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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 29 AUGUST, 2019

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

<SAM DASTYARI, on former affirmation

[2.12pm]

MR ROBERTSON: Two housekeeping matters first, Chief Commissioner.

THE COMMISSIONER: Yes.

MR ROBERTSON: First, I'll now call Mr Ernest Wong tomorrow, because I apprehend that by the time any cross-examination of Mr Dastyari is complete and that I'm finished with Mr Cheah, we're likely to be close to 4
10 o'clock if not quite 4 o'clock. Next, I formally tender the compulsory examination transcript of Mr Dastyari from his appearance before the Commission on 22 August, 2019.

THE COMMISSIONER: Yes, well, the compulsory examination and the transcript of the compulsory examination 22 August, 2019, will become Exhibit 176.

20 **#EXH-176 – COMPULSORY EXAMINATION OF SAM DASTYARI
DATED 22 AUGUST 2019**

MR ROBERTSON: In that transcript, there's a reference to a registration number of Mr Dastyari that I think would be covered by the existing 112 direction, but in any event the Chief Commissioner might confirm that the existing 112 direction or a new 112 direction applies to that registration number.

30 THE COMMISSIONER: Yes. Yes, the registration number of the vehicle referred to in the compulsory examination transcript of 22 August, 2019, being the examination of Mr Dastyari, there is to be no publication or communication of the details of the registration number. I make that order pursuant to section 112 of the Act.

40 **SUPPRESSION ORDER: PURSUANT TO SECTION 112 OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION ACT,
THERE IS TO BE NO PUBLICATION OF THE REGISTRATION
NUMBER OF THE VEHICLE REFERRED TO IN THE
COMPULSORY EXAMINATION TRANSCRIPT OF 22 AUGUST,
2019, BEING THE EXAMINATION OF MR DASTYARI.**

MR ROBERTSON: May it please the Commission. That's all the housekeeping matters - - -

THE COMMISSIONER: Thank you.

MR ROBERTSON: - - - and if you grant any leave to cross-examine that might be conveniently done now.

THE COMMISSIONER: Yes, thank you. All right. Yes, Mr Neil.

MR NEIL: Thank you, Chief Commissioner. Mr Dastyari, 16 September, 2016 - - -

10 THE COMMISSIONER: I'm sorry, just so that, Mr Neil, if you don't already know, appears on behalf of Ms Murnain.---Yeah. Yep.

MR NEIL: Thank you, sorry, I should have told you.---Thank you. Thank you. Sorry, sir.

Let me start again.---Yep.

16 September, 2016.---Yes.

20 That fell in what was an extremely difficult time for you, do you agree?
---Yes.

A time that you described, and rightly so, in your compulsory examination as being very distressful and difficult, a very distressful and difficult time in your life, is that right?---Yes.

You were, on that day, deeply and immediately involved in the aftermath of what then appeared to be the end of your political career, do you agree?---I, yeah, so over that period, yes.

30 A time when you were dealing with what you felt to be, and experienced to be, a very heavy political and personal cost for actions that you had taken to further the interests of the ALP, is that right?---Yes.

It was a time when, and I don't mean this to be at all critical of you, it was a time when you were intensely involved in and focussed on your own affairs. Do you accept that?---Sorry, Mr Neil, can you ask me – I'm not quite sure. Can you ask the question again? I'm not - - -

40 All right. It was a time, 16 September, 2016, when you had a close focus on your own affairs. Do you agree?---At a high level, yes.

Now, since that time, much happened in your life, you've moved on, is that right?---Yes.

You've put those dark times behind you, is that correct?---That's a fair assessment, yes.

You've put the events of that time away in your mind and focused on looking forward, do you agree?---Yes.

Now, in and around September 2016 and for many years since then, until the beginning of this year, you met and spoke frequently with Kaila Murnain, is that right?---Very frequently, sir.

10 When you were asked to come and give evidence in a compulsory examination by this Commission on 22 August, 2019, the call came out of the blue, is that correct?---I thought so, yes. I mean, I knew there was an inquiry underway obviously and, you know, when I got the telephone call from an officer of ICAC saying to, you know, that they were sending an email about a compulsory interview or whatever, Commissioner, they are called, I obviously had an understanding of what the context was going to be because this inquiry was coming.

But certainly before the call came, you had not suspected that you might be giving evidence, is that right?---I had no reason to believe I would.

20 Or that you might be required to prepare for doing so. Do you accept that? ---Yes. I mean, there's always, they can call anyone, obviously there's always that possibility but yes.

But certainly as at 22 August, 2019, when you were compulsorily examined, you had not under taken any preparation for that examination. Do you accept that?---Yes.

30 And in particular, is this right, you had not looked for, found and examined the WhatsApp records that we've looked at today, is that correct?---Yeah, that's right, Mr Neil, that is correct.

You gave evidence on 22 August, 2019 free of any influence from what the WhatsApp records say and do not say, do you agree?---I agree, sir.

Now, since that time, in order to prepare yourself to give evidence in this public inquiry, you have sought out, looked at and examined those WhatsApp records, do you accept that?---That is correct, Mr Neil.

40 And you've done so with a view to ensuring, as best you can, that you give an accurate account of what you can remember of the events of 16 September, 2019. Is that right?---That, that is correct.

And the evidence that you've given today in the public inquiry on 29 August, 2019, is to a degree shaped and influenced by what you've seen in the WhatsApp records, do you accept that?---Mr Neil, I certainly have referred to my records, yes.

And in a perfectly natural way, what you see and do not see in the records, the WhatsApp records, has entered your mind and shaped and influenced what you now think you remember. Do you agree?---I, I don't agree with that, Mr Neil. I don't believe the WhatsApp record and the testimony I gave were inconsistent.

I'm not suggesting - - -?---Okay, sorry.

10 No, no. All I'm suggesting is that when you gave evidence on 22 August, 2019 you were giving the evidence - - -?---I was not aware of those messages, yes.

- - - of your, of what was then in your mind - - -?---Yes.

- - - uninfluenced by anything that you saw or did not see in these WhatsApp records. Correct?---Yes. I was not aware of those WhatsApp records, sir, on 22 August when I gave evidence to ICAC.

20 And then diligently preparing yourself to give evidence today you've looked for, found and examined these WhatsApp records. Correct?---Yes.

And what you see in the WhatsApp records and what you don't see have had an influence on what you now recall. Do you agree?---I'm not sure what you mean by that, sir.

When you give your evidence about what you remember, you've got the, today you've got the - - -?---Yes, yes.

30 - - - WhatsApp records, what they say and what they don't say in your mind. Do you accept that?

MR HODGKINSON: I apologise, and I understand I'm not entitled to be (not transcribable) but what you don't see – the rest of the question's unobjectionable at all, but what you don't see is really possibly different in the mind of the questioner than the witness.

MR NEIL: I'll withdraw the question. All I'm suggesting to you, Mr Dastyari, is this - - -?---Mr Dastyari, yeah.

40 - - - that when you give your, your evidence today, you do so knowing what these WhatsApp records says. Do you agree?---Yeah, yes, sir, I've given evidence today based on my memory and my records.

Now, of course one of the circumstances under which you labour in giving evidence both on 22 August and today, 29 August is that you're being asked to recall events that occurred now almost three years ago. Do you accept that?---Yes, sir.

Three years during which there have been many, and many significant changes in your life and circumstances.---Very many, sir.

Do you agree?---Very many, sir.

A crowded three years. Do you accept that?---Yes.

10 And you would accept, wouldn't you, that all of the circumstances that we've been discussing so far in a quite natural way have diminished the quality of your specific memory of events that occurred on 16 September, 2016. Do you accept that?---Yes, sir.

You would accept, wouldn't you, that they've - - -?---Yes, yes, yes.

- - - seriously diminished, seriously diminished - - -?---Three years is a long period of time, sir.

20 Just listen for a moment to the question. They have seriously diminished the quality of your specific memory of those events. Do you agree?---Can you ask me the question again?

Very well.---I'm not quite sure what you mean by that.

All of the circumstances that we've been talking about, the passage of time, three years.---Yeah. Yeah.

A crowded three years?---Yeah.

30 The fact that the events of September 2016 occurred at a difficult and distressing time in your life?---Yes.

The fact that you've moved on since then and put those events behind you. All of those circumstances can I suggest to you have seriously diminished the quality of your specific memory of the events of 16 September, 2016, in a quite natural way.---Yeah. So I'm not quite sure what you mean be seriously, they certainly have diminished, particularly over the passage of time.

40 Now, despite that circumstance, and putting to one side for the moment the chronology of the events of 16 September, 2016 about which you've given evidence, you have kept a strong memory of some things that you heard and saw on that day. Do you agree?---Without a doubt.

One of those is that you remember that you observed Kaila Murnain in a state of distress.---Yes.

Do you agree?---Yes.

I wonder if we could have a look at page 1949 of Exhibit 176, the transcript of the compulsory examination.---Mr Robertson, am I permitted to see that as well?

Yes, it's going to come up on the screen.

MR ROBERTSON: It will come up on the screen in front of you in a moment.

10 MR NEIL: The screen in front of you now.---Yep. It's not here now but I'm sure it will come up.

Just pause for one moment.

MR ROBERTSON: Just pause.

MR NEIL: You'll see it come up shortly.---Ah hmm.

20 1949. Now, I'm going to refer to the numbers to help you find passages I'm going to ask you about.---Yep.

