did he say to you in relation to that night, "I don't know who took the money home." That's what you - - - ?---That's what he said.

30 And I also suggest to you, at no stage did he say, "I don't know what happened to the money."---I, I think he said, "I don't know who took the money home."

40 And of course, and I appreciate you've denied this, he is, I think you probably know, he has said that probably on the Friday after the dinner that he contacted you and told you that Mr Huang was the one who would bring the money into you?---That would be something that would be, that I would remember and too, and if, if, that, you say that happened on the Friday, I was at Mr Huang's house two days later and I was not given any money.

Now, going to a different topic, you were asked about generous donors making large donations and I think you said that one of the benefits is that they are likely to get access to leadership, I think. Those are not your words - - -?---I think, look, proximity to power is something that Mr Huang was, was interested in.

And in indeed other donors who make large donations are seeking to have access to power or proximity to power?---Look, some are, some are. Some

want politicians to show up at their, their daughter's wedding so they can show off to their community. Some donors, you know, donate to both sides of politics just in case a government decides that they want to change policy. People donate for all different reasons.

And when they donate with the perhaps expectation of proximity to power, they would generally expect that people would know they had donated those large sums of money?---Yes.

10 I think that's all.

THE COMMISSIONER: All right.

MR ROBERTSON: There's just one or two questions of clarification but it shouldn't take any longer than about five minutes.

THE COMMISSIONER: Yes.

20 MR ROBERTSON: In fairness to you, Mr Clements, I want to draw a document to your attention. Can we go to volume 3, page 92. You were asked some questions by my learned friend Mr Dixon about your knowledge of forms associated with the 2015 Chinese Friends of Labor event. I just want to show one document to you which is an email from Mr Wong to you of 18 February, 2015. Do you see that on the screen?---Yeah.

And when you see the "to" field that was your email address at the time. Is that right?---Yeah, yep. That's me, yep.

30 And if we then just turn the page, do you see there there's an invitation form that was attached to the email?---Yep.

So you'd at least accept that you saw the invitation form in advance of the Chinese Friends of Labor dinner on 12 March?---Well, it's an attachment. It wasn't a form that I would ever have needed to fill out. And - - -

We'll come to the filling out bit in a moment.---Yeah, yep.

40 But at least in terms of an invitation, you'd at least seen an invitation form for the 12 March, 2015 event before the event, is that right?---I don't recall seeing this, and it's an attachment to an email, and it's likely I probably didn't open it.

Well, surely you at least opened the attachment to see what you were being invited to.---Oh, I knew what that was.

And then to decide whether or not you wanted to attend or whether, you said, at least put in your diary a particular event, is that right?---Yeah, but I didn't do that.

10 But are you in a position to say whether you saw not just the invitation form, as you can see it on the screen, but also the disclosure form which, at least in some versions of it, were on the right-hand side of what you can see on the screen?---I don't think that I – that form that I've been shown during this inquiry, I don't recall ever seeing that, and that is something I would recall.

So you're quite clear in your mind that you didn't approve that form, is that right?---Oh, I wouldn't have approved that form.

And I think you described it a couple of days ago as an abomination in your view.---Yes, yes.

20 And so had you been asked to approve that form, you would have rejected it, is that right?---Yes.

In answer to some questions that Mr Dixon asked you, you talked about a common sense approach to viewing disclosure forms, do you remember that?---I think what I said was a common sense, that people would be required to use common sense where there were, where they, where, where, where they were required to use their discretion. I think that's the context I said it in.

30 So do we take it from that that one of your expectations of Mr Cheah was that when he was looking at reconciling forms and money, he would adopt his common sense to that process?---At different levels or if he, if he, that, he, he, he should approach Kaila if he, if he had serious concerns.

Well, I'm just trying to understand your expectations of someone in Mr Cheah's position in relation to forms. I think you told us that at least for Chinese Friends of Labor events it was your expectation that Mr Cheah would ensure the money gets to the Sussex Street office, is that right?---Yeah, he, yeah, yeah, yeah.

40 And it was also your expectation, wasn't it, that he would ensure that there would be forms to match the money, is that right?---Yep.

And so at least from your perspective, at least your expectation as general secretary was for Mr Cheah in relation to Chinese Friends of Labor events to ensure that there were signed forms in relation to all money that had been received in relation to those events, is that right?---He should do that, and so should Finance.

