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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 29 AUGUST, 2019

AT 10.00AM

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

THE COMMISSIONER: Mr Robertson.

10 MR ROBERTSON: Can I just confirm matters of programming? I'll continue with Ms Murnain in a moment. And then, and as I've indicated, I'll recall her next week for the purposes of finishing the examination and dealing with any applications for leave to cross-examine. I'll then call Mr Dastyari not before 11.00am, or, although it may be a little bit after that, and he will then be available for cross-examination for anyone who has leave to cross-examine. I'll then call Mr Cheah. That will either be late this morning or perhaps at 2.00pm, depending on the events of this morning. And then I'll call Mr Wong. Mr Wong won't be finished today, and he will continue into tomorrow. As I understand it, the Commission proposes to sit shorter hours tomorrow.

THE COMMISSIONER: Yes, that is so. We'll resume tomorrow at 10 o'clock, we'll go through to midday, and then we'll adjourn until Monday following.

20 MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Thank you.

MR ROBERTSON: I anticipate that during the course of today, a tentative witness list for next week will become available to all concerned.

THE COMMISSIONER: Very good. Thank you. Yes, very well. Thank you, Ms Murnain. Would you return? I'll just administer the affirmation once again.

THE COMMISSIONER: Thank you, Ms Murnain. Take a seat. Yes, Mr Robertson.

MR ROBERTSON: Ms Murnain, according to media reports overnight, you have been suspended as General Secretary of NSW Labor, is that correct to your understanding?---I read that in the media as well.

10

Have you been informed of that directly?---This morning.

Have you been given any reason for that decision being made?---That the leader asked for it.

Any other reason, or was that the whole reason?---I, I haven't actually read the letter. But I understand it's because of these proceedings.

20 But just to be clear about that, you received a letter that confirms that you've been suspended as NSW Labor General Secretary, is that right?
---That's correct.

But you haven't read that letter, is that right?---I briefly read it this morning, but I can't - - -

THE COMMISSIONER: Is that when you received the letter?---I have received it this morning.

30 This morning?---Yep.

MR ROBERTSON: I would ask for a direction - - -

MR MOSES: Commissioner, I can confirm that is correct.

MR NEIL: I object to this. I don't understand what my learned friend has to say about this - - -

MR MOSES: No, no, no, no. Just one moment.

40 THE COMMISSIONER: Just wait a minute.

MR NEIL: - - - in the presence of this witness.

THE COMMISSIONER: Wait a minute, Mr Neil.

MR MOSES: No, no. I'm not going to be giving any reasons. There was a letter sent yesterday evening to the solicitors acting for Ms Murnain, and if the Commission wants the correspondence, we are happy to provide that to

the Commission. That's all I was rising to my feet to say. So, my learned friend could just wait for me.

THE COMMISSIONER: All right. Thank you, Mr Moses. Thank you. That's - - -

MR ROBERTSON: I ask for a direction that that be provided to the Commission, that letter.

10 THE COMMISSIONER: Yes, very well.

MR MOSES: That will happen, Commissioner, so we'll arrange for copies to be provided.

THE COMMISSIONER: When will that happen?

MR MOSES: As soon as I can get them. Thank you, Commissioner. I've asked for those to be made available, and they'll be brought down, and you'll have them shortly.

20

THE COMMISSIONER: Thank you.

MR MOSES: Thank you.

MR ROBERTSON: Ms Murnain, we discussed yesterday a series of meetings with Mr Wong, then-Senator Dastyari, and Mr Robertson on 16 September, 2016.---That's correct, yeah.

30 And have you now told us the extent of what you recall as to what you said in each of those meetings, and what was said in response to you during the course of those meetings?---To the best of my recollection, yes. However, I, I would like to make one clarification. I think you asked of me yesterday whether I specifically used Mr Huang's or Huang's full Chinese name when referring to him in conversations with Mr Dastyari and Mr Robertson. I, I, I don't believe I did, or if I did, it would not have been very well communicated, because I don't, I'm not very good at pronouncing his name. But I would have very clearly stated that he was Mr Huang the well-known Chinese property developer.

40 So to be clear, you are confident that to both Senator Dastyari and Mr Robertson you uttered the words "Mr Huang"?---Yes.

And you clarified the particular Mr Huang to whom you were referring. Correct?---Yes.

But whether or not he was described as Xiangmo Huang or Huang Xiangmo you can't now recall?---Yeah.

In fact by the sound of it it's more likely that you simply called him Mr Huang?---Yes, because I'm not very good at pronouncing his name.

Just focusing on your communications with Mr Ian Robertson in the first instance, other than the telephone call that you had with Mr Robertson to arrange an urgent meeting and the meeting itself, did you have any other communications with Mr Robertson on 16 September, 2016?---I, I don't remember to the best of my knowledge.

- 10 Is it possible that you had any additional communications with him either before or after your meeting with him on 16 September, 2016?---I don't know.

At that particular point in time how often would you have communications with Mr Ian Robertson in your capacity as NSW Labor General Secretary? ---Frequently.

- 20 And I take it that was to obtain legal advice on issues that would arise from time to time in relation to NSW Labor or perhaps Country Labor?---That's correct, yes.

In fact possibly even in relation to federal matters as well pertaining to New South Wales issues if I can put it that way?---That's correct.

THE COMMISSIONER: Had you and Mr Ian Robertson worked well together in relation to ALP matters?---Yes. I think, yes, very well together.

- 30 MR ROBERTSON: How would you usually communicate with Mr Robertson?---I would speak to him over the phone. I would organise a meeting with him or I would – but that would mainly be it or other people in the office would communicate with him.

How often would it be that you would meet with Mr Robertson as distinct from communicating with him by email or by telephone?---I couldn't say. It would be, it would be – I'm not sure how frequent given it was an election year but there would have been a fair few meetings because this was after the Jamie Clements issue and we were frequently meeting with the lawyers about a whole host of issues.

- 40 When you say the Jamie Clements issue, I take it you mean the circumstances in which Mr Clements ultimately resigned and that you were appointed as first, acting general secretary - - -?---Correct, yeah.

- - - and then elected as general secretary. Is that right?---Yes.

How often would you meet, in and around 2016 how often would you meet with Mr Ian Robertson on a Friday night after hours?---Never.

So is it the case that the only time that you had a meeting with Mr Ian Robertson that you can recall in 2016 on a Friday night after hours was the one on 16 September, 2016 that you told us about yesterday?---Yes.

What about other meetings after hours with Mr Ian Robertson? Would that be a common occurrence or an unusual occurrence?---That would be unusual.

10 Following the meeting with Mr Robertson on 16 September, 2016 did you continue to work closely with Mr Robertson?---I, I did. I asked him legal questions on a frequent basis, yes.

So is it fair to say that your professional relationship with Mr Robertson pre and post 16 September, 2016 didn't change substantially. Is that fair? ---That's correct.

Did you ever have any further discussions with Mr Robertson regarding the subject matter of your meeting on 16 September, 2016?---No.

20 What about with Senator Dastyari? Did you have any further discussions with him regarding the matters that you discussed with him on 16 September, 2016?---I don't remember if I did or didn't. I don't believe so. I think I literally followed the advice and didn't say anything until I've told my lawyers.

Well, is it possible that you at least checked in with Senator Dastyari to say, well, the issue that I discussed with you on 16 September I've now discussed it with Ian and this is what he's had to say about it?---I don't believe I would have told him what Ian would have said but it's possible I
30 told him that I could no longer talk about it.

So you've had further communications with Senator Dastyari then and then later Mr Dastyari following your meeting with him on 16 September, 2016?---Not that I remember but it's possible.

When is the last time you've had any communications with Mr Dastyari? ---He sent me messages a few weeks ago after there were some terrible stories about me in the media, but we actually haven't spoken frequently since the state election. Differing views about the future of the party.
40

When you say the state election, you mean the last state election in this state, is that right?---Yes.

When you say you exchanged some messages a few weeks ago, what was the subject matter of those messages with Mr Dastyari?---Sam sent me messages about how – I can't remember exactly but they were about, I can't remember but they said something like, you know, "Terrible stories about you today," and a letter about that. So, and we hadn't spoken in many

weeks, and I replied to that. Because I'm no longer a very close friend of Sam's.

In 2016 you were a close friend of Sam's, is that fair?---Yeah, yeah.

And I think you were just explaining you no longer have that relationship, is that right?---That's correct, yeah.

10 What caused that change in relationship?---Well, this is, so, sorry - - -

If you need a minute, just say so.---During the election, during the federal election there were frequently meetings with people who were putting a lot of pressure on me to resign as general secretary. Sam had the same view and I stopped engaging with him after that.

20 So is it fair to say that whilst you had a close personal relationship in 2016, you've perhaps drifted apart, but also in relation to issues of substance, namely matters such as the matters that you've just summarised?---Yeah, he, he has a view that someone else wants to be the general secretary of the Labor Party and I continued working as the general secretary of the Labor Party, so it was a point of, a very strong point of difference.

When is the last time you've had an oral communication with Mr Dastyari, either by telephone or in person?---I don't know, to tell you the truth.

Are we talking weeks ago, months ago, years ago?---Might have been months ago.

30 And is that a reference to a telephone conversation or an in-person meeting, can you remember?---I don't remember.

But at least for a number of months you haven't had any communications with Mr Dastyari other than the text messages that you referred to a moment ago, is that right?---He tried to call me on WhatsApp two weeks ago. I didn't – or a week ago. I didn't take the call.

Just repeat that. He tried to contact you on WhatsApp?---Yep.

40 Was that, sorry, was that by way of an audio call or by way of a message. ---On WhatsApp.

And so is WhatsApp one of the methods that you'd use to communicate with Mr Dastyari from time to time?---Sometimes, but it's not the primary method.

But it's at least one of the methods that you'd use from time to time, is that right?---Yep. Yep.

Is that a method that you may have used to make contact with him or communicate with him in 2016?---I don't know.

It may be but you can't recall one way or the other.---Can't recall one way or the other, I'm sorry.

10 After leaving Mr Ian Robertson's office on 16 September, 2016, what steps did you take in relation to the information that Mr Wong had told you on 16 September, 2016? And just to be clear, I'm not asking you about any communications you may have had with lawyers in relation to the Commission's inquiry.---Okay.

And we appreciate of course that you've given evidence to the Commission regarding that matter. But excluding those things, what steps did you take in relation to the information that Mr Wong, Mr Ernest Wong, told you on 16 September?---I followed the advice and I, I did not follow it up. I did not take any further steps.

20 So you explained yesterday that Mr Robertson told you to do a number of things, including forget that the meeting ever happened, is that right?
---That's correct.

