

**INDEPENDENT COMMISSION AGAINST CORRUPTION
IN THE MATTER OF AN INVESTIGATION KNOWN AS OPERATION AERO**

**OPENING STATEMENT
OF COUNSEL ASSISTING THE COMMISSION
(SCOTT ROBERTSON)**

The general scope and purpose of this public inquiry

1. Chief Commissioner, this is a public inquiry conducted for the purposes of an investigation by this Commission into whether, from January 2015, officials of the Australian Labor Party (NSW Branch) (**NSW Labor**), members of Chinese Friends of Labor, political donors and others have entered into or carried out a scheme to circumvent prohibitions or requirements under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) relating to political donations.

The origins of the Commission's investigation

2. The origins of this Commission's investigation lie in a separate investigation undertaken by the New South Wales Electoral Commission.
3. During the course of a compliance audit, the Electoral Commission observed¹ that NSW Labor and Country Labor disclosed that they received a total of \$138,930 in revenue² from an event called the "*Chinese Friends of Labor: NSW Labor Chinese Launch*" that was held at the Eight Restaurant in Haymarket on 12 March 2015, about two weeks prior to the NSW State election held that year.
4. Chinese Friends of Labor is a "*Labor Action Committee*" that falls within the auspices of NSW Labor³ although its members need not necessarily be members of NSW Labor. In 2015, the Patron of Chinese Friends of Labor was Ernest WONG MLC and its Convenor was Jonathon YEE, the General Manager of the Emperor's Garden restaurants in Chinatown.
5. Financial records provided by NSW Labor and Country Labor revealed that \$100,000 of the amount that was recorded as being received in connection with the event on 12 March 2015 was cash⁴.

¹ "*Electoral Commission Referral Letter*" dated 15 January 2018 (**Referral Letter**) at 1.

² Public Inquiry Brief Vol 4, 76 (NSW Labor), 97 (Country Labor).

³ See Australian Labor Party (NSW Branch) Rules 2018 cl I.29.

⁴ Public Inquiry Brief Vol 1, 6 (NSW Labor), 49 (Country Labor).

6. A review of NSW Labor and Country Labor disclosures for the year ended 30 June 2015 indicates that the \$100,000 was disclosed to have been received from 12 donors, most of whom were said to have donated \$5,000 in cash to NSW Labor and another \$5,000 in cash to Country Labor.⁵ \$5,700 was the applicable cap on political donations to a political party at that time.⁶
7. Further investigations by the Electoral Commission revealed that the majority of the putative donors were persons associated with Jonathan YEE⁷ (who, as I have already noted, is the General Manager of the Emperor's Garden restaurants in Chinatown). Five of the putative donors were employees or former employees of the Emperor's Garden (Johnnie Chi Wah LIN, Lei MO, Wei SHI, Patricia SIU and Teresa TAM); two were family members of Mr YEE (his mother May Ho YEE and brother Valentine YEE); one was Emperor's Garden Pty Ltd and one was Mr Jonathan YEE himself.
8. These associations, along with the implausibility that restaurant workers would have the financial capacity to make lump sum donations of \$5,000 or \$10,000⁸ as well as other factors, led the Electoral Commission to suspect that the \$100,000 in cash was donated on behalf of a person or persons other than those who appeared in NSW Labor and Country Labor's disclosures.⁹
9. Also of concern to the Electoral Commission was the fact that two donations were disclosed as having been made by persons associated with Wu International Investments Pty Ltd (**WU International**) namely Mr Quanbao (Leo) LIAO and Mr Steve TONG.

⁵ Referral Letter at 12 [3.1].

⁶ Paragraphs 95A(1)(a) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (**EFED Act**) provided for an “*applicable cap*” on political donations to or for the benefit of a registered party of \$5,000 subject to adjustment for inflation pursuant to s 95A(5) and Sch 1. Schedule 1 to the EFED Act required the Electoral Commission to publish a notice on the NSW legislation website and its website the amount of each “*adjustable amount*” under the EFED Act for each financial year. The *Election Funding, Expenditure and Disclosures (Adjustable Amounts) Notice* (as in force on 1 July 2014) indicated that the “*adjustable amount*” for political donations to or for the benefit of a registered party for the financial year commencing 1 July 2014 was \$5,700. Now see *Electoral Funding Act 2018* (NSW) s 23(1)(a).

⁷ Referral Letter at 2.

⁸ See Referral Letter at 2.

⁹ See, eg, the notice in Public Inquiry Brief Vol 1, 1.