I'm going to refer, from time to time, to numbers that you'll see on the left-hand side of each page.---Yes. Okay.

Do you see that?---Yep.

And the page number is on the bottom right-hand corner.---Okay.

30 And we're looking at page 1949 of the transcript of your compulsory examination on 22 August.---Yep.

And at slightly above point 20, at lines 17-19 - - -?---Yeah.

- - - this evidence appears, "Freak-out's not the word. Kaila was very, very distressed over a matter to do with Ernest Wong, yes, I mean, freak-out, probably, I don't want to diminish her emotional state."---Yeah, I felt that "freak-out" was probably a more flippant way of talking about someone's quite serious distress.

40 Yes, and what I wanted to put to you is exactly that point. What you were seeking there to say was that you, your recollection was that she was distressed, and distressed in a serious and significant way, do you agree?
---Yes, sir.

Another thing that, of which you have retained a strong memory from 16 September, 2016, is that Kaila Murnain, in conversation with you, located the immediate source of her distress in something that she had been told by

Ernest Wong, do you agree?---Yeah, yes, sir, she'd come from a meeting with Ernest Wong, and that was the cause of her distress.

That meeting, she told you, had taken place that day, correct?---That evening, sir.

10 And that it had occurred, as you told the Commission in your compulsory examination, the meeting with Ernest Wong had occurred at Parliament House, correct?---Yeah, yes, oh, I, I believed it was the Parliament House office, yes.

And when I say that, what I, oh, perhaps I should be a little clearer, what you remember, something of which you retain a specific memory is that Kaila Murnain told you that the, she had had a conversation or a meeting with Ernest Wong that evening, and that it had occurred at Parliament House, correct?---To that effect, yes, sir.

20 And you have retained a specific memory, a strong memory that she located the source of her distress in information that Ernest Wong had conveyed to her during the course of that meeting or conversation, correct?---Sir, conveyed to her or not conveyed to her, but yes.

Now, you also retain a strong and specific memory that as Kaila Murnain related it to you on 16 September, 2016, the information that Mr Wong had conveyed to her in the meeting, their meeting, concerned Chinese Friends of Labor. Is that right?---Yes.

30 Now, you also remember that she told you something about the subject matter of the information that Ernest Wong had earlier that evening conveyed to her, correct?---What, what do you mean by that, sir? I'm not quite sure what, what you're referring to, my apologies.

You retain a memory today - - -?---Yeah.

- - - and on the 22 August, you had a memory - - -?---Oh, yes, yes, sorry.

40 - - - that as Kaila Murnain related it to you on 16 September, 2016, the information that she had been given by Ernest Wong earlier that evening concerned the subject matter, matters of fundraising, donations, and disclosure. Do you agree?---At, at a high level, yes.

Today when you gave evidence in the public inquiry, you spoke about the subject matter of Kaila Murnain's account of her meeting with Mr Wong had been accounts and issues relating to transparency, do you remember saying that?---Yes. Yes, I do.

And what you mean by that is that what she told you about concerned the subject matters of one, fundraising. Do you agree?---Yes.

Two, donations?---Yes.

And three, disclosure. Do you agree?---Yes, the three related.

And another thing that you now, of which you now retain a strong and specific memory is that as Kaila Murnain related it to you on 16 September, 2019 [sic], the information that earlier that evening had been conveyed to her by Ernest Wong concerned Mr Huang Xiangmo. Is that right? I probably mispronounced it but - - -?---I'm not sure that's quite a fair – it is Huang Xiangmo, but I'm not quite sure that's quite a fair assessment of the evidence I gave earlier, sir.

You have a strong specific memory that he was mentioned by name in Kaila Murnain's account of her earlier meeting with Mr Wong. Do you agree?
---No, sir. No.

I'm sorry, would you just excuse me for a moment.---Yeah, yeah, of course.

20 Earlier today before lunch, during the passage of your examination by Counsel Assisting, you were asked in general terms whether there was – having given an account of your recollection of things that Kaila Murnain had said to you, you were then asked whether you remembered anything else about what she had said.---Yes.

And you gave evidence to this effect, I recall Kaila Murnain raised Huang being a person she was concerned about.---Yes.

30 Is that correct?---Yes, it is correct.

You were then asked whether you had a specific recollection that Mr Huang's name was mentioned, and your evidence, your response to that question was something to the effect of during the past week I do recall she raised Huang Xiangmo in the conversation, and do you remember giving that evidence?---Yes, yes, sir. Yes, I did.

And that is correct, isn't it?---Sir, sir, sir, that is correct. If you wanted to ask me that first question again, though. You asked me a different question.

40 Very well. And the evidence you gave on that topic indicates that whereas during the course of, at the time of your compulsory examination you might have been, you might not have had a strong and specific memory that Mr Huang's name was mentioned, having reflected since that time on your memory of the events of 16 September you now did have a specific recollection that she mentioned his name in connection with her account of her meeting and conversation earlier that evening with Mr Wong. Do you agree?---Not to that extent, sir, no. No, I think you're putting a few words together there.

Well, just tell me then to what extent - - -?---My, to the best of - - -

- - - and in what respects you disagree with what I've put to you.---To the best of my recollection, Huang Xiangmo's name certainly came up in the conversation that Kaila and I had regarding this. I don't have a memory of her specifically saying that Ernest Wong had raised Huang Xiangmo's name. That is just not a recollection that I have.

10 I see. Do you have any recollection as to whether it was Kaila Murnain or you who first mentioned Mr Huang's name?---I believe it was Kaila.

Now, another matter about which you now have or still have rather a strong and specific memory is that during your, that on 16 September, 2016 you gave advice to Kaila Murnain that she should take what she had related to you to the party's lawyers. Do you agree?---Yes, sir. That she should get legal advice and that she should talk to, you know - - -

20 Not just - - -?---I'm paraphrasing my words. She should go to the lawyers with this matter.

And not just legal advice and not just the lawyers and not just Holding Redlich, but specifically that she should see and take and act on the advice of Ian Robertson of Holding Redlich, do you agree?---Sir, the lawyers, Holding Redlich and Ian Robertson were one and the same. In the conversation that we were having, in the context of that conversation, the lawyers meant Ian Robertson, Ian Robertson and Holding Redlich.

30 I wonder if we could have a look next at page 1946 of the transcript of the compulsory examination, Exhibit 176. Just bear with us for a moment and it will come up on the screen. Now, I wonder if you can drop down to the last four lines that appear on that page which record your answer to this question, "Do you recall what advice or suggestion you gave to Ms Murnain regarding those concerns?" Being the concerns about which you'd earlier, she'd earlier told you. And your answer was this, "Look, my advice to her would have been, 'Cover your arse, like, protect your arse and make sure you tell everything to Ian Robertson and make sure you get the lawyers in and don't worry about the expense of the party getting really good lawyers.'" I'll stop reading there and ask you, does that evidence reflect
40 your recollection?---Yes. Perhaps not the most eloquent phrasing that I would have used, but yes.

Yes. But just for a moment the question is, does the evidence that I have just shown and read to you reflect your present recollection of the advice that you gave to Kaila Murnain on 26 September, 2016?---Yes. Noting, as I said - - -

16 September.---As best as I can now recall, yes. And just to address that, “Ian Robertson” and “lawyers” are interchangeable in these conversations.

What I want to suggest to you is that they weren’t just interchangeable, that you specifically used Mr Robertson’s name, the name of Mr Ian Robertson, and specifically advised her to see him. Do you see what I’m putting to you?---Yeah. Yeah, no, no, yes, sir. And the point I am making, and I don’t want to be splitting hairs here, the words, the party, the lawyer that dealt with the account for – the Australia Labor Party account was held with
10 Holding Redlich and the lawyer you dealt with was Ian Robertson. And so yeah, I, I, I, believe I, the point I am making is whether I said the word Ian Robertson or lawyers or Holding Redlich, all three of those things would have been interchangeable, it would have meant the same thing to Kaila in the context of that conversation. When I said, “Take this to the lawyers,” there wouldn’t have been any doubt in her mind that I meant Ian Robertson, whether or not I referred to him by name.

You held Mr Robertson, as at 16 September, 2016, in very high regard, did you not?---Yes, yes.

20

And that was in large part a consequence of your experience in dealing with him, both as a onetime general secretary of ALP NSW and otherwise, do you agree?---Mainly in my capacity as party secretary, yes.

I wonder if we could leave the page we’re looking at now and go for a moment to – sorry, just bear with me, 1949, please. And when we have that, if you just go to the very top of the page, please, drop down a few lines.---Yes, sir.

30 It records this evidence, “Just because my advice always is to talk to Ian because Ian got me through so much and Ian was normally, like, when you freaked out about something or upset or you were concerned, the best thing to talk to is talk to Ian Robertson. Just because I had been in that situation before when I have been uncomfortable or stood over or whatever with branch officials, I always, that is my recollection of what I would normally say in those circumstances, but what I specifically said three years ago, like,” and then we’ll stop there.---Yep. Yes, sir. Yes, sir. I felt it was prudent advice to someone who is distressed over an issue to do with
40 donations and whatnot that they should go and speak to the party’s lawyers and get legal advice.

And the evidence that you just read and that I’ve just seen and that I’ve just read out to you, that accurately sets or states a view that you held as at 16 September, 2019 of Mr Ian Robertson?---2016, sir.