And is it right that you've never had any further communications with Mr Ian Robertson in relation to that matter?---Not about the conversation. I have a vague recollection of conversations once the Electoral Commission letter came in, but I can't be specific about that, because I didn't take notes.

30 Well, in connection with the Electoral Commission's investigation, did you say anything to Mr Ian Robertson about the conversation that you had with him on 16 September, 2016?---I, I don't believe so. I, he was aware of what I'd told him. He, and I, I don't believe so. I - - -

Well, for example, did you say, "I'm concerned that the Electoral Commission is conducting an investigation and I'm concerned about the matter that Mr Wong told me and that I told you that Mr Wong told me, and we therefore need to be careful in our communications to the Electoral Commission," did you say anything like that to Mr Robertson?---No, I didn't.

40 Did you say anything like that to anyone else? Again, here I'm excluding lawyers and excluding what you have more recently told this Commission. ---I was concerned about our responses, so I'd asked the governance director to check the responses with Ian Robertson and Holding Redlich before we sent them off.

When you say the governance director, you're referring to Julie Sibraa, is that right?---That's correct, yep.

S-i-b-r-a-a?---Correct.

Have I pronounced her surname correctly?---Sibraa.

Sibraa. I'm sorry.---Yep. No.

But did you tell Ms Sibraa about the particular reasons why you thought they needed to be checked carefully?---No, I did not.

10 So are you quite sure that you never told Ms Sibraa about the conversation that you had with Mr Wong on 16 September, 2016?---Correct.

Are you quite sure about that?---I, to the best of my recollection, I am, I am
- - -

You're – and I don't say this in any way to seek to embarrass you.---Mmm. Of course.

20 You're, you appear to be having difficulty, in the sense of emotional difficulty in answering those last - - -?---Sorry.

No need, there's no need to apologise at all. But that reaction arose, just arose in relation to my questions about Ms Sibraa.---Oh no, it's everything.

I see. So is there a particular reason why my questioning in relation to Ms Sibraa is causing you particular concern?---No, not really. Just this whole experience. Sorry.

30 No, don't need to apologise, and if you need a moment, just say so, please. ---Keep going.

So you're as clear as you can be that you didn't say to Ms Sibraa what Mr Wong had told you on 16 September, 2016, is that right?---That's correct.

What about anyone else? And again, excluding lawyers and what you've said more recently to the Commission.---Oh, I don't think I've told anyone else that (not transcribable) first raised it with them, when, when this matter began with the Commission.

40 Why was it that you – oh, sorry, I withdraw that. And it follows from that, does it, that you didn't report that matter to anyone else within the Australian Labor Party in the broader sense of the word?---No.

Why was it that you took that approach?---Because I was following the advice religiously, and I was, oh - - -

THE COMMISSIONER: Sorry, I couldn't hear what you said.---I was following the advice, and I was scared, but I also, when, I mean, Ernest

hadn't given me a name when he told me this information, as to who we needed to look out for. And I, I didn't share it with anyone else.

MR ROBERTSON: When you say you were scared, why were you scared?
---For the Labor Party. We'd been through a lot that year. There were multiple court cases ongoing. There were by-elections current. I was scared for the office, and the reputation of the party. And doing my best to make sure that I followed that advice. And I obviously recognise now that's something I shouldn't have done. And I should have made different
10 decisions.

So to unpack that, you knew that this was a matter of significance, that you had information suggesting that there may be illegality in connection with donations, correct?---Yes.

And this of course was not something that happened during your time as general secretary, it was something during your time as assistant general secretary, correct?---Yes. Yes.

20 You were scared and concerned about the implications for the party if that matter became a matter of public record, correct?---Yes.

And you decided in those circumstances to follow the advice that Mr Ian Robertson had given you in relation to the matter?---Yes.

Namely to keep it quiet, as it were?---To forget it, yes.

To forget it and not tell anyone about your meeting with Mr Wong, is that right?---Yes.
30

Now, you later became aware that the Electoral Commission was conducting an investigation in relation to what happened in connection with the Chinese Friends of Labor event in 2015, correct?---Yeah.

Can we please have volume 1 of the public inquiry brief on the screen, which forms part of Exhibit 149. Do you see now on the screen a notice issued to an organisation pursuant to section 110A(1)(a) of the Act there identified?---Yes.

40 This is a document that you've seen before?---Yes.

Just if we turn the page. If we turn the page, please, Operator, you will see it's dated 6 September, 2016.---Yes.

And this notice came to your knowledge around about 6 December, 2016.
---I think so.

If we turn back to the first page, if you can just focus on the second paragraph that's on the screen, where it says, "I, Peter Smithers, have reasons to suspect." Do you see that there?---Yes.

And so once you received this notice, you knew that the Electoral Commission considered that it had reasons to suspect that certain donations were made for or on behalf of other persons in contravention of electoral law, correct?---Yes, yep.

10 Having received that notice, and that having come to your attention, what steps did you take to respond to that notice?---I delegated the job to the governance director, Julie Sibraa, and I asked her to check the response with our law firm, Holding Redlich.

Other than that delegation, did you have any other involvement in providing a response to this notice?---I, I don't, I remember signing the letter now, but it was – in terms of determining the information and investigating it, no, I, I obviously stood back from the process, given I worked at the office in, at the time.

20

Let's go to the letter at page 5, volume 1. Do you see there a letter of 19 December, 2016?---Yeah.

And that's your signature on this page?---Yes.

And is this one of the letters that you're referring to a moment ago, being a letter you signed accompanying a response to the Electoral Commission's notice?---Yes.

30 If we then just turn the page, please. You'll see there, question 1, "Please provide the names of the persons who handed the donations to the ALP on 9 April, 2015." Response, "Kenrick Cheah." Do you see that there?---Ah
hmm.

Now, is it the case that at that point in time you knew that it wasn't Mr Cheah who brought the money in, in the sense of bringing it off the street into head office, but rather that it was someone else?---I, I was told sometime after the money came in that Jamie had accepted the funds in 2015. In 2015.

40

But are you saying that's not something that you knew at the time of signing this letter dated 19 December, 2016?---I knew that Jamie had brought in the, the, or had, had given the money to Kenrick.

But presumably you knew that the – sorry, I withdraw that. Having read the notice, you knew that what the Electoral Commission was really looking for is to understand who was the person who brought it into the office in the sense of bringing it in off the street with a view to identifying who gave the

money from outside the ALP to the ALP, correct?---I had been obviously told by, by Ernest as to his belief in what happened. But the, and, I mean, I, at the time, just to be very clear, the office was closed. I relied on the governance director to pull it together, and I think in terms of information – I mean, I can only speculate about conversations at the time, but on the 9th of April, 2015, I understand that was the date that the money was banked, is that correct?

10 Our banking record says 9 April, that's right.---9 April. And so I don't know whether, and I just can't remember the reason for Kenrick's name there, but having thought about it a lot, I mean, perhaps it was provide the names of the persons who handed the donation on 9 April and that Kenrick had handed the donations to the party on 9 April. But to be very clear, at this time I was not reading too much into the response and relying on others to provide it.

20 But focusing on the specific question that the Electoral Commission is asking, you must accept, mustn't you, that what the Electoral Commission was looking for was not the name of a NSW Labor employee like Mr Cheah but was rather seeking to identify who was bringing in the money to head office in the sense of who, external from the party, is bringing in money with a view to being the donator either themselves or on behalf of someone else. Correct?---I, I accept that now and that, that question could have been answered in a different way.

30 But you have to accept, don't you, at least sitting here now, that the response given to question 1 on behalf of NSW Labor was at least misleading. Correct?---Not intentionally, but it is, it certainly should have been a different answer.

Well, intentionally or not it was at least misleading. You at least accept that, don't you?---It's incorrect is, is, I mean - - -

So the response to question - - -?--- - - - we could have done this much better.

40 THE COMMISSIONER: Well, it's incorrect in what sense?---In that while Kenrick had delivered the donations to the ALP on 9 April if the, the commission, what they actually wanted was who handed the – not actually who handed the ALP donations on 9 April, what they wanted was who walked in the money before that, then the answer should be depending on the date either Jamie or from the evidence provided Mr Huang or Huang.

It would be fair to say, wouldn't it, that the question made plain that it was talking about who brought the money in off the street as it were in delivering it to the ALP?---I mean I, I, I would answer the question very differently now looking at it, and it does clearly say 9 April but I mean I, again this was – excuse me – 2016. I didn't help draft this letter. I signed

the letter and sent it off after it was delegated out to others. But, yes, it should, it should be a different answer.

Well, you may have delegated the function of processing of the answers to be given to the Electoral Commission but you weren't delegating your authority, your responsibility, were you?---No, Commissioner.

All right.---And I understand and I would do something very different now.

10 MR ROBERTSON: And the answers you've just given in relation to question 1 apply equally to question 4, don't they?

MR NEIL: I just want to ask the witness not to answer.

THE COMMISSIONER: Yes.

MR NEIL: I wonder if we could just have a pause before going on.

20 THE COMMISSIONER: Yes, very well. I'll take a short break and let me know when you're ready to resume.

MR NEIL: Thank you.

SHORT ADJOURNMENT

[10.43am]

THE COMMISSIONER: Yes, Mr Robertson.

30 MR ROBERTSON: Thank you, Commissioner - - -

MR MOSES: Oh, Commissioner, just before we start, that correspondence you requested has arrived. Would you like that to be provided to you now?

THE COMMISSIONER: Yes, if you'd provide it to one of the Commission officers.

MR MOSES: Thank you.

40 THE COMMISSIONER: Mmm.

MR ROBERTSON: And while that's happening - - -

THE COMMISSIONER: Just before we - - -

MR ROBERTSON: I'm so sorry.

MR MOSES: There is two pieces of correspondence, Commissioner. One -
- -

THE COMMISSIONER: All right, well, they'll be together marked for identification.

MR MOSES: Yes. There's one dated 28 August, 2019, sent at 8.31pm from the solicitors acting for the Labor Party to the solicitors acting for Ms Murnain, and the response acknowledging receipt of that correspondence at
10 9.20pm last night.

THE COMMISSIONER: Okay.

MR MOSES: Thank you. I'll provide extra copies to my friend.

MR NEIL: I wonder if I could just see that (not transcribable)

MR MOSES: Yes, of course. Here it is, Ian.

20 THE COMMISSIONER: Just pass those down to Mr Neil. All right. Now, yes, I'm sorry. Would you mark them, 10.

MR MOSES: Thank you. Thank you, Commissioner.

THE COMMISSIONER: Those documents just handed up by Mr Moses will be marked as MFI 10.