10. WU International is a property development company based in Chatswood. Property developers are prohibited donors under NSW electoral law¹⁰ and were so prohibited at the time of donations in 2015.¹¹
11. The Electoral Commission conducted a number of interviews as part of its investigation.
12. During an interview with Kenrick CHEAH, the Community Relations Director at NSW Labor, Mr Cheah stated that Mr HUANG Xiangmo attended NSW Labor head office a few weeks after the Chinese Friends of Labor Dinner and gave the then NSW Labor General Secretary, Jamie CLEMENTS, \$100,000 in cash.¹² Mr Cheah stated that, after his meeting with Mr Huang, Mr Clements handed the \$100,000 to Mr Cheah.¹³
13. At that time, Mr Huang (aka Changran Huang) was a director and Chairman of Yuhu Group (Australia) Pty Ltd, a property development company.¹⁴ As a “close associate” of Yuhu Group (Australia) Pty Ltd, Mr Huang was a “prohibited donor” under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) and was therefore prohibited from making political donations for the benefit of State political parties in NSW.¹⁵ Mr Huang is, however, known to have been a significant donor to both the Australian Labor Party and the Liberal Party of Australia, at least on the federal level, and sat at the Head Table at the Chinese Friends of Labor function on 12 March 2015 along with then Federal Leader of the Australian Labor Party, Bill SHORTEN, and the then NSW Labor Leader Luke FOLEY. There is no suggestion on the available material that either Mr Shorten or Mr Foley had any involvement in the conduct investigated by the Electoral Commission.
14. At its meeting on 13 December 2017, the Electoral Commission decided to refer to this Commission the conduct that it had investigated because it considered that there were reasonable grounds to suspect that that conduct may involve a possible criminal offence under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW).¹⁶

¹⁰ See *Electoral Act 2017* (NSW) ss 51-53.

¹¹ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (repealed) s 96GAA-96GB.

¹² Public Inquiry Brief Vol 1A, 12, A79 (the reference in the transcription of this answer to “Mr Wong” should have been transcribed as “Mr [Xiangmo] Huang”: see Public Inquiry Brief Vol 1A, 22, A185).

¹³ Public Inquiry Brief Vol 1A, 13, A90.

¹⁴ Public Inquiry Brief Vol 7, 164.

¹⁵ See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (repealed) s 96GAA-96GB.

¹⁶ Referral Letter at 1.

Amongst the Electoral Commission's reasons for making a referral to this Commission was its view that additional evidence to that obtained by the Electoral Commission may be able to be obtained using the investigative powers available to this Commission.¹⁷

The *Election Funding, Expenditure and Disclosures Act 1981* (NSW)

15. Until it was replaced by the *Election Funding Act 2018* (NSW) with effect from 1 July 2018, the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) (**EFED Act**) regulated the making and disclosure of political donations and electoral expenditure in NSW. According to s 4A of that Act, its objects included:

(a) to establish a fair and transparent election funding, expenditure and disclosure scheme,

(b) to facilitate public awareness of political donations, [and]

(c) to help prevent corruption and undue influence in the government of the State.

16. The EFED Act (as it was in force in 2015) limited the classes of persons from whom political donations may be made and accepted and placed “caps” on the amount of donations that could lawfully be accepted.

17. Relevantly for present purposes, the EFED Act made it unlawful for a donation to a political party to be accepted unless the donor had what that Act described as a “*legitimate link with Australia*” such as enrolment on an electoral roll or an Australian residential address.¹⁸ According to the EFED Act, the objects of that prohibition included:

to remove a perception that certain foreign donors could exert influence over the Australian political process, by requiring a donor to have a legitimate link with Australia, either through residence of the donor or its officer or by being registered in Australia.

18. The EFED Act also prohibited the making or acceptance of donations by or on behalf of a class of persons described as “*prohibited donors*”.¹⁹ “*Prohibited donors*” include “*property developers*”.²⁰

¹⁷ Referral Letter at 7.

¹⁸ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96D.

¹⁹ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96GA.

²⁰ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96GB(1).