But what I'm trying to understand is whether your expectations went a little further in the sense of saying as long as there's a form and there's money that's enough, or whether your expectation was that Mr Cheah would go further and make sure, for example, that the donors are on the electoral roll or have an ABN.---Yep.

That was part of your expectation, is that right?---Yes, absolutely.

10 Was it also an expectation that he might look through the forms to see if there's any obvious indication of fraud? For example, two forms that look exactly the same, one original and one copy?---That would be something that should give rise, I believe, to some questions, yes.

That's as part of a common sense approach of looking at the forms, is that right?---Yep, yep.

20 But, again, is it right to say that you didn't give any specific instructions to Mr Cheah or anyone else concerning matters of that kind, correct?---No, no, that's correct.

And under your tenure there were no written policies that deal with that matter, correct?---As far as I'm aware I think that's correct.

30 Is it also right that other than the Electoral Commission training that you referred to in evidence a little while ago, there was no other training to people like Mr Cheah to say, "These are the kinds of things that you should look for when you're looking at forms"?---I don't recall and I accept that it probably didn't happen.

It probably didn't happen and you made no arrangements for things of that kind to happen?---That's correct, yes.

Thank you, Chief Commissioner.

THE COMMISSIONER: Mr Lawrence, I take it you have – do you have any questions?

40 MR LAWRENCE: Yes, I do. I anticipate no longer than 10 minutes, perhaps a little bit more, but I would be assisted, Chief Commissioner, by a very short break, perhaps also in the order of 10 minutes, just to conduct a client conference, which may well shorten things.

THE COMMISSIONER: Yes, all right.

MR ROBERTSON: Before that happens, can I make a formal tender?

THE COMMISSIONER: Yes.

MR ROBERTSON: I tender the email from Mr Ernest Wong to Mr Clements, 18 February, 2015, 12.04pm, being pages 92 to 93 of volume 3 of the public inquiry brief.

THE COMMISSIONER: Yes. Yes, that invitation will be admitted and will be marked as exhibit 328.

10 **#EXH-328 – EMAIL FROM ERNEST WONG TO JAMES CLEMENTS ON 18 FEBRUARY 2015 AT 12:04PM**

THE COMMISSIONER: Before I adjourn, I need to adjust the time on Monday, when I'll hand down my ruling on the issue that's been raised about Mr Clements' phone. By reason of the fact that there is another inquiry proceeding next week, 2 o'clock is not a convenient time. I'll make it 1.45.

20 MR ROBERTSON: Thank you.

THE COMMISSIONER: 1.45 next Monday, my ruling. Is there any other matters you want to raise, Mr Robertson?

MR ROBERTSON: Not at this point, Chief Commissioner?

THE COMMISSIONER: Very well. Then I'll adjourn for 10 minutes.

30 **SHORT ADJOURNMENT** **[12.10pm]**

MR LAWRENCE: Mr Clements, do you recall that counsel for Mr Cheah asked you some questions about whether you had a memory of handing Kenrick Cheah a bag of cash on 7 April, 2015?---Yes, I recall that question.

And you answered that you didn't recall that?---That's correct.

40 And do you recall that he then put to you that because you couldn't recall it, you couldn't rule it out, or words to that effect?---Yes.

Is there any doubt in your mind as to whether you handed Kenrick Cheah a bag of cash on 7 April, 2015 and have since forgotten about that matter?  
---There's no doubt in my mind, I did not do that.

So I'll take you now to the lunch with Mr Huang and Bill Shorten at Master Ken's. Did you consider Mr Huang apparently paying for that lunch to be a donation to the Labor Party?---No, I did not.

In all of your dealings with Mr Huang, did you ever speak to him on the telephone?---No.

10 So I take it you never had an interpreted phone call with him?---No.

And by that of course I mean a phone call where you and him are present as well as an interpreter?---No.

So you spoke to him in person always. Is that correct?---Only, yeah.

Mr Clements, you accept personal responsibility for accepting \$10,000 in cash from Mr Huang that was then passed on to a trade union. Correct? ---I do.

20 So did you consider that to be a lawful transaction, if I can call it that, at the time that it was undertaken?---Yes, I did.

I take it that you're not now proud of having done that?---No, it's not my proudest moment, no.

You've also accepted the policies and procedures generally in some respects were lax during your tenure as general secretary. Correct?---I accept that.