30 **#MFI-10 – DOCUMENTS PRODUCED BY MR MOSES SC
RELATING TO CORRESPONDENCE BETWEEN THE ALP AND
KAILA MURNAIN**

THE COMMISSIONER: Yes. Would you mark those, and then hand them back to me? Yes, Mr Robertson.

MR ROBERTSON: In fairness to the witness, I should indicate that the majority of the delay in that adjournment was mine and not hers. She was ready to commence before I was. Ms Murnain, I just want to go back in
40 time, back to 16 September, 2016, just to ask you a couple of further questions regarding that.---Mmm.

Is it quite clear to you in your mind that the order of the three critical meetings that we were discussing is Mr Wong, then Mr Dastyari, and then Mr Robertson?---Yes.

It's not possible that your meeting with Mr Robertson happened before your meeting with Mr Dastyari?---No.

Is it possible that you then had a further meeting with Mr Dastyari after your meeting with Mr Robertson?---I don't recall so.

Can I try – well, is that your, are you sure that you didn't, or are you saying you can't recall one way or the other?---I was sure I didn't. I thought I went home after that.

You thought you went straight home?---Yeah.

10

Can I try and assist you this way?---Yep.

Can I hand to you and to the Chief Commissioner and to those behind me a document?---Thank you. Thanks.

For your assistance, Ms Murnain, the document that I've just given you is a, is said to be a screenshot of the WhatsApp app from Mr Dastyari.---Ah
hmm.

20 And can you see there a series of notes in relation to 16 September, 2016?
---Ah hmm.

And just to assist you in getting your bearings, the text message that you showed to us yesterday - - -?---Mmm.

- - - where you say to Mr Ian Robertson, "I'm at the top of the escalator," - -
-?---Ah hmm.

- - - that was at 7.18pm.---Correct. Yep.

30

Do you see that there?---Yep.

And then do you see that it looks like Mr Dastyari at about 7.41pm, about halfway down the page, says, "Yo, yo, I will come to you"?---Yep.

And he's, it says, "c-r-m" but presumably intended to mean "corner", Elizabeth and King?---Yep, mmm.

40 That's the corner of the MLC Building that is adjacent to the top of the
escalators that you have spoken to us about?---Yep.

MR HODGKINSON: Sorry. Commissioner, can I seek leave to appear for Mr Dastyari.

THE COMMISSIONER: Yes, Mr Hodgkinson, I grant you leave.

MR HODGKINSON: I appear with my learned friend Mr Bodisco.

THE COMMISSIONER: I'm sorry, I'm having trouble. Could you just move closer to the nearest microphone.

MR HODGKINSON: I'm very sorry, Commissioner.

THE COMMISSIONER: That's all right.

10 MR HODGKINSON: Commissioner, I appear with my learned friend Mr Bodisco, instructed by Ms Shelly, and I rise at this time, the corner mentioned in this WhatsApp is not the corner of the MLC Building. It's a block away from it and my learned friend's question I suspect inadvertently was incorrect.

MR ROBERTSON: I'm grateful to my learned friend. I was quite wrong about that. I'm grateful for his intervention.

THE COMMISSIONER: Yes, thank you.

20 MR ROBERTSON: I'm sorry, Ms Murnain, I got that wrong. The corner that's near the escalator is in fact Castlereagh and King Street, isn't it?
---The corner, yes.

And we discussed that yesterday I think.---Yes.

And so just to be clear about that, and I'm sorry for misdirecting you. The escalator that you were on the top of when you sent the message to Mr Ian Robertson I'm at the top of the escalator was the escalator going up into the MLC Building. Is that right?---Yes.

30 And that escalator is near the corner as my learned friend has correctly pointed out is Elizabeth and Castlereagh Street not Elizabeth and King?
---Yes.

Elizabeth Street I think is the next street parallel to the north. Is that right?
---Yes.

And then you say, if you have a look at the left here, "Here are you, where are you."---Mmm.

40 And then it seems that Mr Dastyari says, "Lap. Can you cross?" Do you see that there?---Ah hmm.

Does that refresh your memory as to further communications that you may have had with Mr Dastyari on the evening of 16 September, 2016?---The only thing I – I mean it doesn't but I mean I don't know whether there was a time difference on our phones or something. I mean that's the only thing I can think of.

So even in the face of this screenshot your best recollection was that the order of meetings was Mr Wong, Mr Dastyari, then Senator Dastyari, Mr Ian Robertson and there then was no further meetings with Senator Dastyari after your meeting with Mr Robertson. Is that your best recollection sitting there now?---I, I mean I, I, my memory is that I met with Sam prior to the meeting with Ian Robertson but this, I mean I could check my records as well but - - -

10 Well, I'm not asking about your records. I'm asking for your best recollection at the moment.---I - - -

And I'm asking you whether this screenshot leads you to recall something different to what you've so far told us?---The timing doesn't make sense with my other text messages, no.

Well, can I assist you this way. The text message between you and Mr Ian Robertson was time stamped at 7.18pm.---Ah hmm.

20 And I think you told us that the meeting with Mr Robertson was about 20 minutes or so?---Yes, correct.

And the first of these text messages seems to be about 7.41pm.---Yes.

Now that I've reminded you of those timings, is it still your evidence that you think that's inconsistent with - - -?---I, I just don't know. I mean there's, it's a possibility that I met up with him afterwards.

30 Now, does that mean it's possible that you had two meetings with him on 16 September or that it's possible that there was only one meeting and it happened after your meeting with Mr Robertson?---I don't know the answer to that. In my, in my, to the best of my recollection that happened prior, the meeting with Sam happened prior to the meeting with, with Ian Robertson and he gave the advice of go to Ian Robertson.

And just to understand that. We've got the meeting with Mr Wong in The Domain.---Ah hmm.

40 There's then some, there's some telephone calls before you meet Mr Robertson. Are you quite clear that your first call was to Mr Dastyari rather than to Mr Robertson or you're not sure about that?---I thought it was Mr Dastyari but it is possible that I've mixed the order up but I, I, my recollection is my recollection I'm sorry.

So your best recollection is meeting with Mr Wong, call with Mr Dastyari - - -?---Yep.

- - - meeting with Mr Dastyari, call with Mr Robertson - - -?---Yep.

- - - meeting with Mr Robertson - - -?---Yep.

- - - and no further meeting with Mr Dastyari after your meeting with Mr Robertson?---I may well have met with him again according to this, but to the best of my recollection, I didn't. I went home.

Possible further meeting but you can't recall sitting there now.---Yeah, yeah.

10 Chief Commissioner, I tender the screenshot of WhatsApp communications between Ms Murnain and then Senator Dastyari of 16 September, 2016.

THE COMMISSIONER: Yes. That will be admitted and it will be marked as Exhibit 174.

#EXH-174 – SCREENSHOT OF WHATSAPP COMMUNICATIONS BETWEEN SAM DASTYARI AND KAILA MURNAIN ON 16 SEPTEMBER 2016

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MR ROBERTSON: I'll also tender the bundle of communications produced by Mr Moses of Senior Counsel and which was marked as MFI 10.

THE COMMISSIONER: The documents produced today by Mr Moses of Senior Counsel, now marked MFI 1, will be admitted and marked as Exhibit 175.

30 MR ROBERTSON: Thank you, Chief Commissioner. You said MFI 1 when you meant MFI 10.

THE COMMISSIONER: 10, I'm sorry, I mean. Thank you. MFI 10 is now Exhibit 175.

#EXH-175 – DOCUMENTS PRODUCED BY MR MOSES SC RELATING TO CORRESPONDENCE BETWEEN THE ALP AND KAILIA MURNAIN

40

MR ROBERTSON: Can we go back, please, to volume 1 of the public inquiry brief forming part of Exhibit 149. And before we adjourned, Ms Murnain, we were talking about the response to the notice to produce from the Electoral Commission.---Yeah.

And I was focusing in particular your attention on question 4.---Yeah.

So you would at least accept, wouldn't you, that if you had your time again, you would answer both questions 1 and questions 4 differently?---If I had my time again, I would.

And a particular reason for that is that you knew that the notice to produce was seeking to explore who was bringing the money in from the street, as it were, rather than who was passing the money between themselves within ALP head office, correct?---Yes.

10 And so on the face of that, you would at least have to accept, wouldn't you, that the answers to question 1 and question 4 are at least misleading, would you agree with that?---I agree that they're not correct, yes.

They shouldn't have been answered in that fashion and they should have been answered in a more forthcoming fashion, correct?---Yes.

In terms of preparing this document that we can see on the screen, did you have any communications with any lawyers in relation to the settling of that document?---I - - -

20

MR NEIL: I just object to that question, if I may, because it has an unexpressed premise about who prepared this document.

MR ROBERTSON: I'll withdraw the question and deal with it in stages, then. Who prepared the first draft of this document as you understand it? ---Julie Sibraa.

30 And she did that because you delegated the exercise of responding to the notice to produce to her, is that right?---As the governance director, she would reply to the responses to letters from the Electoral Commission.

But not just that, you specifically delegated the task of responding to this notice to produce to her, is that right?---Yes.

And is part of the reason that you delegated that exercise was that at that point in time you knew about what Mr Wong had told you in 2016?---No, the reason I did that was because she's the governance director and governance matters have to be managed by the governance director, not a political staffer.

40

So is it the case that as a matter of procedure in late 2016, the procedure being adopted at head office was that inquiries of this kind were to be dealt with, at least in the first instance, by the governance director, is that right? ---Correct, yes.

Did Ms Sibraa discuss with you what she was proposing to say in response to the Electoral Commission's notice?---She may have but, to be honest, I, when, when I received the letter or the draft response, I remember a

conversation with her where I asked her whether I had to sign it as the, the – the letter was addressed to the proper officer and it wasn't clear who the proper officer of the party is, and I remember the conversation with her where I said, "Am I the one who's supposed to respond even though I didn't do the investigation into who did what?" Her answer was she wasn't sure, so she asked the commission and they indicated that I should sign the letter as the general secretary of both parties.

10 To your knowledge, did anyone within NSW Labor seek legal advice on this response?---I asked Julie to get legal advice from Holding Redlich on this matter.

Do you have any knowledge as to who, if anyone, within Holding Redlich gave advice in relation to this response?---I, I don't, and I don't have access to the party's records and haven't, but I, I understand that that did happen.

20 Well, you understand that based on what?---I understand that it happened, that the lawyers checked it because I asked Julie to get the lawyers to check it, first of all, and that would usually happen if I'd asked for it. I have a vague recollection of teleconferences between the office and Ian Robertson or others from Holding Redlich about this exact matter, but I don't recall whether I actually participated in them or whether I had anything to contribute to them. In fact, I believe I exited from this process and recused myself quite early on.