2016, I’m sorry, of Mr Ian Robertson. Do you agree?---Yes.

And it also accurately reflects a view that you had, having spoken with Kaila Murnain on that day, that she was uncomfortable. Do you agree?
---Distressed is the word I would use, sir.

And that the very man you thought on 16 September, 2016, the very man that she should speak to in that state of mind was Mr Ian Robertson. Do you agree?---Yes, sir, seeing a senior partner in a law firm I thought was an appropriate piece of advice to give.

10 If we could go back to transcript page 1946, please. I wonder if you'd be good enough just to go up to about point 30. You gave evidence there, beginning at line 29, using as you say your own language, that what you understood on 16 September, 2016 Kaila Murnain to be worried about was that, "The LP accounts and donations were a shit show and she was whinging to me about how everyone had abandoned her and she'd been left alone in the LP party office and we all moved on to our other careers and she was there to clean up the mess." Do you see that?---Yes, sir, I do.

20 "Clear up the pieces," I'm sorry.---Yes. Sir, I haven't had an opportunity to read that entire paragraph so I'm not quite sure of the exact context that you're questioning me on, but, but, but yes, I can see that passage.

And that passage, now that you've looked at it again, had it read out to you, that accurately reflects your recollection of something that Kaila Murnain said to you in the course of speaking with her on 16 September, 2016. Is that right?---Sir, I haven't had an opportunity to review the entire paragraph and context of that, but I, I, I believe the evidence that I've tried to give in the private inquiry if you read through the entire document is that that was the general frame of which Kaila came to many situations to.

30 Over on page 1949, line 37, just up from point 40.---Yes, sir, I can read that.

And your best recollection is, you were asked, "Your best recollection is that it," that is what Kaila Murnain was talking to you about on 16 September, 2016, "That it arose from some issue concerning Mr Wong, Mr Ernest Wong and Mr Kenrick Cheah?" And you answered, "Yeah, I, it was slightly broader than that. She, Kaila, made it clear that the issue with, at the time, was that she felt she'd been left all these issues relating to funding disclosure, donations, everything, and everyone kind of walked away and left the party in her hands and she was just venting with me."---And, and, and, yes, sir, and the word venting in that context, it kind of means the emotional state she was in, she was, yeah, unloading.

40 What she was telling you on 16 September, 2016 was that she was talking about something that she had inherited.---Is that a question, sir?

Yes.---What's the question?

What Kaila Murnain was talking to you about on 16 September, 2016, was something that she had inherited. Do you agree?---Oh, yes, sir, yes.

Something that she had inherited from, that had occurred in a time before she had become general secretary.---Yes, sir.

And that of course is the very matter that you refer to in the next question and answer at the bottom of page 1949.---Yes, sir.

10 Do you accept that?---Oh, sorry, sorry, the, the 149, talking about 37 to 40?

The last question and answer.---Oh, yes, sir.

Specifically, as she related to you on 16 September, 2016, she was talking about, using her words, “the mess that’d been left to her from the Jamie Clements era”. Do you agree?---No, sorry, sir, where, which lines are you referring to?

20 Nothing on that page, but something on page 1958.---If you can turn to that page, I’d like, I’d like to see it in context.

Yes, just pause for a moment, all come up.---Ah hmm.

1958.---Ah hmm.

And I’m looking at a passage about halfway between lines 10 and 20. I’ll read the passage to you. “Kaila, I don’t think, Kaila was never forthcoming in her concerns and her view of Jamie Clements, and what she felt was, I’m using her words, the mess that had been left to her.”---So what line’s this?
30 Sorry, sir, I can’t find this.

Just a little further down, she referred to it, as you relate, to “a smoking mess”.---So, sorry, sir, which line are you referring to? I, I can’t - - -

Just look halfway between lines, points 10 and 20.---Yep. Okay, so I’m just going to - - -

Go down to - - -?---Can you give me a moment to read that paragraph?

40 Yes.---I just want to make sure I’m, I’m, I just want to read in context. Yes, sir, that she was never not forthcoming, which probably isn’t the best grammar, but she was quite clear about her concerns regarding Jamie and others (not transcribable), it didn’t make scratching that surface.

That it was very clear to you from what she was saying to you on 16 September, 2016, that the subject matter concerned a mess, a smoking mess, that had been left to her from the time when Jamie Clements was the General Secretary of ALP NSW. Do you agree?---Sir, I, I, I, I do at a high

level, I, I, I (not transcribable) I want to have a, I want to have a, a better look at the context of this, that we're not conflating just that one conversation - - -

Please take your time, please take your time.---That we're not conflating that one conversation with the general sense that Kaila had over that period of time.

10 I'm sorry, I'm attempting to use your words.---Okay. Yeah.

Have a look at the passage to which I've drawn your attention.---Yes.

Take your time to do so. Let me know when you're ready to proceed.
---Yes, sir, ready to proceed.

Very well.---I know Kate McClymont gets a mention too.

20 What I am suggesting to you is that in, that when you spoke – I'm sorry, I'll start again, I'm sorry. What I'm suggesting to you is that when speaking with you on 16 September, 2016 about information that had been conveyed to her earlier that evening by Mr Wong, Kaila Murnain made it clear to you that the subject matter concerned a mess that had been left to her from the time when Jamie Clements was the General Secretary of ALP NSW. Do you agree?---Yeah, oh, yes, yes, oh, that it was the time before she was secretary, and after I was secretary, which would necessitate it would be Jamie Clements's period.

Let me put this to you directly.---Yep.

30 What she was talking to you about, she made clear to you, and you clearly understood, was not her mess, it was Mr Clements' mess.---Well, so I'd, I'd only go so far as to say (not transcribable) it certainly referred to events during a period of time where she was not the general secretary, yes.

Now, I wonder if I could go back to the subject for a moment of Mr Ian Robertson.---Yes.

40 And the proposition that I was putting to you a little earlier, that when you spoke with Kaila Murnain on 16 September, 2016 you advised her to go not just to the lawyers, not just to Holding Redlich, but specifically to Mr Robertson, do you agree?---Um - - -

And what I could do is show you many passages - - -?---Sure, sir, sir, I'm - - -

Just for a moment, just - - -?---I'm, I'm not - - -

I'm sorry, wait, please.---Okay, yep.

THE COMMISSIONER: Mr Neil, I don't think you can put the question in those terms.

MR NEIL: Very well. I will do so directly.

THE WITNESS: I mean, and to be helpful - - -

10 THE COMMISSIONER: I thought you had put this question in any event, did you not? I thought he - - -

MR NEIL: I had put the question.

THE COMMISSIONER: I thought Mr Dastyari had answered that. Unless there's something else that needs to be cleared up.

MR NEIL: I wonder if that we then move from that topic and – let me withdraw that. Let me move from that topic to this. I want to ask about something else that I suggest you continue to have a strong specific memory
20 about concerning the events of 16 September, 2016, and that is that, in relation to your advice, that Ms Murnain take what Mr Wong had told her to the lawyers, if I can use that neutral expression. Kaila Murnain did not resist that suggestion but readily embraced it. Do you agree?---To the second part of that, sir, and not just the first, sir, can I give you an answer more fully?

Yes, of course.---My view was she should, because she was distressed and she was distressed at what she thought was a lack of transparency, that she should take she was told and what she was not told, just her concerns in
30 general, to the party lawyers and that was Ian Robertson.

And now what I want to ask you about is your memory of her response to your advice and that was that her response was to readily embrace the advice?---Yes, sir. I think, I think she was relieved to be given a path forward.

And certainly you sensed not the least resistance on her part to your advice, do you agree?---So, I can't, well, I can't remember her exact words. I distinctly remember I left with the impression that she was talking the
40 matter to the lawyers.

Now, I want to turn from the matters I have been asking you about to the different question of the chronology and sequence of events.---Yes, yes.

The events on 16 September, 2016. Very well.---Yes. And, sir, in doing so I just want to reiterate again to the Commission, the Commissioner that I am really straining to remember specifics around times from an event three years ago.

Yes. A perfectly natural difficulty you would agree, would you not?

---Yeah, yes.

A difficulty that you've experienced about events that occurred three years ago, not just this event but many others, do you accept that?---Sir, I would struggle to tell you what time I had dinner last night exactly.

10 You've given evidence today about one substantive conversation with Kaila Murnain on 16 September, 2016, correct?---Yes, sir.

Now, I want to suggest to you that you had at least two substantive conversations with Kaila Murnain on 16 September, 2016, about the subject matter of her meeting with Mr Wong earlier that evening.---Sir, I, my very strong recollection is that I had one meeting with Kaila Murnain that evening. If she was saying conversation phone to phone, you're referring to
- - -

20 First of all I'm talking about at least two substantive conversations with her about the same subject matter on that day, 16 September, 2016, that's the proposition.

THE COMMISSIONER: I think the witness is trying to clarify whether you're talking about face-to-face meetings or you're not?

30 MR NEIL: For the moment I am not talking about face-to-face meetings. I'll come to that in a minute. I am just talking about two substantive conversations.---Sir, that is not my recollection. My recollection is we have many conversations, we would have had in a normal course of events, many conversations that day and that week. I remember one substantive conversation about this topic and the reason why I remember it is because she was so distressed, it made it stand out from our other conversations.