30 So what evidence can you give as to systemic factors at play in respect of your position as general secretary that may have contributed to those circumstances?---And this is not in any way to say that this is to abrogate responsibility from myself, but, or to pass it on to others, but the laxness in procedures and policies in that office was something that I did inherit and I accept responsibility for not having improved that position, and I understand that steps have now been taken. I did institute at the request of the Left Wing assistant secretary and under the guise of the, the 2014 state conference, a very important review called the Tarrant-Tierney review, and that Tarrant-Tierney review which was concluded during my time in office, and I was hoping if I had have survived to implement some very difficult  
40 recommendations that were going to be very difficult politically.

THE COMMISSIONER: How did that review come about?---There was a review, the left, the, the Administrative Committee had become a behemoth, it was almost 50 people. Imagine a board trying to run an organising with 50 people on it. And people were turning up and grandstanding about their own political issues, about, they'd be having, a union would be having a dispute with Qantas and the secretary of the TWU would want to turn up and start talking about, you know, that. It had nothing to do with the Labor

Party and it was becoming out of control and the Left Wing assistant secretary John Graham, came to me and said, "I think this is a problem, it's, it's becoming a problem, this is the Administrative Committee and it's supposed to be, it's supposed to be administering the party and it's becoming a bit of a joke." And I said, "I agree with that, but reducing the size of a committee like this is going to be very difficult because everybody wants to be on it." So I said, "The best way to do it is to set up a review, mandated by conference, and get all the union secretaries in to hear the arguments as to why that committee needed to be shortened or made smaller, because if you want people to effectively give up the position of power, they're going to have to understand why." A key recommendation of that report was that the Administrative Committee be shrunk to I think 16 persons, half from the rank and file and half from the trade unions. And that was going to be a very difficult recommendation that I was going to take to conference and it subsequently got dropped and I understand it was a very difficult period and I understand that people are looking at ways of fixing these problems with in the Labor Party and that report holds the key to a lot of these things because the less political that office becomes, the better it can be at doing its real job, which is to govern the Labor Party.

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MR LAWRENCE: And was there also a - - -

THE COMMISSIONER: Just before we go on, I understand that – well, you go on with it.

MR LAWRENCE: Was there also a recommendation in the Tarrant-Tierney review for a governance director who would be independent?

---Yes. The governance director was recommended by a couple of review, but the Tarrant-Tierney review did recommend that they be independent, and that's important because the governance director was there to make sure that the elected political officers were not, were, were, were not getting their functions in the way of the governance functions.

30

And what does independent mean in this context?---Independent, and this was the way that I wanted to do it, was to say that it would not be a party member. And subsequently, and this is in no way a reflection on Julie Sibraa who I have a lot of respect for, but the situation where the governance director leaves the office and then gets put on a winnable ticket in a winnable spot in the Upper House ticket is not a good look because - - -

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Was there a proposal that the governance director be appointed and then removed if necessary by a special majority of the Administrative Committee?---Yes, and two-third - - -

And what would the significance of that recommendation be?---A two-third, a two-third majority of the Administrative Committee was, was changing rules that I brought in to fix the independence of the tribunals that were determining disputes within the Labor Party, and that's important because

the Right Wing does not – I think it’s three-quarter, in fact. You’d need consensus if you ask for a three-quarter majority. So the Right Wing, of which I was the head of, could not just jam things through. I, they had, we had to get the agreement of the, the three-quarter majority of the admin committee, and in that way, and that’s why Greg James, who was not a party member, was appointed during my time as the Head of the Internal Review Tribunal.

Certainly. Thank you. And - - -

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THE COMMISSIONER: I understand the importance of the issue that the Tarrant-Tierney report examined and made recommendations on, but in terms of a root-and-branch, if you like, review of administrative procedures need to put in place proper delegations and things of that kind, did that form any part of the review you’ve spoken of, or was, or not?---That’s, that’s what was the governance procedure was going to, the governance director was to be brought, and I understand that Julie did, did, did so some of that.

20

But, well, were there any recommendations though, which was directed to what the governance director would do in terms of what I’ve termed a written branch review of procedures which up to that time had not been properly documented, delegations had not been properly delegated, or did the recommendations not specifically address those issues?---I don’t think it specifically recommended those. But, but it did say that part of what the governance director would do is start to fix some of these issues. And I’m, and Julie did, I’m not, I’m not denying that. But I do believe that allowing political people who have political ambitions which can be satisfied by the general secretary is not a good way to have a governance director.

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All right. Okay.