30 And when you say recused yourself, do we take it from that that you deliberately didn't want to have direct involvement in drafting responses to the notice to produce given what you'd been told by Mr Wong?---It was more a concern that I had worked in the party office in 2015 and it was inappropriate for me to draft the responses or do the, well, do the investigation into the matter.

Well, it was more than that, wasn't it? Because you had information that you've now told us about, that there may have been illegality in connection with donations in 2015, and you knew at least by later 2016 that the Electoral Commission was interested in that matter, correct?---I knew that, yes.

40 And so at least one of the reasons why you sought to absent yourself from the exercise of responding to this notice to produce is that you knew that you had information that the Electoral Commission might want and that you were concerned might cause damage to the party, correct?---That is not, that was not my motivation. It was more that it would be done appropriately and the process would be followed that was established in our office, where people who had the information would be able to give it to the commission.

Whether or not it was your motivation, it was at least one of the factors that informed why you should, to use your words, recuse yourself from the

exercise, correct?---No. It was, it was process. It was that the governance director should perform this duty.

So are you saying the fact that you had information from Mr Wong as to potential illegality in 2015 had absolutely nothing to do with your decision to try and minimise your involvement in the response to the Electoral Commission, is that your evidence?---Can you repeat the question.

10 Is it your evidence that although you knew that illegality may have been associated with donations in 2015, and although you knew that the Electoral Commission had concerns in relation to that matter, that played no part at all in your decision to seek to absent yourself in the exercise of responding to the Electoral Commission's inquiries. Was that your honest evidence?
---My evidence is that by this time – this was December – I'd been on leave because I was getting married. When we responded to this letter it was after the office had closed. I remember we had to come in to, to do it, to sign the letter, and I'd been on leave for a fair chunk of that period after the by-elections. The conversation with Ernest, I hadn't had another conversation with Ernest after that point about that matter, and in fact for a while there he
20 did avoid me on the matter. So I, I had hoped that the commission would get to the bottom of it through this process and that it's more appropriate that I should not, should not get in the way of any investigation.

Can you direct yourself to my question, please. My question was, is it your evidence that although you were aware of potential illegality in connection with donations in 2015, and although you were aware that the Electoral Commission had an interest in that matter, that played no role at all in your decision to absent yourself or to seek to absent yourself to the exercise of responding to the Electoral Commission's notices? Is that your honest
30 evidence? Yes or no?---No, I, I responded to the, the document, and I asked the governance director to get the lawyers to check it. So, I mean, I, I signed it. I took that responsibility on. So - - -

You said to us a moment ago that you recused yourself from the exercise of preparing a response to the notice to produce, is that right?---That means asking people questions about what happened within the office.

40 But it's fair to say, isn't it, that you sought to minimise your involvement in the response to the Electoral Commission's enquiries, correct?---Because that was the process at the time.

Well, what I want to suggest to you is that at least one of the reasons you took that approach was that you had information about potential illegality, that you didn't want to be disclosed by that process - - -?---I wasn't - - -

- - - do you agree with that or not?---No. I was not trying to, to minimise any disclosure or not disclose anything. I was trying to follow the appropriate processes in the office at the time.

THE COMMISSIONER: But you knew when you delegated the task of answering or drafting answers to the Electoral Commission's questions that those to whom you delegated did not have the knowledge you had, that had been imparted to you by Mr Wong, correct?---Yes.

So that you delegated the task in circumstances where you knew they wouldn't have the full story - - -?---And I asked - - -

10 - - - to be able to answer these questions, isn't that right?---Yes.

Well, wasn't that a deliberate decision by you to not involve yourself, and not involve the others by giving them the information you had, so that the true story wouldn't come out?---No, that wasn't the intent.

Well, you do agree that when you delegated it, you held some important information that those who were going to deal with the answers to the Electoral Commission's questions would not have.---And that's why I asked them to check the response with the lawyers, to make sure that, that - - -
20

But how, what good would that do, if they didn't have all the full facts to undertake the drafting of the answers?---The lawyers?

No, no. If those who were drafting the answers didn't have the full story that had been imparted to you by Mr Wong - - -?---Mmm.

- - - then they wouldn't be able to fully and properly respond to the answers, particularly answers to questions 1 and 4. Isn't that right?---Well, I'm not sure I could have given them a different response to 1 and 4 other than what they provided at the time, because I wasn't given the name of the person who didn't make the donation.
30

But see, what I'm saying is, you had in effect quarantined the information that Mr Wong had imparted to you about what was suggesting illegal conduct in relation to the donations that the Electoral Commission was looking into.---Yes.

That's right?---(No Audible Reply)

40 Well, if you quarantined that information, kept it to yourself, those who had the task of drafting full and proper answer to the questions wouldn't be able to undertake the task properly, without that knowledge which you had quarantined and kept to yourself.---Which is, well, I never kept it to myself, I disclosed that information to the party's lawyers. And then I asked for this response to be checked by the party's lawyers.

Well, I'm not talking about the lawyers at this stage, I'm talking about the team who were working on the answers.---Yeah.

You knew they wouldn't be able to give proper answer, because they didn't have all the relevant information, i.e., the information Mr Wong had given you. Isn't that right?---I mean, I, I, Commissioner, I would answer things very differently now, but at the time I was doing the best with the information and the advice that I'd had. It wasn't an intentional decision by me.

10 Well, even leaving that to one side for the moment. The fact of the matter is, those who you delegated the task to did not have the full bundle of relevant facts to be able to undertake proper answer to the questions the Electoral Commission posed. Do you agree with that?---She, Julie was not privy to the information I had been given, no.

So how would she be expected to be able to give a true and proper answer if that was the case?---I'm just reading the question, sorry, the answers.

20 Well, if you just read question 1 before you answer that question. Confine it to question 1 for the moment.---The question if it had been written slightly differently would have been very different and I understand the commission's intent was a different request to what has been provided there but I'm not sure anything that I have been told would actually change this answer.

MR ROBERTSON: Let me try and ask it this way.---Yeah.

30 Can we go, please, to page 1 of volume 1 of the brief and focus on paragraph 2. You there see that Mr Smithers says that he considers he has reason to suspect that cash political donations made at a function called the Chinese Community Dinner – Chinese Friends of Labor held at The Eight Modern Chinese Restaurant on 12 March, 2015 were made for or on behalf of other persons and deposited into an ALP bank account. Do you see that there?---Yes.

40 At the time that you signed the response to this notice to produce you had reason to suspect that cash political donations made at the function called Chinese Community Dinner – Chinese Friends of Labor were made on behalf of other persons and deposited in an ALP bank account, didn't you? ---Yes, but I wasn't told who had made a donation that was incorrect.

The answer to my question is yes, isn't it? You did have reasons for a suspicion of the kind that Mr Smithers had?---Yes, and the commission was investigating and, and, by this stage already and that was their, their role.

And you decided not to inform Mr Smithers or anyone else in the Electoral Commission that you had additional information that would support Mr Smithers' suspicion. Correct?---By December, I mean it was an incredibly busy time. We had by-elections. This - - -

Can you just focus on my question, please.---When, in 2015 – I am focusing on your question. That wasn't going through my mind in 2015 when I was responding to this letter.

2016.---2016 when I was responding to this letter.

Yes, but the answer to my question is yes, isn't it? You had reason to suspect, to have the same suspicion as Mr Smithers. Correct?---Yes.

10

And you decided not to give that information to Mr Smithers. Correct?---I didn't give it to Julie Sibraa and I, I didn't give it to Mr Smithers.

And I suggest to you that that was at least one of the reasons why you sought to absent yourself or recuse yourself from the exercise of responding to the notice to produce. Do you agree with that?---No, I don't. The exercise of responding to the notice to produce is the job of the governance director.

20

That might be so, but you signed it, didn't you?---Because I was told I had to by Julie, who told me the commission said that I should sign the letter.

But you signed it in circumstances where you had reasons to suspect the very same matter that Mr Smithers was concerned about as one can see in the second paragraph on the page that appears on the screen. Correct?---Yes.

30

Can we go, please, to page 12 of the same volume. This is volume 1, page 12, part of Exhibit 149. So sorry. It's not that page. Just pardon me for a moment. So if we can go to page 44 of the same volume. Now, you received two notices around that time, didn't you, one was for Australian Labor Party New South Wales Branch and the other one was for Country Labor. Correct?---Yes, yeah.

And you were the General Secretary of Country Labor at that time, correct?---Yes, yep.

40

And Mr Smithers was asking you, in substance, the same questions as he asked you in your capacity as NSW Labor General Secretary, correct?---Yes, yep.

And in substance the same responses were given. If we could just turn to, first to page 48 of that bundle. Again you signed this one off as Country Labor General Secretary, correct?---Yes, yes.

And if we just turn the page, the questions and answers, just turn the page, please, to page 49, the questions and answers are to the same effect as those in respect of NSW Labor, correct?---I believe so, yes.

And the answers that you've given both to my questions and the Chief Commissioner's questions concerning responses to the Electoral Commission apply equally to the responses on behalf of Country Labor as they do for NSW Labor, correct?---Yes.

10 Other than simply signing these two letters as 19 December, 2016, and telling Mr Sibraa that she should, as it were, take care of it, did you have any other involvement in the exercise of responding to these notices to produce?---No, not to, not that I remember.

Well, for example, did you send any emails to Holding Redlich in relation to the matter or receive any emails back from them regarding their review?---I don't remember.

So it's possible that they did. You just don't recall one way or the other?---Yes.

20 You mentioned a moment ago or a little while ago about telephone conversations with Holding Redlich in relation to the matter.---Ah hmm.

Do you recall whether they were telephone conversations in which you were involved?---I don't remember, to be honest.

So it's possible that you may have been on a telephone call in relation to this matter?---Yes.

30 But would it be fair to say that a telephone call of that kind, Ms Sibraa, almost certainly would have been a participant in as well?---Yes.

Matters of this kind, responding to Electoral Commission matters, when being dealt with by Holding Redlich, are those matters that Mr Ian Robertson himself would ordinarily deal with or would he ordinarily delegate that exercise to more junior staff or perhaps to other partners within his firm?---This, it depends on the seniority of the issue. So perhaps it would be a better question for Ian Robertson.

40 But in your understanding and practice in working closely with Mr Robertson is this the kind of matter that he would deal with himself or he would delegate to more junior staff?---I'm not sure.

You have no specific recollection, is it fair to say, as to who from Holding Redlich was involved in the exercise of giving any comments on the draft responses that Ms Sibraa prepared, is that right?---I, I don't recall. There may have been a phone call, as I said before, with Ian at the beginning of the matter, but I just don't recall.