19. As for persons who are entitled to make political donations under the EFED Act, that Act placed a “cap” on political donations to registered political parties of \$5,000 per financial year²¹ and prohibited the acceptance of donations that exceeded that cap (as adjusted for inflation²²).
20. It was an offence punishable by imprisonment for two years and/or 400 penalty units for a political party to accept a political donation from a person who it knew did not have a “legitimate link with Australia”²³, knew was a “prohibited donor” or knew was making a political donation that exceeded an applicable cap.²⁴
21. Similarly, it was an offence punishable by imprisonment for two years and/or 400 penalty units for a prohibited donor to make a political donation or for a person to make a political donation on behalf of a prohibited donor where, at the time that the donation was made, the person making the donation was aware of the facts that resulted in the donation being unlawful.²⁵
22. The EFED Act also contained provisions requiring the disclosure of political donations by political parties and by persons who, during a disclosure period, had made a reportable political donation of or exceeding \$1,000.²⁶ In general terms, the Act required political parties to make annual, audited²⁷ disclosures to the Electoral Commission setting out (amongst other things) the name and address of each person who made a donation to that party of or exceeding \$1,000 in a disclosure period as well as the amount of the donation made.²⁸ Similarly, a person who, during a relevant disclosure period, made a political donation exceeding \$1,000 was required to lodge his, her or its own disclosure with the Electoral Commission.²⁹

²¹ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 95A.

²² See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 95A(5).

²³ In the sense that that concept was given effect to by s 96D(1) of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) ss 96GB(1).

²⁴ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96I.

²⁵ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96I.

²⁶ See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) Pt 6, Div 2.

²⁷ See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96K.

²⁸ See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 92.

²⁹ See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 88(2).

23. It was also an offence under the EFED Act to make a statement in a disclosure that was knowingly false³⁰ or to give knowingly false or misleading information in answer to a requirement to give information imposed by the Electoral Commission.³¹ The penalty for making a false or misleading statement in a disclosure is imprisonment for up to two years and/or a fine of up to 400 penalty units.
24. The EFED Act also contained a general prohibition against entering into or carrying out a scheme (whether alone or with others) for the purpose of circumventing the Part of the EFED Act dealing with political donations and electoral expenditure. Contravention of that prohibition constitutes a serious indictable offence punishable by imprisonment for 10 years.³²

The Independent Commission Against Corruption's investigation and this public inquiry

25. Under s 13A of the *Independent Commission Against Corruption Act 1988* (NSW), this Commission has the function of investigating conduct that may involve possible offences under NSW electoral law that the Electoral Commission refers to this Commission for investigation.
26. In pursuance of that function, this Commission commenced a preliminary investigation after it received the referral from the Electoral Commission and, on 7 June 2018, decided to conduct a full investigation.
27. Since that time, the Commission has gathered a wide range of evidence which will be presented, tested and expanded upon in this public inquiry. Such evidence has been gathered both through the voluntary assistance of various individuals as well as through the use of compulsory powers. The powers so exercised have included the conduct of compulsory examinations under s 30 of the *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**) and the issue of notices to produce under s 22 of the ICAC Act.
28. The Commission also executed a search warrant at the offices of NSW Labor on Sussex Street on 18 December 2018. That search warrant was issued by an “*authorised officer*” under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) on the application of an officer of the Commission.

³⁰ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96H.

³¹ *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 110(7).

³² See *Election Funding, Expenditure and Disclosures Act 1981* (NSW) s 96HB.

29. During the course of this public inquiry, I will tender some of the material gathered during the course of the Commission's investigation to date. I will also call a number of witnesses to give oral evidence in relation to the investigation including members and officers of NSW Labor and Chinese Friends of Labor and nine of the ten individuals who were disclosed by NSW Labor and Country Labor as being the donors of the \$100,000 in cash.

Quanbao LIAO

30. The tenth individual, Quanbao (Leo) LIAO, is not available to give evidence to this public inquiry.
31. Mr Liao was a Deputy General Manager of Wu International³³ and signed a "reservation form" dated 20 February 2015 that stated that he wished to purchase a \$5,000 VVIP table for the Chinese Friends of Labor event on 12 March 2015.³⁴
32. Mr Liao was due to give evidence to the Commission in a compulsory examination on 25 June 2018. Tragically, Mr Liao is understood to have taken his own life on the weekend prior to that scheduled appearance.³⁵
33. There is evidence suggesting that Mr Liao's decision to take his own life was connected with the conduct that the Commission is investigating.
34. On the night of Mr Liao's death, Mr Yueren (Kenny) ZHAN, a colleague of Mr Liao at WU International found a handwritten suicide note dated 23 June 2018 that was addressed to Mr Liao's wife.³⁶
35. Part of that note reads as follows (in English translation):

When you receive this letter, I will have left you. Please forgive me for not saying a proper goodbye.

Last few days, you kept asking me what have been happening, with me preoccupied with worry. But I was unable to tell you, because in the morning of 15 June two detectives knocking came at our door, they told me not to discuss it with any family member, in reality I have also chosen not to tell you either, to prevent you having to worry about it.

³³ Public Inquiry Brief Vol 1, 383, A115.

³⁴ Public Inquiry Brief Vol 5, 25.