Conversations that you had with her on other days. Correct?---Sir, as the evidence I gave earlier, Kaila and I would over that period talk many times a day. The focus of most of our conversations over that period was my welfare. The reason why this memory sticks out is that it was different. This one conversation was different.

40 I want to suggest to you, I've been asking you about two substantive conversations without relating them to physical face-to-face meetings.
---Yeah.

I now want to go a step further and suggest to you that you had two meetings with her on that day, 16 September, 2016. What do you say to that?---Sir, that is not my recollection of events. I distinctly remember one meeting where Kaila was distressed and got into my motor vehicle.

The meeting that you can recall is a meeting that occurred when you met her on the corner of Elizabeth and King Streets. Is that right?---Sir, can I clarify? I, my memory is that we had one meeting and one distinct meeting.

Yes.---My records indicate that. My understanding of that comes from my records. From my memory, as you can see on the earlier evidence I gave to the Commission last week, was that we definitely did meet on that night.

10 You've got a memory of speaking with her in your car. Is that right?---Yes, sir.

And just in your mind's eye where was that car? What do you remember? Where was it?---Sir, I remember, as I gave the Commission on the 22nd, driving around Sydney, driving around the city and I remember it – the reason I remember this was that Kaila didn't want to have dinner, that, and that we were driving around and that she was distressed. My memory is more of her distress than the physical location.

20 So in your mind's eye there's nothing that tells you about the location of the meeting in your car that you can remember. Is that right?---Sir, I remember it being around Sydney and I remember it not being at the ALP party office. And to place all this in context, the evidence I gave on the 22nd I gave three hours after I was given notice to appear, so I'm saying there was no, straight from my mind asking about topics that I had not put my mind to for many years and that evidence remains, that sustains.

30 And free, as we've already agreed, free of any influence from what you later saw in the WhatsApp records. Correct?---Sir, as I said earlier, my evidence today was based on my memory and my records.

Certainly this must be true, is it, the meeting in your car that you can now remember is a meeting that you say followed the text exchange in the WhatsApp records. Is that correct?---Sir, just to be clear. I distinctly recall having one meeting with Kaila Murnain, and in that one meeting with Kaila Murnain I strongly urged her see the lawyers. Let me finish, sir. The evidence that you're referring to which is the text message relates to is the, is the WhatsApp message is my records.

40 Yes, I understand. Now, do you have this memory? The conversation that you're now relating in which you gave the advice that you've just referred to, do you have an actual memory that that conversation took place after the text exchange that one sees reproduced here on the WhatsApp records? Do you have an actual memory of that?---No, sir.

On 22 August this year, the time of your compulsory examination, you remembered, did you not, that you had picked up Kaila Murnain, collected her in your car at Parliament House or in its vicinity. Do you agree?---Yes. Yes, I remember. Sorry, that was the evidence that I gave, yes.

And that evidence accurately reflected the memory that you had at that time. Is that right?---Yes, sir, yes. That was without the records, without having had the opportunity to refer to my records, yes.

Looking at the WhatsApp records, do you still have them with you?
---They're not in front of my screen, if that's what you mean.

10 I'll just see if - - -?---If you can pull them up, yeah.

Perhaps someone will show them to you or - - -

MR ROBERTSON: Exhibit 174.

MR NEIL: 174. I don't know if you can – the difficulty is you can't see the times of course, but - - -?---Yes, sir.

20 - - - but the text messages, but the “Yo, I'll come to you,” in the printed copy shows 7.44pm. 41pm I'm sorry, does it?

MR ROBERTSON: Yes.

THE WITNESS: I mean that is what the record says, sir.

MR NEIL: Perhaps it would be easier if you saw a hard copy.---Thank you.

MR ROBERTSON: I'll hand a hard copy to the witness.

30 THE WITNESS: Thank you, thank you. Yes, it's 7.41, sir.

MR NEIL: And you're broadly familiar with the way in which the screen of the WhatsApp application appears. Is that, is that right?---Yeah, course, yeah.

You've used WhatsApp for many years?---Yes.

40 And you know, don't you, that when one sees a missed voice call notation of the kind which we see three here in Exhibit 174, that appears when there is a, when someone tries to call your phone and for one reason or another you don't pick it up.---Yes, sir. I would read that I had three missed calls from Kaila Murnain on my WhatsApp app at 7.18 and two at 7.20.

And on this screen, nothing is shown, nothing appears if someone telephones you on WhatsApp and you answer it. Do you agree?---Yes, sir, and in reverse, if you call someone else and they answer, yes, sir.

It's clear that looking at this, do you agree, that at 7.41 you knew where to come to Kaila Murnain?---Yes, sir, yes.

You knew at 7.41pm, according to this, that if you came to the corner of Elizabeth and King Streets, there you would find Kaila Murnain. Do you agree?---Yes, sir, that's how I read those messages.

Now, let me suggest this possibility to you. That you knew that because either she had earlier told you that that's where you would find her, or you knew from your own knowledge that that's where she was.---Or, sir, there could be other possibilities.

10

What actually happened was that you had taken her to that location or somewhere near it earlier that evening.---So that is, that is not my recollection of events.

That you had taken her there from Parliament House or its vicinity where you had picked her up.---Sir, that is not my recollection of events.

20

I wonder if we could have a look at transcript of the compulsory examination, Exhibit 176 at page 1947.---Sir, is your question was there two meetings with Kaila? Is that the question or that's not your question?

I'm certainly suggesting that possibility to you.---Okay. That's not my recollection.

I'm suggesting the possibility to you that you had two meetings with her. Do you understand?---Yeah. I, I, look - - -

30

That the first such meeting occurred when you picked her up in the vicinity of Parliament House. Do you understand?---Yeah.

And that the second meeting was when you came to her on the corner of Elizabeth and King Streets. Do you understand?---I do, sir, and as per my evidence, my recollection is that we met once that evening.

40

What I want to suggest to you is that with the passage of time and all that has happened since then, you have conflated your memory of those two meetings into one. What do you say to that possibility?---Look, I don't believe so because that's not my recollection. My recollection is having one meeting with Kaila Murnain on that night.

And that you've conflated them in your memory in part because the WhatsApp records that you've looked at since 22 August, 2019 appear to reflect only one meeting on that day. What do you say to that possibility?---I, I, I say no, sir, and the reason being this. On 22 August when I met with ICAC my recollection at the time was that we'd met once that evening. That recollection has continued throughout this entire period, and I don't believe that recollection has been shaped by my records.

I wonder if we could have a look at transcript, the transcript of the compulsory examination. Can we have that now, 1947. Look at about line 30, towards the end of the line. "I picked her up from parliament and drove her back to her office." Do you see that?---Yes, sir.

Look up, line 19, just above point 20. You refer to picking her up in the vicinity of Parliament House, State Parliament House. Do you see that?
---Yes, sir.

10 And those two aspects of, or passages in your evidence where you refer to having picked her up from State Parliament House, those passages accurately reflect your recollection of what had occurred on 16 September, 2016 as at the date of your compulsory examination, 22 August, 2019.
---Yes, sir, but I distinctly remember there being one meeting.

Well, and that one meeting, can we at least agree on that, that one meeting began when you picked her up at or in the vicinity of State Parliament House on that evening. Do you agree?---Sir, with the best of my recollection I had one meeting that involved me picking her up and ended
20 with me dropping her off. That is my best recollection.

Then I wonder if we could look at transcript 1961, please. Look at the evidence that appears at line 39, just above point 40, and goes all the way to the end of the page. Read that to yourself and let me know when you've done so, please.---Yes, sir.

What you there read reflects this, doesn't it, that on 22 August, 2019, at the time of your compulsory examination, before you found and looked at the WhatsApp records, in your mind, in your memory was at least the
30 possibility that you had driven Kaila Murnain to Mr Ian Robertson?
---Yes.

And that was in your mind, not because you were making it up or imagining it or speculating about it, it was because there was something in your memory about that. Do you agree?---(not transcribable) I unexpectedly had been asked to provide questions about an event several years ago. I remember picking her up in my vehicle, I was questioned my counsel about where I dropped her off and I was racking through my brain what the different options were and that was certainly one of them because of the
40 context of the conversation. I am explicit that I know in the context of that conversation, I repeatedly said to her to go see the lawyers.

And it wasn't an imagined possibility.---Not at all.

It was something that was in your mind somewhere, do you agree?---It, it, it, yes, sir.

Reflecting back on events that had occurred three years before, do you agree?---Yes, sir.

It was a real possibility, I want to suggest to you, because you refer to it again over on transcript page 1962?---Sir, at no point is my evidence that - -

Have a look at that for a moment. Just - - ?---Yeah, what line, sir?

10 Wait, wait. 1962, do you have that?---Yep. What line, sir?

And then look at about halfway between points 10 and 20. The line begins with the word “recall” and it continues, “I believe my advice generally” - - - ?---Yeah, I may have tried to take her to see Ian - - -

- - - “was as always, ‘Go see Ian,’ and if she’s that distressed, I may have tried to take her to see Ian then and there.” Do you see that?---Yes. And that’s still my evidence.

20 And once again, that was a real, you gave that evidence because in your memory at the time of your compulsory examination was the real possibility that you had taken her to see Mr Ian Robertson?---Sir, more than the possibility. I was in a vehicle, Kaila was incredibly distressed, my strong advice for her was to go and see the lawyers, and if you’re asking me is there a possibility then I actually dropped her there myself, as per the evidence of the 22nd, yes.