And is it right to say that you didn't engage in any inquiries yourself as to what the correct answers were to the questions that the Electoral Commission asked, is that right?---Yes, that's right.

The extent of your involvement in terms of preparation of the answers was to ensure that Ms Sibraa would take responsibility for that exercise, is that right?---She would provide me with the answers, yes.

10 So do we take it from that that by you signing the letters that we've seen, one at page 48 and one at page I think it was 6 (not transcribable) 5, you weren't confirming that the answers were correct of your own knowledge, is that right?---Yep.

Or even that they were correct of your own investigations.---Correct.

The extent of it was that you were merely communicating answers that someone else had acquired on behalf of the two parties.---Yes.

20 You would agree, wouldn't you, that you didn't tell the NSW Electoral Commission about the meeting that you had with Mr Wong, Mr Ernest Wong, on 16 September, 2016, correct?---Yes.

And you didn't tell this Commission until you responded to questions that I asked in a compulsory examination, correct?---Yes.

Why was it that you ultimately decided to tell this Commission what Mr Wong said to you on 16 September, 2016?---Because I wanted to do the right thing.

30 Is that the extent of it?---I just wanted to make sure that, that I was being honest.

But you had since September of 2106 to – as you've put it – do the right thing. Why was it that you only decided to do that, as it were, very late in the day, once you'd already been required to attend here by way of compulsory examinations?---I took the legal advice very seriously. I - - -

Pausing there. Don't tell me about any legal advice that you've been given.

40 THE COMMISSIONER: You're referring to legal advice in relation to the compulsory examination?---I'm speaking about the Robertson discussion in terms of - - -

MR ROBERTSON: Oh, I'm so sorry. I'm so sorry.---Yeah.

No, you can tell me about that. Don't tell me about the detail of any advice you may have been given in connection with giving evidence before this Commission, either in a compulsory examination or in this public inquiry.

---Okay. So I followed that advice strictly until, until I'd had a bit of time off. As people can understand, this a seven-day-a-week, almost 24-hour-a-day job. There's always one drama, that you move from one to the next, and issues and problems, and for the first time probably in a decade I've had time off in the last few weeks and been forced to recall events that happened in 2016 and 2015, which frankly weren't things I was thinking about even at the points at which this investigation had been made public.

10 Is that the extent of your reasons or were you concerned that, with a public inquiry that was imminent, it may have come out in any event and you wanted to get ahead of the curve, as it were?---No. I wanted to make sure that what had happened or what I knew for certain was on the record. I wanted to do the right thing.

That completes my examination for the time being.

20 THE COMMISSIONER: Can I just ask you this. When you received the Electoral Commission questions in relation to this matter, I think you said when you delegated it you gave some instruction that the drafting of the responses should be done either in coordination with the lawyers or to send the responses to the lawyers, something along those lines.---Yes.

What did you in fact say to them about that?---Can you, can you check this response with Ian at Holding Redlich.

Check - - -?---Check the response with Ian at Holding Redlich.

30 And why did you give that instruction?---Because I, I told him the information that I'd been given, and despite the fact I'd had no evidence to suggest that what Ernest was saying was true, I suspected that because of the Electoral Commission's investigation that the lawyers would be able to provide Julie with the assurance that how we were responding was correct.

So do I understand by that answer that you were in effect imposing a responsibility on Mr Robertson to determine what should be disclosed in relation to what you say you had said to him - - -?---Yes.

40 - - - that Mr Wong had said to you about an illegal donation?---Yes. And I acknowledge that that was not the right decision to make now, in hindsight.

Why did you not yourself speak to Mr Robertson and say, "Look, following the advice you gave about not disclosing this matter, we've now got the Electoral Commission on our doorstep, in effect. What do you think we should do now in the light of that?" Why didn't you, in other words, put to him that circumstances had changed somewhat with the Electoral Commission investigations?---I, I don't really remember at the time. I mean, I think, I think the Electoral Commission may have been looking into it before these letters were received for information. So at the time I would

have seen Ian, I think they were already asking questions about the issue, but I'm not certain. So when I received those letters and went to Ian, I mean, he was very specific about forgetting it had happened, so I did my best to forget it had happened, especially when Ernest hadn't raised it again with me.

10 But although you may have known the Electoral Commission was looking into this donations matter, they were now interrogating the ALP by their notice. So, now that they had embarked on the interrogation process, why wouldn't you then ring Mr Robertson and say, "Look, things are ramping up, we should revisit this question as to what should be disclosed, if anything," why didn't you do that?---Because I was told to forget it and that's what I did. And it was the wrong thing to do.

All right. Yes, Mr Robertson.

MR ROBERTSON: That's examination for the time being. As I've indicated, I propose to recall Ms Murnain during the course of next week to deal with any applications for leave to cross-examine.

20

THE COMMISSIONER: Yes. Yes, very well. Well, Ms Murnain, I'm going to ask you to step down now. That will complete your examination for today. You will be required to attend next week. A precise date and so on will be confirmed, and on that occasion there may or may not be some further examination by Counsel Assisting, and then there may be applications for cross-examination of you. Do you understand the process? ---Yes.

30 Very well. Thank you. You may step down.---Thank you.

30

THE WITNESS STOOD DOWN

[11.51am]

MR ROBERTSON: I propose to call the next witness immediately. I might pause very briefly so that my learned friend for Mr Dastyari can come a little further forward if he wishes to, or he can go from there if he'd prefer.

40 MR HODGKINSON: Commissioner, Mr Dastyari's just outside. My learned junior will go and make sure he's - - -

THE COMMISSIONER: Somebody – yes, thank you.

MR ROBERTSON: I call Sam Dastyari.

THE COMMISSIONER: Yes, very well. You might find a seat further up there, Mr Hodgkinson.

MR HODGKINSON: Thank you, Commissioner.

THE COMMISSIONER: Mr Dastyari, do you take an oath or an affirmation?

MR DASTYARI: Affirmation, sir.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Just take a seat, thank you.---Thank you.

Mr Robertson, I think it's the fact, isn't it, that Ms Murnain has left the hearing room? I think that is the, yes. Yes, that is. Yes, thank you.

10 MR ROBERTSON: My learned friend for her confirms and that appears to be right.

MR NEIL: Perhaps I should just, she may be outside, and there is, the proceedings are broadcast outside.

THE COMMISSIONER: Mr Neil, it's a matter for you as to whether you want her to stay outside or not.

20 MR NEIL: I would prefer it and, but I wonder if we could just have a moment to make some, to ensure that she's not within range of the broadcast of the proceedings.

THE COMMISSIONER: Yes, okay, so enquiry can be made, if - - -

MR NEIL: I'll send my junior for that purpose. I want to be sure that she cannot hear this.

THE COMMISSIONER: Very good. Thank you. Yes, very well. We'll get started.

30 MR HODGKINSON: Your Honour, I have an application to make. Your Honour, the provisions of section 37 and 38 of the Independent Commission Against Corruption Act have been explained to Mr Dastyari. He, being a person who has been summoned to attend and appear before the Commission at this public inquiry, objects to the answering of any question, the production of any document or other thing in this public inquiry on such grounds under section 37(2) of the ICAC Act as it may be available to him, and he asks for a declaration under section 38 that all answers given by him and all documents or other things produced by him in this public inquiry be

40

THE COMMISSIONER: Thank you, Mr Hodgkinson. Mr Dastyari, you're familiar with the Commission processes to which Mr Hodgkinson has just referred?---Yes, sir.

You understand that a declaration has the effect that the evidence you give in this inquiry can't be used against you in the future in proceedings, for example, criminal, civil, disciplinary, administrative proceedings?---Yes, Commissioner.

You understand however that notwithstanding the declaration being made you are required to answer all questions and to answer them truthfully?
---Yes, Commissioner.

10 It's my obligation to ensure that you understand that notwithstanding the section 38 declaration that a person who commits an offence under the Independent Commission Against Corruption Act such as giving false or misleading evidence can be prosecuted and the evidence given in the proceedings today could be used against you in those circumstances, not that I'm suggesting that's likely to occur but it's my obligation to remind you as I do with any witness.---Yes, Commissioner.

20 Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness, Mr Dastyari, and all documents and things produced or that may be produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection. That being the case there is no need for him to make objection in respect of any particular answer given or document or thing produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS, MR DASTYARI, AND ALL DOCUMENTS AND THINGS PRODUCED OR THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Yes, very good. Thank you, Mr Robertson.

MR ROBERTSON: Mr Dastyari, you're a former General Secretary of the Australian Labor Party New South Wales Branch. Correct?---Yes.

40 You had that role between about 2010 and 2013. Is that right?---Yes.

Your successor was Mr Jamie Clements. Correct?---Yes.

And his successor was Ms Kaila Murnain. Correct?---Yes.

You were a senator for New South Wales between 2013 and 2018?---Yes.

And you resigned from the front bench on or about 7 September, 2016. Is that right?---I believe that to be true.

Somewhere around there. It may have been the day before or the day after?
---I thought it may have been the 8th but, yes.

At that point in time when you resigned Ms Murnain was the General Secretary of NSW Labor. Correct?---Yes.

10 Can you just explain in general terms what your relationship was with Ms Murnain as at September of 2016.---Ms Murnain and I were both professional and personal friends. So we had a close working relationship and we were friends.

And so you would be in contact with each other regularly. Is that right?
---Yes.

THE COMMISSIONER: How did you come to meet originally?
---Commissioner, I met Kaila in or around when she would have been 15/16
20 at an ALP conference in or around 2003/2004. I knew her as a young Labor activist. We went through the movement together. She was several years younger than me and she kind of came up through the movement after me.

Thank you.

MR ROBERTSON: And I think you said at least as at September 2016 you would be in regular contact with each other.---Very regular, sir.

Is that in relation to just personal matters or professional matters or both?
30 ---Both.

So it was a close working relationship where you would be in contact what, on a daily basis or on a regular basis of that kind?---Mr Robertson, it would vary from day to day. It would be one to many times a day.

Do you still have that kind of relationship with Ms Murnain?---No.

Why not?---Several reasons. Firstly, I am no longer engaged in day-to-day party politics. I have moved on from politics. Moved on with my life and
40 moved on to do other things. That was, that's one reason, and another reason being that Kaila and I drifted apart earlier in the year in what she felt – well, we, we drifted apart earlier in the year on a personal level.

Earlier in which year?---This year.

So the breakdown in the relationship or at least the drifting apart happened during the course of this year, is that fair?---Yes.

When's the last time you've had any communication with Ms Murnain?
---Look, I, I reached out to her around this 3rd, 4th of August this year was the last time that we had any communication back and forth. That's the last time her and I have been in contact with each other.