³⁵ See Statement of Constable Guy MCTAGGART dated 4 November 2018 at [54]-[55] (**Constable McTaggart Statement**) (Public Inquiry Brief Vol 9C, 206).

³⁶ Constable McTaggart Statement at [14] (Public Inquiry Brief Vol 9C, 197).

36. I interpolate to observe that the summons for Mr Liao to appear at a compulsory examination before the Commission on 25 June 2018 was served by two Commission officers on 15 June 2018.

37. A later part of Mr Liao's note said the following:

[...] I have decided to leave this world, which is also my last hardest attempt, to prevent you and our daughter from becoming family members of a criminal, this is because I am still innocent at the time I wrote this letter. [...]

38. Another suicide note, this time addressed to both Mr Liao's wife and his daughter and dated 24 June 2018, was located at Mr Liao's home. That note included the following text (in English translation):

The real situation was that I was involved in a political donation, using my own money on this donation; which did not directly show on my bankcard and credit card (statement). In addition, as this matter took place around March 2015, it was awhile back and I was unable to clearly explain it, this was where the problem lies.

This led me to remember past events where my father was being interrogated in China, eventually he ended in jail; it was petrifying.

You know that all my life, I've always been eager to excel, preserve my reputation, or maybe it was because of integrity that I chose to take my own life.

[...]

39. This public inquiry will investigate the circumstances in which Mr Liao came to be involved in, as he put it, "*a political donation*" including whether he had any role in devising and/or implementing any scheme to circumvent the requirements of NSW electoral law. Part of that investigation will include consideration of whether Mr Liao was, in fact, a donor to the Country Labor Party as both Mr Liao³⁷ and the Country Labor Party³⁸ asserted in their disclosures to the Electoral Commission.

HUANG Xiangmo

40. The other key witness who, at this stage, will not be giving evidence in this public inquiry Mr Huang Xiangmo.

41. To the Commission's knowledge, Mr Huang has not been in Australia since late 2018; his visa was cancelled on 5 December 2018.³⁹

³⁷ Public Inquiry Brief Vol 1, 369.

³⁸ Public Inquiry Brief Vol 2, 101.

³⁹ Public Inquiry Brief Vol 7, 4.

42. Mr Huang was invited to participate in an interview with the Commission by video-link⁴⁰ but has declined that invitation through his solicitor, Tim Unsworth of Unsworth Legal.⁴¹
43. Notwithstanding Mr Huang's decision to decline to participate in an interview with the Commission, his alleged conduct will remain a key part of this public inquiry. It is a matter for Mr Huang as to whether he wishes to leave the evidence of him delivering \$100,000 in cash to NSW Labor Head Office unexplained by him. The Commission's invitation to him to participate in an interview to tell his side of the story stands.

Kalia MURNAIN

44. Another aspect of the evidence that will be presented in this public inquiry that warrants immediate comment is that of Ms Kalia Murnain.
45. Ms Murnain is presently the General Secretary of NSW Labor and Country Labor but was one of its Assistant Secretaries at the time of the Chinese Friends of Labor dinner in 2015.
46. Ms Murnain has given evidence to the Commission in a compulsory examination to the effect that Ernest Wong told her that a person had not, in fact, donated the funds that they had said that they had donated to the Labor Party in 2015. Ms Murnain said that Mr Wong told her that Mr Huang Xiangmo was the true source of the funds said to have been donated by that other person.
47. Of course, Ms Murnain's statement as to what Mr Wong is said to have told her is not, of itself, conclusive proof that there were one or more "*straw donors*" or "*pretend donors*" associated with the Chinese Friends of Labor function in 2015 or that there was a scheme to conceal the fact that Mr Huang was the true source of funds deposited in NSW Labor and Country Labor's bank accounts. I anticipate, though, that other evidence bearing on that issue will be presented during the course of this public inquiry.

Key questions to be investigated in this public inquiry

48. As should be apparent from what I have said, a number of key questions arise from the Commission's investigations to date and are to be pursued further in this public inquiry. They include:
- (a) was Huang Xiangmo the true source of the \$100,000 in cash that was banked by NSW Labor and Country Labor on 9 April 2015?;

⁴⁰ See email from Phil Vickery, Investigator to Tim Unsworth of 7 February 2019 (12:03pm).

⁴¹ See email from Tim Unsworth of 7 February 2019 (1:01 pm).