Yes. And having dropped her there, I want to suggest to you, dropped her at or near Mr Ian Robertson’s offices, that’s how you knew that you could
30 come to her near the corner of Elizabeth and King Streets?---I, I, I don’t believe so, sir. And I don’t believe so because my memory of all of this up to that point is, as you put it, I just, I’m very sure of one interaction with her in a vehicle and that involved in me telling her to go see the lawyers and that was the end of the conversations. I am not, my personal memory doesn’t relate to the time. The time I am basing off my records.

Not just the time but the whole chronology of events on 16 September, 2016, you are basing them on your records, correct?---Sorry, sir. Can you put that question to me again?

40 It’s not just the time but it’s the whole chronology of the events of 16 September that you are basing on your records, your WhatsApp records? ---I, I don’t believe that that’s fair, sir. Regardless of these records, my evidence, which I think is backed up by these records obviously, remains predominantly the same, which is that I picked up Kaila in a motor vehicle, she was distressed, I told her, she said things to me, I said, “Go see lawyers.”

Would you excuse me for one moment, please?

THE WITNESS: Sir, can I possibly run to the bathroom, Commissioner.

THE COMMISSIONER: Well, yes. I'm sorry, who do you want to ask a question?---No, no. Can I go to the bathroom?

Oh, I'm sorry. Yes. We'll take a short adjournment.

10

SHORT ADJOURNMENT

[3.14pm]

MR ROBERTSON: Can I indicate that during the lunch adjournment I provided to my learned friend Mr Neil and my learned friend Mr McInerney a document which I'll now put up on the screen and which I'll formally tender in a moment and which I understand my learned friend Mr Neil is about to take the witness to. On the screen a document entitled Call Charge Records. I'll just explain briefly for the benefit of those observing what this document is and then I'll tender it in a moment. I understand my learned friend will cross-examine on this in a moment.

20

THE WITNESS: Yeah.

MR ROBERTSON: This is call charge records obtained by the Commission in relation to calls initiated from Mr Dastyari's phone or initiated from Ms Murnain's phone, so in other words communications between those two individuals. Looking at the columns, the Date obviously enough is the date on which the call was initiated, the Time is local time, Phone Service A is the initiating telephone, the full number is being redacted for obvious reasons and consistent with the section 112 direction that you've given, Chief Commissioner. The Phone Service User is self-explanatory, but as the initiating telephone, that's User A, Phone Service User B and Phone Service User Number B is the recipient, the Duration obviously enough is the duration of the call if any in seconds, Phone Service A is the cell tower location for the initiating telephone and Phone Service B is the recipient. As you'll see, Chief Commissioner, some of the cells are blank, that's because the records as produced by the telecommunications company don't necessarily include those cell tower records, but can I make clear the mere fact that for example Phone Service A location says 505 George Street, it doesn't mean that the individual was necessarily at 505 George Street as distinct from somewhere in the general vicinity and recording against that particular cell.

30

40

THE WITNESS: Yep. Understand.

MR ROBERTSON: So having given that explanation I tender the call charge records of 16 September, 2016 between Mr Dastyari and Ms Murnain.

THE COMMISSIONER: I think it's fairly obvious, the column Duration where it's got a zero, that's a call made but not answered or not connected?

10 MR ROBERTSON: It's a call that's been recorded as being initiated but of having zero duration, and so that may for example occur in the event of an engaged signal or something along those lines.

THE COMMISSIONER: Thank you. The call charge records in relation to Mr Dastyari and Ms Murnain's phone contacts will become Exhibit 177.

**#EXH-177 – CALL CHARGE RECORDS OF COMMUNICATIONS
BETWEEN SAM DASTYARI AND KAILA MURNAIN DATED 16
SEPTEMBER 2016**

20

THE COMMISSIONER: Yes. Just before you get going again, Mr Neil, can you – I'm not pressing you, but can you indicate how much long you might be? The reason being that I've got a witness, Mr Cheah, waiting and if we're not going to get to him we might as well let him go.

MR NEIL: Five to 10 minutes, no longer.

THE COMMISSIONER: All right. We'll wait and see.

30 MR ROBERTSON: Can I respectfully suggest that Mr Cheah be put over to tomorrow because my learned friend, Mr McInerney, wishes to cross-examine as well.

THE COMMISSIONER: I think that's the way to go. So if somebody could let Mr Cheah know that he may go and - - -

MR ROBERTSON: His solicitor and counsel and I can see nodding behind me.

40 THE COMMISSIONER: Yes. And return tomorrow 10 o'clock.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Yes, Mr Neil.

MR NEIL: Can you see the records in front of you now?---Yes, clearly, clearly. And just so I'm saying, yellow is me calling her, green is her calling me?

Correct.---Done.

And I think you might also have heard Counsel Assisting explain the significance of the information in the last column, the right-hand column, as being some indication of the vicinity of the phone service in column A, the fourth column from the left.---Yeah, yeah.

Do you see that?---Yeah.

10

And I say some indication, because as you heard Counsel Assisting explain, it's an imperfect indication.---Understand completely.

But if you'd be good enough to look at the entry at about the middle of the table for 15.45.48, quarter to 4.00 in the afternoon, and do you see that you are recorded by, however imperfectly by this system as being somewhere in the vicinity of Chinatown?---Yeah.

20

Does it accord with your, does that, does it accord with your recollection that you were in the CBD or its vicinity as at about a quarter to 4.00 on the afternoon of 16 September, 2016?

MR McINERNEY: I object, I object, Chief Commissioner. That's, and I might ask for clarification through Mr Robertson, Counsel Assisting.

THE COMMISSIONER: Could you just move closer to the microphone if you would, thanks, Mr McInerney?

30

MR McINERNEY: Yes, certainly, Chief Commissioner.

THE COMMISSIONER: Thank you. Yes.

MR McINERNEY: As I understood Mr Neil's question he was putting to the witness that the reference to Chinatown as Phone Service B location - - -

MR NEIL: No, A, A location.

40

MR McINERNEY: No, no. It's B location. I think Mr Neil's about to withdraw the question.

THE COMMISSIONER: Yes.

MR NEIL: I completely mucked that up and I'm going to withdraw the question. Yes, yes, yes. All right. I completely confused myself there. Please forgive me. Now, look down to the last four entries.---Yes, sir.

And they appear to record, first, a series of three unanswered phone calls, two made by you and one by Kaila Murnain.---Yep.

At around eight minutes past 7.00 in the evening.---Ah hmm, ah hmm.

And then one conversation initiated by Kaila Murnain, lasting one and a half minutes, that began at around nine minutes past 7.00 that evening.---Yep.

Because it was your practice to use both the mobile telephone network - - -?
---Ah hmm.

10 - - - and the WhatsApp application - - -?---Sir, sir, what, what - - -

- - - to communicate with Ms Murnain, is that correct?---What, what would normally happen, and by the way, the 90 seconds doesn't mean we spoke, that could have just been her leaving a message for me, which I have no recollection of. Yeah. But because Kaila and I both had the, a messenger kind of service, the reason you would interchange from the two is if someone was already on the phone, with the service that we had, if you call, and they're on the phone, it goes straight to voicemail, and if you call with
20 WhatsApp, then it kind of appears on their phone. It kind of overrode that kind of thing, so you could talk to, let people know you're trying to call them when they were already on their phone.

Yes.---But, but, but yes, I see that there is a, a 90-second connected call between Kaila and I at 7.10pm, which is to me unremarkable.

And the point I wanted to confirm with you is that on this day, 16 September, 2016, as on other days, it was your practice and that of Ms Murnain when she was talking with you, to use both the mobile telephone network and the WhatsApp application to communicate with one another.
30 ---Yes, sir.

We know at least that from the Exhibit 177, the call charge records, that there was one conversation between, or communication, I'm sorry, between you and her at about nine minutes past 7.00 on that evening.---I, I, yes, sir, as I said before, that may have been a message of some form. I can't recall whether that was a connected call or not.

I'll just suggest to you that either that or an unrecorded WhatsApp telephone communication initiated the series of events that led you to collect Ms
40 Murnain at or in the vicinity of Parliament House.---Ah hmm.

Do you agree?---Perhaps.

And that either in one of those conversations or in a meeting, a discussion that took place in your car after you collected her at the vicinity of Parliament House, or at Parliament House, you had a conversation with her about her meeting with Ernest Wong earlier that evening, and you advised her to go and see Mr Robertson, Mr Ian Robertson. Do you agree?---I, at a

high level, yes, sir. That there was, yes, I had a, Kaila Murnain at some point in that evening got into my motor vehicle. She outlined concerns regarding a meeting she had with Mr Ernest Wong, and I advised her to go see Ian Robertson as the party lawyer.

And that following that conversation - - -?---Ah hmm.

10 I withdraw that. You have a memory that following that conversation you may have tried to take her to see Mr Robertson then and there, do you agree?---As I said before, I, I may have, right? But I certainly drove around. I don't have a distinct recollection of where I left her, but the idea of leaving her at the lawyer's is not beyond my evidence or beyond my assumption of things I may have done.

And leaving her, specifically, leaving her at the lawyer's after you'd had the conversation with her that you now say you can remember.---Sorry, sir, I'm not saying now I can remember, I always said I can remember it.