When you say "reached out", you reached out in what form? What form of communication did you use?---I, I sent her a message and a letter on, on, on the WhatsApp.

10 So a text message on WhatsApp?---Yes.

And when you say a letter, do you mean you've attached some kind of letter?---Yes. Yes, it was a personal letter.

And your best recollection is that that was a few weeks ago?---Yes. Though I am, one thing I'm not sure about, Mr Robertson, and I want to be clear about this, is in or around after I had my private session in ICAC on Thursday or Friday last week, I went through all of my messages and records, and in doing so - - -

20

Can we just pause there for a moment? I think I should apply for the section 112 declaration given in relation – sorry, direction given in relation to the compulsory examination of Mr Dastyari on 22 August, 2019 to be lifted.

THE COMMISSIONER: Yes, I agree. The order made on 22 August this year in Mr Dastyari's compulsory examination is lifted. Accordingly, it is no longer subject to suppression or non-publication.

30 **VARIATION OF SUPPRESSION ORDER: THE ORDER MADE ON 22 AUGUST THIS YEAR IN MR DASTYARI'S COMPULSORY EXAMINATION IS LIFTED. ACCORDINGLY, IT IS NO LONGER SUBJECT TO SUPPRESSION OR NON-PUBLICATION.**

MR ROBERTSON: Can I indicate for your assistance, Chief Commissioner, that that transcript has been available to those with access to the restricted website from I think at least this morning. But now you've made that section 112 direction. I'm sorry to interrupt you.---Oh, no, no,
40 no. In following that (not transcribable) going through all of my records, I, I believe I may have misdialled Kaila after Thursday but I hung up before she had the opportunity to answer.

Can I just deal with that. You participated in a compulsory examination before this Commission on 22 August, 2019.---Yes.

And that was Thursday of last week.---Yes.

And you then sought to make contact with Ms Murnain?---No.

So what were you referring to in terms of missed calls?---I was going through my phone to make a copy of all of the WhatsApp messages and contact between Kaila and I, and in doing so I dialled her and hung up before she answered.

I see. So since the compulsory examination of 22 August, 2019, you accidentally called Ms Murnain, is that right?---Yes, sir.

10

But you didn't speak to her?---I have not spoken to her.

And so putting that aside, your last bilateral contact with Ms Murnain was a few weeks ago with the message and letter that you referred to before?---I, I believe it was either 3 or 4 August.

And that was done by WhatsApp, is that right?---Yes.

And in general terms what was the subject matter of that communication?
---It was a, there had been a media story the day before in the paper where there was some horrible things that had been said about Kaila in the media – I think I, from my recollection it was a Herald article – and I wrote her a letter effectively saying words to the effect of “Even though we haven't really been speaking, we're not really friends at the moment, chin up, you're a good person.”

20

Were those stories and that communication in any way connected with the investigation of this Commission?---I'm not sure. I can't remember. The story was about her future prospects in her career, and people had said some nasty things about her in the article.

30

I see. So the focus, the focus of the story was on, as it were, future prospects and her position as general secretary, is that right?---I believe so.

And there may have been a passing reference to this investigation or perhaps to – withdraw that. There may have been a passing reference to this investigation and any steps that she may have taken, but that wasn't the gravamen of either the article or your response to it, is that right?---Yes, sir.

40

Prior to that point in time, 3 or 4 August, when was the last time you had any communications with Ms Murnain?---Mr Robertson, I couldn't tell you off the top of my head, but it was infrequent.

So is it right to say that in 2016 there was frequent communications?---Yes.

And when did they cease to become frequent?---Around, sometime between the state and federal elections this year. So sometime around April/May this year.

I now want to ask you whether you recall having a meeting with Ms Murnain on Friday, 16 September, 2016. And can I assist in trying to give you some bearings this way. I think you agreed with me that you resigned from the front bench on or about 7 or 8 September?---Yes, sir.

And 16 September is a Friday.---Yes, sir.

10 Do you have any recollection of having any meetings - - -?---I had.

- - - or meeting Ms Murnain on or about Friday, 16 September, 2016?
---Yes, I do.

Doing the best you can, can you explain your recollection of that meeting?
---Thank you - - -

20 Or both meetings if there was more than one.---Thank you, Mr Robertson. Mr Robertson, there was one meeting that Kaila and I had had on the evening of 16 September. In way of context, that was a parliamentary sitting week. This was the Friday of the sitting week.

30 When you say parliamentary sitting week, you're talking about the Federal Parliament at this point?---Federal Parliament. Federal Parliament had been sitting. It was the end of a federal parliamentary sitting week. I recall that Kaila and I had made informal arrangements to get together on the Friday evening at the end of the week. I received a call from Kaila at some point in the evening or afternoon, informing me that, to make arrangements to, to catch up, and she told me that she was at, she'd been in a meeting at the parliament and that I came to collect her from that general vicinity or area, and we had a conversation in my vehicle.

Now, first you said there was one meeting. You're quite sure that you only had one meeting with Ms Murnain on 16 September, 2016?---Yes, sir.

And do you recall how many times you would have spoken to her by telephone on 16 September, 2016?---Placed in the context of that week and events of that week, I would suspect it would be very frequent. I, yeah, three to five, perhaps.

40 And when you say placed in the context of that week, that's because there was significant media interest in relation to you and the circumstances in which you resigned from the front bench, is that right?---Yes. Kaila and I were in a lot of contact that week.

And is it right to say that although you had resigned by about 7 or 8 September, there was still media interest in you and the circumstances in which you resigned from the front bench?---Yes.

And so that's the context that you were seeking to summarise a moment ago, is that right?---Yes.

And I think I understood you to say you had a telephone call with Ms Murnain where she asked to meet up with you, is that right?---I, to the best of my recollection, yes.

10 But is it right that there were already tentative arrangements in place to have some kind of a meeting on that Friday, is that our understanding?---That's the best of my recollection, yes.

And do you recall whether those tentative arrangements happened on Friday or are they done in advance of Friday?---I would have believed it would have happened earlier in the week but I'm not sure. I can't say with a level of confidence.

20 And then you mentioned a call where I think you said arrangements were made to meet her near the parliament, near State Parliament House, is that right?---My recollection, Mr Robertson, is that the initial, the initial plan was to meet with Kaila at the ALP party office, which is obviously her place of work, and that plan changed for me to meet her on the other side of the city.

Doing the best you can, and appreciating it was a little while ago, can you tell us what Ms Murnain said on that conversation, that telephone conversation, and what you said in response?---All I can recall is her saying, asking for, for us to, to, to meet up.

30 Can you recall anything about her oral demeanour? By which I mean did she appear calm, stressed or anything in between?---I, I - - -

Focusing on the telephone conversation.---Yeah, I can't, I can't recall the details of the telephone conversation.

But your best recollection was that it was more mechanical in nature. In other words, working out on a location, is that right?---That's the best of my recollection but we did speak several times a day.

40 A little earlier in an answer – and I may have misunderstood you – there may have been a reference to a meeting at Parliament House, when Ms Murnain spoke to you by telephone, have I got that right?---I'm not sure where she was when she spoke to me by telephone, but I know that she had a, she had like, yep, yeah, that she had a meeting at parliament.

But is it right that during the telephone conversation, there was no discussion as to the content of any meetings that she have had, as best as you can now recall?---As best as I can recall, the telephone conversation was mechanical in nature.

When you describe it as a telephone conversation, does that necessarily mean it's a telephone call in the traditional sense, or it is possible that it was a WhatsApp call or something of a similar nature?---It's, it's likely that it was a WhatsApp call.

And are you – was it Ms Murnain who called you or was it you that called Ms Murnain, do you recall?---I, I, I, I, I can't recall, and (not transcribable) there was many calls over a period of days, not just one call.

10

Following the particular telephone call we're talking about, so the one to make arrangements to meet somewhere near Parliament House, what did you do following that call?---Oh, following that call, I believe I made my way into the city, with the, with the intention of meeting up with Kaila.

Pausing there, do you recall where you were before you were in the city? ---I, I was in, I was at the Castle Hill RSL.

20

And so you drive from Castle Hill into the city following this telephone call, is that right?---No, no, sir. My, my best recollection and, is that I was at the Castle Hill RSL, meeting with my staff at the end of what had been a long week for our, for our team, or members of my staff, been a long week for our team, and that I was heading into the city, after doing personal errands, with a view to catching up with Kaila.

Do I take it from that that there was a period of delay between the telephone call that arranged the meeting, and the actual meeting itself?---No, no, Mr Robertson, no. In, in that, so, no.

30

So is it right then that you left Castle Hill in fairly short order from receiving the telephone call that we've been discussing, that is to say the telephone call to have a meeting near State Parliament House?---Well, no, Mr Robertson, I wouldn't take that from that at all.

So, I'm just trying to understand the timing.---Okay, can I - - -

So there's a telephone call, and I'm trying to understand how long after the telephone call the meeting would have happened, was it, well, the time necessary to move from Castle Hill to the city - - -?---No.

40

- - - was it a longer period of time?---No, Mr Robertson. My understanding and recollection, there was always an informal intention to meet up with Kaila on that evening, as I had been away in parliament in Canberra that whole week. And at some point prior to us meeting, the plans got changed from us meeting at head, from the ALP party office to somewhere else.

But I'm just trying to understand the chronology.---Yeah. Mr Robertson, yeah, I, I don't know at what time there was the exact call, that changed the arrangement from being at the ALP party office to being somewhere else.

And so when you were at Castle Hill, you already had an intention to meet with Ms Murnain, is that right?---I believe so.

But the tentative plan at least was at Sussex Street, rather than at Parliament House?---Mr Robertson, that was the normal place for us to meet, yes.

10

So you don't have a specific recollection of that, but that would be the ordinary place you'd meet, because that's her place of work, correct?---Yes.

And what I'm just trying to understand is whether in the telephone call, Ms Murnain is saying in effect, "Come down right now," and you came down right now, or whether we're talking about a telephone call perhaps earlier in the day that then led you to decide to drive not to Sussex Street, but to Parliament House at the time that you were intending to leave anyway.

20

---Well, I can't exactly remember specifically. My recollection would be that it would be the latter not the former, in that there was the intention to meet at the ALP party office, and at some point late, that got changed to meeting somewhere else.

Do you recall whether there was any suggestion from Ms Murnain in the telephone call that she wanted to see you urgently, for some urgent matter to deal with, as distinct from simply meeting up in the way that was at least tentatively arranged?---I, I can't recall her tonality.

30

So you then drive into the area around State Parliament House?---No, Mr Robertson.