- (b) were steps taken to conceal the true source of the money that was said to have been received in connection with the Chinese Friends of Labor event in 2015? If so, who took those steps and when? Who (if anyone) enticed, directed or encouraged others to take such steps? What were the reasons for taking those steps?;
 - (c) did anyone enter into or carry out a scheme for the purpose of circumventing prohibitions under the EFED Act relating to “*prohibited donors*” or “*caps*” on political donations? If so, who were the participants in that scheme? What were their respective roles? How was the scheme carried out?;
 - (d) in the case of Ernest Wong, who was a Member of the Legislative Council and therefore a “*public official*” during the key period of relevance to this public inquiry, is there any evidence that he engaged in any “*corrupt conduct*” within the meaning of the *Independent Commission Against Corruption Act 1988* (NSW)?
49. This Commission is an investigative body. It is not a Court. Consistent with that, this Commission will not be making any findings of criminal guilt. It will, however, make findings and reach conclusions in relation to the conduct referred to it and give consideration as to whether advice should be sought from the Director of Prosecutions with respect to the prosecution of any person for a specified criminal offence.⁴²
50. In making those findings, reaching those conclusions and giving consideration as to whether advice should be sought from the Director of Public Prosecutions, it will obviously be necessary for the Commission to make assessments as to the credibility of what has been said to the Commission to date and what might be said in evidence in this public inquiry. That being so, a further question that may arise for consideration is whether any person has made any false or misleading statements to the Commission. It is a serious indictable offence punishable by imprisonment for five years and/or 200 penalty units knowingly to give false or misleading evidence at a compulsory examination or public inquiry.⁴³
51. In addition to making findings and reaching conclusions regarding what, in fact, occurred in relation to the conduct referred to this Commission for investigation, the Commission will also consider whether it should recommend changes to the terms or administration of electoral donation and disclosure laws in New South Wales in light of the conduct referred to it. The details of any recommendations that the Commission is contemplating making will be dealt with in written submissions that will be circulated after the conclusion of this public inquiry.

⁴² See *Independent Commission Against Corruption Act 1988* (NSW) s 74A(1)(a) and (2)(a).

⁴³ *Independent Commission Against Corruption Act 1988* (NSW) s 87. See also s 80 of that Act which provides that wilfully making any false statement to the Commission or an officer of the Commission in the exercise of their functions is punishable by imprisonment for 12 months and/or 50 penalty units.

Conclusion

52. Section 4A of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) provided that one of the objects of that Act was “*to establish a fair and transparent ... disclosure scheme*”.⁴⁴ This public inquiry will investigate whether that disclosure scheme was undermined by conduct associated with the Chinese Friends of Labor event in 2015 and whether recommendations should be made to secure the integrity of the disclosure scheme for political donations in the future

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⁴⁴ Now see *Electoral Funding Act 2018* (NSW).

TABLE OF PUTATIVE DONORS

Name	Description (as at time of putative donation)	NSW Labor donation ⁴⁵	Country Labor donation ⁴⁶
Jonathon YEE	General Manager and Director of Emperor's Garden Pty Ltd	\$5,000	\$5,000
Emperor's Garden Pty Ltd	Owned by the Yee family	\$5,000	\$5,000
May Ho YEE	Jonathon YEE's mother	\$5,000	\$5,000
Valentine YEE	Jonathan YEE's older brother	\$5,000	\$0
Patricia SIU	Employee of Emperor's Garden Pty Ltd and family friend of YEE family	\$5,000	\$5,000
Teresa TAM ⁴⁷	Employee of Emperor's Garden Pty Ltd	\$5,000	\$5,000
Lei MO	Employee of Emperor's Garden Pty Ltd	\$5,000	\$5,000
Wei SHI	Employee of Emperor's Garden Pty Ltd	\$5,000	\$5,000
Johnnie Chi Wah LIN	Employee of Emperor's Garden Pty Ltd	\$5,000	\$5,000
Harbour City Pty Ltd (To (Stanley) YIP)	Souvenir shop next to Emperor's Garden restaurant run by To YIP. Mr YIP is a friend of Jonathon Yee.	\$5,000	\$0
Quanbao (Leo) LIAO	Deputy General Manager, Wu International Investments Pty Ltd	\$0	\$5,000
Steve TONG	Employee of Wu International Investments Pty Ltd	\$0	\$5,000
TOTAL		\$50,000	\$50,000

⁴⁵ As set out in NSW Labor disclosure: see Public Hearing Brief Vol 4, 30-37.

⁴⁶ As set out in Country Labor disclosure: see Public Hearing Brief Vol 4, 101.

⁴⁷ Recorded in NSW Labor's original disclosure as Teresa Tay (see Public Hearing Brief Vol 4, 36) and subsequently corrected (see Public Hearing Brief Vol 4, 77).