20 Yes, yes, very well.---Yes.

But leaving her, you have a memory of leaving her at the lawyer's?---No. I have a memory, let's be very, very, very clear here, right? I had a conversation with Kaila Murnain, I, my strong advice at the end of that conversation and during that conversation in my evidence is that she needs to get legal advice, she has to, she should go to the lawyer, which I have said on the 22nd, I've said again today that there, she needs to go to the lawyers, she had to get legal advice and then counsel, on the 22nd, or someone, had put to me that could I perhaps have even dropped her at the lawyer's. I am saying that is a possibility, that's not my distinct
30 recollection.

It wasn't counsel who suggested that, it was you.---Oh, sure. (not transcribable) I'll be very, very clear, I, I am saying that is a very likely possibility but I do not have a distinct memory of saying, "I left her at the lawyer's," but I certainly walked away with an impression she was going to see the lawyers.

40 And more than that, an impression in your mind, in your memory, of at least the real possibility that after you gave her the advice that she should go and see the lawyers, you may have actually taken her there?---Yes. I walked away from that conversation with an impression that the outcome of this was going to be Kaila Murnain going and seeing the lawyers, and after that conversation I, at no point in the past three years, have turned my mind to this conversation beyond, it kind of ended there for me.

And taking her to see the lawyers near the corner of Elizabeth and King Streets?---Sir, I am, I am, I, I, I can't say where, you're conflating what is there about where I am picking someone up as where I may be dropping them off. I, I, let me very clear with you. I don't have the context, right, of this beyond I have my recollection in my memory which I have outlined on two occasions and this as a record.

10 THE COMMISSIONER: When you said "of this" in that last answer, are you referring to a copy of Exhibit - - -?---Yes, these are my records.

- - - 174?---Yes. And on - - -

MR NEIL: The WhatsApp records?---Yes.

One thing you do know and did know as at 16 September, 2016, is that Mr Ian Robertson's office were only one block away from the corner of Elizabeth and King Streets, correct?---Yes. That (not transcribable) yes.

20

That's the cross-examination, thank you.

THE COMMISSIONER: Yes, Mr McInerney.

MR McINERNEY: Yes, Chief Commissioner. McInerney is my name, Mr Dastyari. I appear for Mr Robertson.---Fantastic. Thank you.

Mr Dastyari, in your evidence you've indicated you had a close personal and professional relationship with Ms Kaila Murnain for a number of years before this period of September 2016?---Yes.

30

And you've given evidence that you would speak to each other regularly? ---I believe we've just seen a record of one day in which we spoke seven times.

And that was not uncommon before September 2016?---Not at all.

And as a former General Secretary of the NSW ALP, Ms Murnain was someone who you acted as a mentor, is that correct?---Yes. Yes, I think that's, but I don't want to diminish her role but yes.

40

And the nature of the relationship by about, let's take it through July of 2016, was that you would be talking daily about a whole range of ALP business?---And beyond that period as well, yes.

And she would ask, make queries of you about the function she was performing as the general secretary, is that fair?---I, I think, to paraphrase, sir, I, I'd use the word, I think I was a, as a predecessor I was a confidant.

And in terms of the State ALP at that time, you were two of the most senior people within the organisation, is that correct?---I think Kaila certainly was. I'm not sure I was, to be honest, at that point.

Now, you would discuss with her issues which would be of a concern at a federal level. Is that correct?---And of a personal nature as well.

10 And the state issues which would be concerning her office, is that the position?---From time to time she would come to me for advice.

Now, if someone had asked you, let's say, before Thursday last week, to recall a conversation you'd had with Ms Murnain three years previous on a particular day at a particular time of the day, is it fair to say you would have had difficulty recalling that conversation?---Because of the sheer volume of them, yes.

20 And is it fair to say that when you came into the Commission for the private examination last week, the nature of the questions to you were focusing your attention on very specific periods of time?---Oh, well, really, as you can see from my evidence, it was really about one incident and one car trip, one, one night in question.

And if the witness might be shown the transcript at 1945PT, if the Commission pleases.---Mmm.

30 1945. And I want to direct Mr Dastyari's attention at about line 30, down through to about line 42.---Okay, that just hasn't appeared yet, sir.

Certainly. Now if you see a little below about line 31, there's a question from Counsel Assisting. "I want to ask you now about a conversation that you may have had with Ms Murnain in September of 2016," and your response, do you see that?---Yes, sir.

And then do you see the next question directed to you by Counsel Assisting? ---Yes, sir.

40 Can I just ask you to read that to yourself? Just let me - - -?---Yes, sir.

Now, if you look at that question, the introduction is a conversation you may have had with Ms Murnain in September of 2016. The next follow-up question is more specific. It's towards September of 2016, and whether you recall that on a Friday evening, in about September, 2016, Ms Murnain giving you a call and being very distressed about something that she had just been told by Mr Wong, Mr Ernest Wong. Can you see that?---Yes, sir.

So that was, you were in effect informed that that was the substance of the conversation you were being asked about, do you see that?---He, he drew my attention to a particular conversation, yes, sir.

Now, if this date of September, 2016, hadn't been mentioned to you but you'd been asked, "Do you have a recollection about having a conversation with Ms Murnain about, involving Mr Wong?" as I understand your evidence, you have a recollection of such a conversation at some point in time, is that right?---Yes, sir.

10

But if one took away the direction of your attention to a Friday night in September, 2016, is it fair to say you wouldn't have been able to identify when that conversation had occurred?---Yes, sir. My, my recollection solely from my memory was that there was a conversation with Kaila in my motor vehicle at a point around that time, but in terms of the exact date and time, no, I have had, I've been assisted in that being brought to my attention.

20

When you say around that point in time, if you'd been asked on 22 August of this year whether that conversation had occurred sometime in 2017, or sometime in 2015, or sometime in 2016, you, your - - -?---No, sir, I would have remembered it was around that time in 2016. And the reason I remember is that it was a distinct conversation, as you've seen from the phone records, Kaila and I spoke a lot and quite frequently. This conversation stood out of the conversations of that, during that period, because it was about an issue she was distressed about.

So, your focus is on the distress, is that correct?---Yes, sir.

30

So you have a recollection that she was distressed?---Yes, sir.

And you link that with Wong, Mr Wong?---I have a recollection that she, I have a recollection of these events, as the event (not transcribable) yes.

40

And is it the position that you and Ms Murnain would meet regularly at the end of a sitting week, when you were both, when you were back from Canberra?---Either meet in person, or regular phone conversations, yeah, yes. Either physical, as you can see, because we were always in, we spent so much time in contact with one another, sometimes that was in a physical capacity, sometimes it was on the phone, sometimes we were on the phone so often it almost didn't matter if we'd see each other for three weeks or not.

So would it be fair to say that each week, or every other week, you would be catching up for coffee or dinner or the like to meet in person, having regard to the close nature of your relationship?---Sir, it would be fair to say that we would meet in person regularly.

And as part of Ms Murnain's functions, she would be dealing with state members of parliament, both Lower and Upper House regularly, would she not?---I, I, of, look, that's a matter for Ms Murnain, but that's my understanding, yes.

Well, when you were the general secretary - - -?---Yes.

- - - that's what you did. You'd be up and back from Parliament House very regularly, wouldn't you?---Frequently, sir.

10

And you'd be dealing with all the members of the ALP up there, wouldn't you?---Sir, it's part of the job, yes.

Part of the job is to know each of the members and to be on a personal relationship with each of them so that one can function as part of the general secretary, correct?---Yes, sir.

20

So it's not an uncommon occurrence for Ms Murnain, as you would understand it, to have to go to Parliament House and talk to a member of parliament?---That would be a frequent occurrence, sir.

And you wouldn't know on how many occasions Ms Murnain would go to parliament during this, let's say, three-year period and talk to someone such as Mr Wong, correct?---No, sir, I wouldn't.

Now, could I ask you, then, to be taken transcript at 1947 at about line 10. ---It hasn't appeared yet, sir.

30

Can you just read that to yourself, please, Mr Dastyari?---Yes, sir. I've read it to myself.

Now, if you see there in the question from Counsel Assisting, he is seeking to assist you with your recollection, and about the third line down, "I wonder whether you have any recollection of Ms Murnain giving you a call or otherwise making contact with you, perhaps by text message, being very concerned." Do you see that?---Yes, sir, I can see that.

40

And then a little further down, "Very stressed about something and you driving down to the - - -" and then you interrupted, "Yes, yes, yes." "- - - vicinity of Parliament House, State Parliament House I mean, and you having a discussion perhaps in your vehicle."---Yes, sir. And what you can see there is that question has obviously sparked my memory.

Yes. But it's linking to a conversation in a vehicle and Ms Murnain being very distressed.---Yes, sir.

But, again, if that hadn't been linked by the questioner to 16 September, before last week, from your, as you were sitting there, it could have been

weeks before or weeks after or months before or months after, do you agree?---I mean, sir, with all due respect, you're asking me a hypothetical. I'm not sure I can answer. You're saying without these prompts would I have remembered this, and I don't know the answer to that.

All right.---I may have and may have not. I don't, I don't know.

10 As you sit there now, you don't have a recollection, a specific recollection of the events of 16 September, 2016?---No, sir. I'm sorry, I have a recollection of a series of events and I have records that have narrowed down that date in my mind.

But the linking of the involvement of Ms Murnain being very distressed and a conversation involving Mr Wong, that's been, that was linked for you to this date of 16 September, do you agree with that?---Sir, I'm not quite sure what your question is.