MR LAWRENCE: Mr Clements, you said that you were the convenor of the National Right at the time that you were the General Secretary of the NSW Labor Party, correct?---And the NSW Right, yep.

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Are you able to explain briefly to the Commissioner, what is the convenor of the National Right?---So the convenor of the National Right is probably the most powerful ex officio position in the Labor Party. And what that means is that where there were problems at National Conference, at the National Executive, it fell to me as the convenor of the Right faction to get all those problems fixed. And, and, and it was, and it made me a significant powerbroker in the Labor Party.

And in terms of these lax policies and procedures, the acceptance of the \$10,000, specifically on the question of the position of general secretary, what structural or systemic-related evidence can you give to Chief Commissioner?---One of the things that was discussed, and I’m not sure if it was a formal recommendation, but it was definitely discussed around the

time, was the idea that the running of the NSW Branch of the Labor Party should not be done by someone who is a factional convenor, by someone who's elected, or, or elected by conference, but that it should be a appointed position by the Administrative Committee, and it should not be a political role. And looking back on my, my failures in my time to fix some of these things, if I wasn't running around constantly having to fix problems that, that, that weren't really mine to fix, I would have had more time to look at this stuff, in between election campaigns. And, and, and it's a, because it's a dual role, you, you, it's very difficult to do, to, to, you have to be a good administrator to be the General Secretary of the Labor Party. You have to be a good campaigner. You can be both of those things. You also have to be a good political manager. And it's very difficult to exercise all three of those functions when the one that you have to worry about most is the political management because you've got the sword of Damocles hanging over your head the whole time.

10 THE COMMISSIONER: Before you became general secretary, had you been involved at a position that involved administrative governance skills?  
---I was a lawyer, and I was a, and I was, I was a lawyer, an, an in-house  
20 lawyer.

So does that answer my question? What are you saying?---I mean I, I had the skills to fix the things. It was well within my ability and my knowledge.

I'm talking about, no, I'm talking about administration - - -?---But I've never run an, I have never run an organisation before that, no.

All right. How did you come to be, is it elected - - -?---Yes.

30 - - - or an appointed position, it's an elected position?---Yes.

I see. And you were elected by what constituency?---So this is how it works, Commissioner, and it's about to happen on Monday.

No, I'm talking about how you came into - - -?---Well, there was, there was a group - - -

40 No, just let me finish talking. I'm just interested to know how you came into the office, the election of what constituency, how did it work?---By the Administrative Committee but I was ultimately elected by conference, but the conference just does whatever the factions tell them to do and the real people that elected me and put me where I was were the Right Wing union secretaries and they meet secretly and they decide, they decide in, in secret meetings who they're going to back to become general secretary and then they all walk in and vote that way.

Do you consider in any way, trying be objective as you can be, whether you had the necessary skills and background experience to take on the job as

general secretary?---I do believe I did, Commissioner, and I do believe that despite some of the failings that have been out in this Commission, the 2015 election result, we won 13 seats, 14 if you count Macquarie Field in the redistributed amount, and I think it was a good result. But I do admit that I played a part in some of these failings.

MR LAWRENCE: That's the re-examination, thank you, Chief Commissioner.

10 THE COMMISSIONER: Yes, thank you. Nothing further?

MR ROBERTSON: Nothing presently on my part.

THE COMMISSIONER: Nothing further. Mr Clements, that completes your examination in this segment. It's not likely that you would be called upon again in the future but in the nature of this investigation, anything's possible. So you're still under summons but you are certainly excused from today. Thank you for your attendance.---Thank you, Commissioner.

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**THE WITNESS WITHDREW [12.41pm]**

THE COMMISSIONER: Nothing else.

MR ROBERTSON: Nothing further for my part.

30 THE COMMISSIONER: Then the Commission will resume Monday morning, as I confirmed, at 1.45, the delivering of the ruling and then the present programming will be that it will be adjourned further then until 9 December.

MR ROBERTSON: Yes, that's so. At least the week beginning the 9<sup>th</sup> and at least my hope is to, whilst setting aside that week, to start perhaps on the 10<sup>th</sup> rather than the 9<sup>th</sup> but that's not a matter that we can resolve finally.

THE COMMISSIONER: That can be confirmed. Yes. Very well. Thank you. I'll adjourn.

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**AT 12.42PM THE MATTER WAS ADJOURNED ACCORDINGLY [12.42pm]**