So when do you do that, then?---Oh, sorry, I, I (not transcribable) go to that new Parliament House, that was the bit that I (not transcribable) yeah.

Sorry, just to understand it, at some point you leave Castle Hill?---Earlier in the day.

Earlier in the day, I see.---And then I went home and did my personal errands and then I headed into the city to meet with Kaila.

40

I see. So the origin of your trip to Parliament House was home, not Castle Hill, is that right?---Yes.

So during the course of, say the afternoon, you were in Castle Hill?---I believe so, yes.

You ran errands and the you went home?---Yes.

And then you went from home to the area around State Parliament House, is that right?---Yes. The ordinary course of events on a Friday was for me to do the kid's drop off and pick up.

And I think I understand you to be saying it wasn't like you received a telephone call from Ms Murnain saying, "Come down urgently now." The telephone call was to change the details of arrangements that had otherwise been tentatively made. Have I got that right or - - -?---That is the best of my recollection, so - - -

10

But that might not be right, that's doing the best you can, noting that it was some time ago, is that right?---Yes.

And so you drive from home to the area around Parliament House?---Sorry, sir, can you define what you mean by the area around Parliament House?

Well, you tell me.---Okay. I drove and arranged to meet Kaila at, I believe, 7.45/7.47 at the corner of King and Elizabeth.

20

Now, how are you able to be so precise in relation to the timing?---Because, so after I gave my, after you asked me these questions last Thursday, I subsequently went and checked my telephone and other records and I have WhatsApp messages saying words to that effect.

Can we have Exhibit 174 on the screen, please. Mr Dastyari, I've put up on the screen what appears to be a WhatsApp chain. Is that the chain that you were just referring to?---Yes, sir.

30

And I appreciate it's difficult to see, there's timing on the right-hand side of 7.41pm. See that there?---Yes.

And that's why you said to me a moment ago that it was around 7.47?---Oh, no. So if you look at the, the final one, which is the, "Where are you?" That is closer to 7.47, yeah.

That's what I was just about to say.---Oh, sorry.

The last one's about 7.47?---Yes.

40

And that's why you identified 7.47 as the time a moment ago, is that right? ---Yep, yes.

Now, a little bit further up the screen, there's a series of missed voice calls at 7.18 and 7.19. Do you see that there?---Yes.

Do you recall whether they were calls that you were making to Ms Murnain or whether they were calls from Ms Murnain to you?---My, my

understanding is that they would be called from Ms Murnain to me. I'm not, I don't think it records missed calls that I make out.

And you then recall having an exchange by text or by WhatsApp message in the way that's identified on the screen, Exhibit 174?---My recollection is resting on this information that I have available in front of me.

10 And to be clear, is it right that you have no recollection of having any other meeting with Ms Murnain prior to sending the messages that we can now see on the screen?---Yes.

So you're agreeing with me, there was no, to the best of your recollection, there was no meeting prior to, say, 7.47 on 16 September, 2016?---Mr Robertson, I, I believe there was only, there was only one meeting between Kaila and I that evening and in terms of the exact time, I'm resting on my records.

20 So you're quite sure that there was only one meeting and you're drawing the inference that it must have been after this exchange of text messages or WhatsApp messages because of the content of the messages, is that right? ---Yes.

Now, I take it you then have a recollection of meeting with Ms Murnain? ---Yes, I do.

And where did you first meet her?---Well, I believe I met at the corner of King and Elizabeth.

30 And that belief, I take it, is based on the WhatsApp message that we now see on the screen, is that right?---Yes. I, I, my, my personal memory is of meeting her not at Sussex Street and somewhere on the other side of the city and my messages is what I'm going off on the basis of exactly where.

So you don't have a specific recollection of the location but you're fairly sure it wasn't Sussex Street, is that right?---I'm sure it wasn't Sussex Street.

40 And when you met Ms Murnain what happened then? Are you meeting on the street, have you parked?---Again as from the messages that, that - I believe I had stopped at a set of lights or intersection and Kaila Murnain came into my car.

So your best recollection is that you're at the traffic lights on the corner of Elizabeth and King Street. Your car is probably in an easterly direction because it's a one-way street, at least as I recall it.---Mr Robertson, the best of my recollection informed with the details of the messages.

And you don't pull over and park, is that right, or do you pull over and park?---I, I couldn't, I couldn't tell you whether we pulled over and parked at that point or drove around for a bit and parked a bit later.

Do you at least have a recollection of having a discussion with Ms Murnain?---Yes.

Where was that discussion?---In my car.

10 So in some way she gets into your vehicle somewhere near the corner of Elizabeth and King Street. Is that right?---Yes, sir.

Now, doing the best you can, and again appreciating it was some time ago, I want to know your best recollection of what Ms Murnain said to you and what you said to Ms Murnain.---Yeah. Ms Murnain entered my car and came into the car. She came and sat in the passenger side. I was obviously in the driving side. She came into the passenger side of the vehicle.

Ms Murnain was quite distressed and gave me both verbal and non-verbal cues as to how distressed she was. Verbally - - -

20

What were her non – sorry, keep going.---Verbally by not wanting to, I was of the impression that we were going to have dinner or, you know, go – and she didn't want to have dinner. She was quite distressed. And secondly, when Kaila is very stressed and anxious she becomes incredibly fidgety. So it was kind of familiar with someone who knew her those both verbal and non-verbal cues that she was distressed. Kaila came into the car. As soon as we'd moved on from the basic pleasantries to the best of my recollection she certainly left me with the impression that she'd had an exchange or interaction with Ernest Wong and that has left her, and that was the cause of why she was so distressed.

30

Now, I want you to do the best you can in identifying what words she actually uttered to you. I appreciate it's difficult but I want you to do the best you can.---Yeah. Mr Robertson, since this was first brought to my attention last Thursday, I have gone away and done my absolute best to try and reconstruct this series of events and this conversation. I, I'm going to struggle to be able to repeat the exact words that she used but I can certainly express to you the impression that she left with me. She had had a - - -

40 We'll come back to that. What I want you to do – I appreciate you won't be able to get the exact words, but doing the best you can, what words or words to what effect did she use?---Okay. Mr Robertson, words to the effect that she had, she had had an interaction with Ernest Wong who is obviously known to you as an Upper House MLC for the NSW Labor Party in that they had had a discussion around the accounts and finances for Chinese Friends of Labor. Kaila relayed to me that she thought there had been a, there were issues relating to lack of transparency and that had, that was what was deeply distressing her.

Was that the extent of the concerns, lack of transparency, or was there any suggestion of illegal or improper conduct?---Mr Robertson, can you ask the question again?

You said a moment ago that Ms Murnain was concerned about a lack of transparency. Is that right?---Yes.

10 What I want to know is whether she went further than that to say not just about a lack of transparency but something about illegal or improper conduct.---Mr Robertson, the impression that I was left with that it was a lack of transparency that would have led to what could be defined as improper conduct in that Kaila left me with the impression that the accounts for Chinese Friends of Labor for previous years did not – were not an accurate reflection of events that had taken place and it's deeply distressed her.

20 THE COMMISSIONER: Can you do what you were asked to do before and just try and related what she actually said to you. I know it - - -?---Yes, Commissioner. I'm trying to remember the words. What I've got left is the impression that I was left with at the time. In terms of the words she used was just that, I'm struggling to remember the language that she would have used but she was incredibly distressed and deeply distressed. I was kind of running off her distress and could understand the enormity of it because of how distressed she was, and that she felt that, yeah, she'd had a meeting with Ernest, that it hadn't been pleasant, and that the ALP accounts for Chinese Friends of Labor weren't reflective of what had taken place, and she seemed deeply concerned that she didn't really know what was
30 happening or, or it may or may not have taken place, could or couldn't be improper conduct.

MR ROBERTSON: The accounts weren't reflective in relation to what matter? Did she identify the particular matter where she was concerned that the accounts might not be reflective?---Mr Robertson, I took it to be a high level understanding that the Chinese Friends of Labor accounts overall for previous years were not reflective. I was left with the impression that Kaila herself didn't quite know what exactly had happened and so she was incredibly distressed by that.

40 But there's lots of different ways in which accounts might not be reflective. I take it she's not suggesting there was some technical breach of accounting laws, for example.---Oh, no, no, no. And I could tell that by the level of distress that she had.

But did she identify the particular area in which she was concerned that the accounts of Chinese Friends of Labor might not be accurate?---Yes. Yes.

What's that area?---When I mean accounts, Mr Robertson, I should, to clarify, I mean fundraising activities.

Yes. So you're talking specifically about fundraising activities?---The accounts and fundraising activities for Chinese Friends of Labor are essentially the, they're the same thing, yes.

THE COMMISSIONER: Did she say anything to you as to what Mr Wong had actually said to her?---At a, at a high level, yes.

10

Doing the best you can, what was the essence of what she was saying about what Mr Wong had said to her?---That she couldn't get a handle on, that, that Ernest Wong was unclear and cagey about what had gone on with the accounts, that the accounts didn't reflect the fundraising activities that had taken place, and that, and words to that effect.

MR ROBERTSON: Just to be clear about it. I think you used the phrase "the accounts didn't reflect what had in fact taken place", is that right? ---Yes.

20

And that's specifically in relation to a question of fundraising, is that right? ---Yes. The accounts for Chinese Friends of Labor fundraising, yes.

But does that mean in substance, then, as she was explaining it to you, that the accounts of Chinese Friends of Labor, what, suggested that particular sums of money had been received when they hadn't been received? Or was she not specific as to the kind of matter, as best as you can now recall?---I, I don't recall us going into that level of detail, but the understanding that I was left with was that her distress was because she didn't really know what had probably gone on in the accounts.

30

Now you used the past tense "gone on". Did she identify what period she was particularly concerned with?---Yes. In the period prior to her becoming party secretary.

Can you recall anything else about what Ms Murnain told you during that conversation?---Yes. I recall that Ms Murnain specifically singled out Huang Xiangmo as someone she was highly concerned about.

40

You have a specific recollection of Mr Huang being referred to?---Look, after having spent the past week, you know, doing, doing my best to piece it together, I, I, yes, I believe she did raise Huang Xiangmo in the conversation with me.

Because you'll recall, or at least I think I recall from your compulsory examination on 22 August, 2019, my recollection of your evidence was that you thought that Mr Huang may have been referred to but you weren't quite sure. That's my recollection but I may be wrong.---Yes.

And is it the case that you've now thought about it further since 22 August, and you're now, you now have a specific recollection of Mr Huang being referred to?---Yes. To place it in context, on the 22nd I came from, to here with no understanding of what the questions were going to be an hour before you'd given me notice to appear.