20 When you were first asked to recall about these events back in 2016, these matters were linked for you. You didn't link them.---In terms of the events of the date?

Yes.---Oh, yes, sir.

And it's quite possible, isn't it, that there's no doubt you had a meeting with Ms Murnain in the evening of 16 September, 2016.---Ah hmm.

But this conversation in the car about Mr Wong happened some other time, do you agree?---No, sir. No. I don't believe so.

30 Now, that week ending 16 September, Mr Neil raised with you it's a very busy one for you personally.---A very difficult week, sir.

Now, the position was, wasn't it, that you'd resigned from the front bench in the Opposition of the Federal Parliament on about the Tuesday or Wednesday, 7 or 8 September, 2016? That's your recollection?---Yeah, yes. Yes, sir. Yeah, yeah.

40 And part of the reason for that was what some had described as a cash for payments scandal, correct?---They're, they're your words, sir, not mine. But, yes.

Well, others in the press have described it that way, haven't they?---Yes. Yes, they did, sir.

And that a \$5,000 payment had been made to cover a legal bill of yours from about late 2014 worth about \$5,000?---Yes, sir.

Mr Yuhu being, the Yuhu company being a company controlled by Mr Huang?---By Mr Huang Xiangmo, yes, sir.

And also at the same time that the Top Education Institute had paid a \$1,670 bill?---Yes, sir. If you go back it was actually the second was more significant than the first in terms of the media speculation, but yes, broadly, yes, sir.

10 And at that time, part of the media scrutiny was directed to the press conference you'd given where you were standing with Mr Huang in China about three months before?---So I think the press conference, that became much larger about a year or so later, but it was mentioned in the media coverage, yes.

But at that time, in about September 2016, there was a concern that the comments you'd made at the press conference in July 2016 were inconsistent with the government's policy - - -?---Yes, sir, yes.

20 - - - and Federal Labor's policy?---Yes, sir, yep.

And at that time, your position was that you'd misspoken or stumbled. Is that a fair summary of it?---I'm not sure that's a fair summary, sir.

All right.---I think my view at that time was that I was wrong, and I'd said the wrong thing, and I took responsibility for that.

But the distinction being drawn at the time was that it wasn't a deliberate act by yours, you'd made a mistake.---At a high level, sure.

30 Whereas about 12 months on from that when you announced you'd be resigning from the Federal Parliament, by that stage there was a transcription or a recording of the comments you'd made at that press conference in July 2016?---Yes, sir.

Now, part of what was occurring between 7 and 9 September, 2016, was that the media, it had been expressed in the media, a concern that you had acted in breach of both Federal and State ALP rules. Do you agree?
---I had not, sir.

40 No, but that was the - - -?---Oh, so that was one of the media stories at the time, yes.

There was an assertion being made to that effect. Correct?---I believe so, yes.

And that assertion having been made, it was then NSW ALP who put forward a position that there had been no breach of the rules by you. Is that correct?---So I don't remember that specifically, whether it was that or the

Federal ALP, but, but that is not something I recall, simply 'cause the nature of what was going on at the time.

But you'd know from your position as general secretary, that issue having been raised, that's an issue about which NSW ALP may seek legal advice?
---I gathered, yes.

10 And from your understanding, the person from whom such advice could be sought would be Mr Robertson.---It would be Mr Robertson, sir, especially over a party legal matter.

And at that time in about September 2016, your political career wasn't dead and buried by any means, was it?---Oh, that's, that's a point for speculation.

But certainly it had support from the federal leader during the course of that, following your stepping down from the front bench. Correct?
---Sure, sir, sure, yeah.

20 Mr Shorten at that time, you recall that?---Yeah.

Do you agree with me?---Well, I mean I stepped down and I'm not sure how much support that was there, sir, but that's for others.

Whereas the position changed by about November of 2017, when the transcript and the transcription - - -?---Yes, yeah, yeah, yes, yes, yes.

- - - became available, that made your position - - -?---I think a lot of things, including my own behaviour, made my position untenable, sir.

30 Now, do you recall as well that in that leading up to 16 September, 2016, that there was a live issue at a state level for the NSW ALP concerning state member Mr Lalich?---Sir, there's been many live issues regarding state member Mr Lalich, which one in particular?

An allegation that he'd accepted a gift back in 2014 from the Managing Director of ABC Tissues.---I remember this, yes.

40 Mr Henry Ngai.---I remember this, yes. There was a media story that was running around at the time, yes.

And could I suggest to you that the media story running around at the time, there was certainly an article which came out at about, shortly after 1.00pm on 16 September, 2016 concerning that very issue?---In fairness, Counsel, at that point I was so busy dealing with my own, kind of, issues that I didn't pay the kind of attention I usually would to state politics as a federal member but, but, but that doesn't discord with my memory of events of a thing that was happening a couple of years ago.

But in terms of – so you have a recollection of that being an issue for the state member, Mr Lalich, at that time?---Yes, sir, I do.

And that's an issue which, as you understood it, the Premier's office had become involved in, do you recall?---You mean the Opposition Leader's office, sir?

Sorry, yes.---Yes. They're the kinds of things that the Opposition Leaders and lawyers would be involved in, yes, sir.

10

And once it gets escalated to the Opposition Leader's office, that's a serious matter for the general secretary, do you agree?---Without a doubt, sir.

And that sort of matter, when it's escalated to that sort of level, can cause a good degree of stress and anxiety for the general secretary?---Sir, that's a fairly, at a high level, yes, but that's a fairly common occurrence and common matter. Like, that's not of the extraordinary if you know what I mean. Like, an event like that of an MP being caught or some issue around a donation which subsequently has obviously gone away, is not an outside
20 the parameters of the normal operation of business as general secretary. You have things like that all the time.

Is it fair to say that as at Friday, 16 September, 2016, you were concerned to know what advice the general secretary had received with respect to your position under the both federal and state rules?---No, sir.

You don't have any recollection about that, is that - - -?---No, sir. Just, at no point was I concerned about that. I have a deep understanding of the ALP Rules myself. I in no way, shape or form had breached them.

30

No, if I can just take you back to the trip in the car.---Yep, yes, sir.

From about 7.47pm.---Yes, sir.

I think, and I don't want to misstate your evidence, but I think you said you were in the car for an hour or more.---I, my recollection is that it was a longer period of time, a, a, a decently length period of time and, and that it was up to an hour/hour and a half. I, I have no recollection that it went for a long period of time and that would accord with her level of distress.

40

And that length of time, there would have been a number of other issues which you discussed in the car trip, do you agree?---Yes, sir. Yes.

And as you sit there now, you're not, you can't recall what they were?---No, oh, I, I believe it was broadly around personal issues to do with, you know, my state and my welfare which was the general conversation we were having over that period.

And in regard to the position you had found yourself by the end of that week?---Oh, I think it was a welfare, “Are you okay, is everything okay?” that kind of conversation that we’d been having for that week and the week after and subsequent.

And look, following the car trip, did you drop Ms Murnain back to the Sussex Street office?---Sir, this is the (not transcribable) gone through with Mr Neil and others. I can’t recall where I dropped Ms Murnain but I recall dropping Ms Murnain.

10

But on your evidence, it’s an hour or more later after you, after you had picked her up?---It, it, it, it, sir, yes, In my evidence, I, it was a long conversation, a decent length of time conversation, that is my memory and my records are my records and they speak for themselves.

No further questions, Chief Commissioner.

THE COMMISSIONER: Thank you Mr McInerney. Yes.

20 MR LAWRENCE: There is a few questions that I would seek leave to ask, Commissioner. I did explain them - - -

THE COMMISSIONER: Sorry, please speak – yes.

MR LAWRENCE: I did explain the substance of them to Counsel Assisting just before lunch. I am happy to do so again, of course.

MR ROBERTSON: I think my learned friend should articulate it in the open session before deciding whether leave should be granted.

30

THE COMMISSIONER: Yes.

MR ROBERTSON: Just in brief terms.

THE COMMISSIONER: Yes. Well, in terms which you know you are required to address without going through the detail of it. Can you just give me a general idea of what’s the purpose of the cross-examination and the ambit of the issues it goes to, how it affects your interest.

40 MR LAWRENCE: Yes, indeed. Mr Neil has cross-examined to suggest that the conversation between Mr Dastyari and Ms Murnain pertained to things relating to what was described as the Jamie Clements era. There’s an implication there that it pertained to matters that may well have been the responsibility of Mr Clements.

THE COMMISSIONER: Ah hmm.

MR LAWRENCE: And if I could take you, Commissioner, to page 1948 of the transcript of Mr Dastyari's compulsory examination. And if I could take you, Chief Commissioner, to - - -

THE COMMISSIONER: Just while that's coming, what's the point on that page?

10 MR LAWRENCE: There is evidence from Mr Dastyari that in fact what Ms Murnain told him was that Ernest Wong had made accusations against her, had made accusations of wrongdoing against Ms Murnain, and that in my submission puts a very different context on the conversation in terms of any question of wrongdoing or allocation or liability - - -

THE COMMISSIONER: Wrongdoing by whom?

MR LAWRENCE: - - - in respect of wrongdoing by certainly Ms Murnain and, by inference, perhaps Mr Clements.

20 THE COMMISSIONER: Look, Mr Lawrence, the evidence of this witness here goes to a single issue, essentially, or perhaps two related issues. Whether or not, for example, what Ms Murnain may have said to the witness about your client is not evidence of the proof of the fact at all. Whether it was her opinion was well-based or not, or whether it was a jaundiced view born out of their very difficult relationship, I'm not here to deal with those hearsay-type allegations and whether or not they are well-based or the context in which they were made. It's got nothing to do with the observations, the physical observations of this witness, in terms of what he saw and what he did and what he heard. That's the issue here, not any indirect fallout there may be to somebody's reputation, because it's all
30 hearsay and it's not relevant to the issue this witness is here for.

MR LAWRENCE: Yes, look, the only thing, Chief Commissioner, that I would say is that evidence from a witness that another person has admitted to them that serious accusations were made against them by another person at a date well into the past may be relevant to determining the question of whether there in fact was any such involvement.

40 THE COMMISSIONER: Then we'd have to investigate the ins and outs of that prior allegation, wouldn't we? Well, why would I do that?

MR LAWRENCE: Yes. Look, I can't put it any higher, Chief Commissioner, than that.

THE COMMISSIONER: Mr Lawrence, on the basis of what you've said, well, perhaps Counsel Assisting might have something to say. Do you have anything?

MR ROBERTSON: I don't. It's not precisely clear to me whether there's a sufficient interest. And there's, in my submission, two available courses. One is to simply refuse leave. One is, if leave is to be granted, it should be very confined because it's not presently clear to me that there is a sufficient interest to permit cross-examination, and there's a risk that it then directs attention to a matter that is unlikely to assist the investigation that the Commission has undertaken. So I'm not submitting that there's no possible conceivable relevance of questioning. I am submitting that it's hard to see how there's any interest in going down that particular path, at least based on what my learned friend's just summarised.

THE COMMISSIONER: Mr Lawrence, I'm going to take this course. I won't let you cross-examine this witness today on the basis of what you've said so far. I will, however, give you leave to put in a written document – I don't mean a lengthy submission – as to how and why you say it could be relevant. We'll assess it as we go. If it becomes apparent in my view that you should have Mr Dastyari recalled for the purpose of putting it, then we'll deal with it on that basis, and I'll have Mr Dastyari brought back. Given the time of day that it is now, just a couple of minutes before 4 o'clock, I think it's better dealt with that way, although I would regret any inconvenience to Mr Dastyari coming back once more. If he has to, then that will happen.

MR LAWRENCE: Certainly. Thank you, Chief Commissioner.

MR ROBERTSON: There's a couple of questions I just wanted to ask just very briefly.

THE COMMISSIONER: Yes, certainly.

MR ROBERTSON: Mr Dastyari, you've been asked a number of questions about Exhibit 174, which is the WhatsApp print.---Yes, sir.

Can I just understand how you came to produce that document. I take it that after the compulsory examination you then reviewed your telephone to see whether there was anything on it that might be relevant to anything that occurred on 16 September, 2016. Is that right?---Yes, sir. Yes, sir. I checked my records following our conversation.

And in relation to that, you checked messaging apps such as WhatsApp, is that right?---Yes, sir.

Now, what sort of telephone do you presently have?---A, a iPhone 8 or 9.

Is that the same physical hardware that you had in 2016?---No, sir.

What provider do you use for your telephone?---Telstra, sir.

And was it Telstra from 2016 as well?---Yes, sir.

In the period between the compulsory examination and today, have you sought to delete or modify any records of any communications with Ms Murnain?---No, sir. Of course not.

10

Is your iPhone secured with a password?---Yes, sir.

And do you know whether it has an iPhone, I'm sorry, an iTunes backup password?---I have an iTunes account, sir. I'm not sure if I want to say it out loud.

No, no, no, don't, I don't want you to say the password out loud. I'm just wondering whether it does have a password, to your knowledge.---I, I, I believe it would, sir.

20

And do you know what – don't tell me what it is out loud, but do you know what that password is?---Of, of course, sir, yes.

Chief Commissioner, I ask you to make a requirement under section 35(2) of the Independent Commission Against Corruption Act requiring Mr Dastyari to produce his telephone for inspection by the Commission. Plainly enough from the cross-examination, there are issues in terms of timing, and plainly enough there may well be material on Mr Dastyari's phone that technical people can acquire, that Mr Dastyari hasn't necessarily been able to do so in that period of time. So I seek that direction.

30

THE COMMISSIONER: Now, Mr Robertson, if I were to make that direction, how long would Mr Dastyari be without his phone?

MR ROBERTSON: I'm told it would need to be downloaded in effect overnight. So I would say, it wouldn't be a couple of hour exercise, unfortunately.

40

THE COMMISSIONER: Sorry, are you saying it could be two hours to download it?

MR ROBERTSON: No, no, so, I'm sorry, it won't be two hours. It would be an overnight exercise, unfortunately. I'm instructed, it simply takes some time to download.

THE COMMISSIONER: If the phone was to be returned to you tomorrow morning, Mr Dastyari, can you manage without it for that period?---Look, I mean, it's - - -

MR HODGKINSON: Commissioner, might I just address - - -

THE COMMISSIONER: Mmm.

MR HODGKINSON: The, there is a – Mr Dastyari’s phone has a wide variety of material. There is some legitimate interest, we understand, in communications in or around this time – and I’m not limiting it to the 16th –
10 in or around this time, between him and other witnesses that you’ve heard from, and possibly even a bit wider. But there’s also a range of other information, including very personal information that is contained on the phone.

THE COMMISSIONER: Yes, certainly.

MR HODGKINSON: And having a complete download dump in an unsupervised fashion and an overnight, becomes a very problematic and potentially difficult issue.

20 THE COMMISSIONER: Well, that would not happen in an uncontrolled fashion. There are protocols that must be followed to ensure that material that might be protected by the legal professional privilege for example is not examined. Similarly, if it’s obvious that the relevant dates narrow the range, and there is virtual information within that, then that material is not the subject of examination. There are protocols, and we’re happy to have the officers of the Commission explain them to you and to Mr Dastyari to give him a level of assurance about those matters. But Mr Hodgkinson, do you have any other proposal as to how this could be handled?

30 MR HODGKINSON: I’m afraid I don’t, Your Honour. I’m happy to deal with that with Counsel Assisting, but one of the issues that Your Honour just raised is this, and that is it would at least be in part dealt with if we narrowed the range. At the moment, as I understand the order that’s sought, it would be a complete download of the phone’s contents, and there are two things that are important about that, given the evidence that you’ve received. Firstly, this is not the phone, the physical device that he had in 2016.

THE COMMISSIONER: No, I know.

40 MR HODGKINSON: And as a consequence, in the natural course of the way these things operate, some information that was on that phone is now not on this phone. On the other hand, as we’ve seen, the way in which some apps backup, the WhatsApp in this case, backup, it does keep with it material. So if there was at least a narrowing of the scope of the order, that would go to addressing some aspects of the issue that I’ve raised, Commissioner, and we understand, understand that there is a legitimacy in some areas of that.

THE COMMISSIONER: Yes. All right.

MR HODGKINSON: And we don't seek to in any way interfere with that legitimate area of inquiry.

10 THE COMMISSIONER: Well, Mr Hodgkinson, I'll see what we can do in a moment. I'll just call on Counsel Assisting. Mr Robertson, is there any way in which we can define and limit the period which means that perhaps not all of the material outside the realm and scope is downloaded to expedite the process or alternatively is there another way of approaching this?

20 MR ROBERTSON: The required scope can certainly be limited and the kind of concerns that my learned friend has just identified are concerns that ought to be dealt with. Can I respectfully suggest this course. I'll have a discussion with my learned friend once we rise. I have a technical assistant presently here and we'll endeavour to find an agreed way forward that minimises the imposition on Mr Dastyari and which deals with the kinds of matters that have been discussed, and it may be that I'll need to ask you to make a direction in chambers once we attempt to deal with it practically.

THE COMMISSIONER: Yes. Very well. I think we'll deal with it on that basis. There have been arrangements in the past where the use of our technical officers whereby some safe arrangement can be made which causes minimum inconvenience and invasion of privacy and such like issues. So what I'll do, now, Mr Dastyari, I'm going to let you get away today, subject to, however, waiting with your legal representatives for a discussion about the matter we've just dealt with - - -?---Yeah, of course.

30 - - - to see if we can work out a satisfactory approach, and subject to that - - -?---And, sir, can we just have it also noted that the WhatsApp records that have become aware to the Commissioner because we voluntarily brought them forward ourselves at our, without being requested to do so. I just wanted to let that, yeah, didn't want to leave that - - -

Well, I suggest you participate in these discussions so that we can come up with a solution. You otherwise, is there any reason not to let Mr Dastyari go otherwise, he's not required tomorrow?

40 MR ROBERTSON: He's not required tomorrow.

THE COMMISSIONER: All right. Mr Dastyari - - -?---You don't want me back, sir?

I don't think it's likely that we will, but it's possible.---Okay, thank you, sir, thank you, sir.

So I'll leave the summons alive, as it were, operating.---Yeah.

But if a decision is made that there's no reason to keep the summons open then you'll be notified and discharged from the summons.---Thank you, sir, thank you for, thank you.

Thank you.---I'm the only person who's enjoyed themselves here today.

I'll adjourn. Thank you. I'll adjourn.

10 **THE WITNESS WITHDREW** **[4.07pm]**

AT 4.07PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.07pm]