10 So let me ask you some questions about that. The first time you became aware that you may have, that the Commission might think you had information of assistance to the Commission in its investigation, the present investigation, was Thursday, 22 August, 2019, correct?---Yes.

And on 22 August, 2019, you were given notice of a summons to attend the next day, 23 August, 2019, the Friday, correct?---Yes.

And you made contact with Commission officers and asked for the examination to take place on the 22nd instead, correct?---Yes, professional arrangements.

20 And the arrangements were changed such that you've participated in a compulsory examination on Thursday, the 22nd, is that right?---Thank you. Yes.

And the time period between you first receiving notice that the Commission was interested in your contribution and actually attending this Commission was only in the vicinity of a few hours, is that right?---Yes.

30 And before you attended here and I asked you some questions, you didn't know the subject matter of the questions that I would ask. I withdraw that. ---Of course not. Not at all.

You had a general idea of the general nature of the Commission's investigation because there was a public notice of this public inquiry, correct?---Yes, sir.

But you had no knowledge or understanding as to the specific line of questioning that I then asked you on the afternoon of 22 August, 2019, is that right?---Yes, sir.

40 THE COMMISSIONER: You may answer this, just to be clear about it. I understand that before Thursday, when you were contacted by Commission officers, you had no idea that you would be giving evidence in this investigation, is that right?---Yes.

MR ROBERTSON: And indeed before 22 August, 2019, you hadn't received a summons to appear in the public inquiry, had you?---No.

Between receiving the summons to participate in a compulsory examination on 22 August, 2019, and attending to give that evidence, did you speak to anyone about anything connected with this Commission's investigation? I withdraw that. Other than speaking to lawyers to make arrangements for representation on the afternoon of 22 August, 2019, did you have any discussions with anyone as to the substance of the Commission's investigation?---Not to the substance, no.

10 You may have had discussions with a view of making practical arrangements, such as legal representation?---Yes.

But nothing as to the substance of the matter.---Yes.

And you certainly had no discussions or any communications at all with Ms Murnain before you, in the period between obtaining the summons and attending here on 22 August?---Of course not, no. No, of course not.

And not since either, is that right?---No, no, no. Of course not.

20 Is there anything else you can recall as to what Ms Murnain said to you during the meeting of 16 September, 2016?---No.

What did you say in response to what Ms Murnain was telling you?---That Ms Murnain should go and speak, that she needed to get proper legal advice and that she should go to the lawyers with this matter.

And did you identify any particular lawyer?---It would have been to go to Holding Redlich.

30 Do I take it from that you don't have a specific recollection, but if you referred to a particular lawyer it would be Holding Redlich because they were the party's lawyers?---Yes.

And they have been the party's lawyers for a significant period of time, correct?---Including my period as secretary, yes.

40 What else, if anything, can you recall saying to Ms Murnain during that? ---Look, I, simply that, you know, she was very, very visibly and emotionally distressed and that I thought the best thing for her to do was that she needed to get proper advice, that, you know, she'd raised some serious concerns and that she should go to the lawyers.

Doing the best you can, how long did that meeting take?---Look, my recollection is that it was a reasonably lengthy meeting and I, I, again, I'm really going, trying to put a time here, but, but a, a longish meeting of, say, 30, 45 to an hour, to an hour and a half.

Do you recall where you were for the duration of the meeting? Was it always in the car or do you recall whether you might have parked and continued the discussion somewhere?---I, at no point did we leave the vehicle and I remember being in the car because Kaila didn't want to go have dinner.

10 And so where were you, where were you driving in that, say, hour-long period?---It's, again it was in and around the vicinity and area of the city. I, I, I couldn't tell you specifically exactly which streets, but it was in and around town.

But it was just in the CBD? It wasn't any further afield so far as you can recall?---So far as I can recall, yes.

Do you recall where you – I withdraw that. Do you recall whether Ms Murnain said anything in response to your suggestion to go see the lawyers?---My recollection is that she agreed.

20 And so is it the case that she left you with the impression that she was intending to promptly see lawyers after your meeting had come to an end? ---Yes.

She didn't suggest, did she, that she'd already seen lawyers in relation to the matter that you discussed?---No. No, she did not.

And was it clear that from what she said that she hadn't yet seen lawyers? ---Yes.

30 How was that made clear?---It was, it was the evidence, sorry. Sorry, can you ask the question again, sir?

I think you said in response to one of my questions that it was clear to you that, at the time of your meeting with Ms Murnain, she hadn't seen the lawyer in relation to the matter that she was concerned about. Did I get that right?---Yes. And to me it's based on the advice that I was giving. I very strongly, forcefully gave the advice that, "You need to go and see the lawyers. You need to go, you know, talk to the lawyers about this matter." And if she had have seen, it wouldn't have made sense for her to have seen the lawyers or if she had have seen the lawyers, you know, she hadn't told me because I had, my advice to her was, "Go see the lawyers."

40 And she didn't say anything like, "Well, I've already seen the lawyers and this is what they've said"?---She did not say she'd already seen the lawyers. She left me with the impression at the end of that meeting that she was going to speak to lawyers about this matter.

But she didn't say that, "I haven't spoken to the lawyers yet," I take it? It's an impression that you were left with.---It was an impression that I was left with.

In light of what you said and in light of her responses or non-responses to particular things.---Yeah. Mr Robertson, Kaila had outlined concerns regarding Chinese Friends of Labor and its finances. I advised her to go and see lawyers.

10 Before relaying the events of 16 September, 2016 to this commission on 22 August, 2019 and again today, have you relayed those events to anyone else?---Yes.

Who?---My lawyers.

Excluding lawyers, have you relayed those events to anyone else?---I'm, I'm trying to think if personally I have mentioned to my mother or others that I, when I was, they, they were asking questions about me giving evidence to this inquiry. But no one involved in the inquiry, no.

20

Back in 2016, within say a few weeks or a few months of September 2016, did you relay what Ms Murnain had said to you to anyone else?---No.

At that point in time, you were a sitting senator, correct?---Yes.

But no longer on the front bench?---Yes.

The General Secretary of the Australia Labor Party had told you about a potential issue in accounts on a, at least on a state level, correct?---Yes.

30

But notwithstanding that you didn't tell anyone else about that information?---No. No. Mr Robertson, to put you at ease, between this event on 16 September and last Thursday, me getting called in to this ICAC, I mean the private – from 16 September until last Thursday, I had no discussions with nobody about this matter in any way, shape or form.

But as a member of the Australia Labor Party, you must have been concerned about what Ms Murnain told you on 16 September, 2016?---Yes. I was.

40

Did you have any further discussions with Ms Murnain regarding that matter after the 16th of September?---I don't remember, I don't remember speaking to her again about this, no but I very forcefully told her to go to the lawyers and get legal advice.

But you didn't receive any report back from her that she'd in fact taken up your advice?---Not that I recall, no.

So at that point in time, 16 September, 2016, you're aware of a potential concerning issue and you're a sitting senator for NSW and you don't further raise that issue either with Ms Murnain or anyone else, is that your evidence?---My evidence is that I urged the party secretary to take it to the party lawyers and I certainly left with the impression that's what was happening.

10 But you didn't chase her up or anyone else up to ensure that that had happened?---I can't recall Kaila coming back to me and saying whether she did to didn't.

And you didn't raise the matter with anyone else, for example, the party president, is that right?---No.

20 Why not?---Kaila had come to me in, had come to me for advice. I believe I had given her that advice. I believed that telling the party secretary, well, came to me with an issue, I said, "You need to take this to lawyers, the best course of action is to take it to lawyers," and I was a confidant who would give frank and fearless advice to the party secretary.

That's the examination for the time being, Chief Commissioner. In my submission, you should receive any applications for leave to cross-examine Mr Dastyari now, but, with apologies to him, to stand down any cross-examination until after lunchtime.

THE COMMISSIONER: Yes, very well. Just before I do that, at this time, in September 2016, I think you yourself, you said that you were involved in your own issues at that time which had hit the media, and so on.---Yes, yes.

30 And during that period of time, had you frequent discussions with Ms Murnain about your problems?---Yeah, that, that was the -- look, the reason that this conversation sticks in my memory, Commissioner, is that over a period of time where we, from, when I was involved in a, in a, in a, in a media issue of my own, Kaila and I had many conversations over that period. The large emphasis and focus of those conversations was around my wellbeing and my welfare. The reason I recall this conversation specifically was it stood out because it wasn't just about, "How are you going, how are you doing?" It was, it was about Kaila and her issues, and also how emotional she was.

40 Yes, very well. Thank you. Now, anybody applying for a cross-examination?

MR NEIL: I make such an application.

THE COMMISSIONER: Yes, Mr Neil. Just before you proceed, is there anyone else - - -

MR LAWRENCE: Yes, I may on behalf of Mr Clements seek authority to ask a few questions. I may not need - - -

THE COMMISSIONER: What's your interest in this evidence?

MR LAWRENCE: I may not need to, Chief Commissioner, if the transcript of the compulsory examination is to be tendered.

10 THE COMMISSIONER: Well, I'd need to be satisfied that you have sufficient interest, but you can consider that over the lunch period.

MR LAWRENCE: Certainly. Thank you.

MR ROBERTSON: But can I indicate for assistance of my learned friend, although I haven't tendered the compulsory examination transcript at least yet, it's available to him if he's got access to the restricted website. If he doesn't yet, he can speak to me during the luncheon adjournment, and I can make some arrangements.

20 THE COMMISSIONER: Yes, very good, thank you for that.

MR LAWRENCE: Yes, I was more concerned as to whether the transcript will be put into evidence.

THE COMMISSIONER: Yes. Okay.

MR ROBERTSON: And I'll reflect on that over lunchtime and I'll speak to my learned friend about it.

30 THE COMMISSIONER: Yes, very well. Mr McInerney?

MR McINERNEY: Yes, Chief Commissioner. I'll - - -

THE COMMISSIONER: Yes. Do you wish to cross-examine?

MR McINERNEY: Yes.

40 THE COMMISSIONER: Yes, yes, very well. Well, then, it would seem appropriate, wouldn't it, Mr Neil, that you go first, and then Mr McInerney follow.

MR NEIL: We accept that.

THE COMMISSIONER: Yes, all right. Well, we'll deal with that after about 2 o'clock. Is that inconvenient to you, Mr Dastyari?---Yeah, of course, happy to help.

All right. We'll proceed on that basis. You may step down, thanks, and we'll see you at 2 o'clock. I'll let you – yes, Mr Moses? Sorry.

MR MOSES: No, no, I'm just getting up quickly, Chief Commissioner. Time for lunch.

THE COMMISSIONER: I'll adjourn.

10 **LUNCHEON ADJOURNMENT**

[12.43pm]