

AEROPVT01817
20/08/2019

AERO
pp 01817-01853

COMPULSORY
EXAMINATION

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 20 AUGUST, 2019

AT 10.30AM

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.

THE COMMISSIONER: Yes.

MR ROBERTSON: Chief Commissioner, Ms Murnain appears in response to a compulsory examination summons issued to her.

THE COMMISSIONER: Yes, thank you. Yes. So Mr Neil, do you appear, or seek leave to appear?

10 MR NEIL: Yes, with my learned friend Mr Rayment, and Ms Murnain seeks authorisation to be represented by me and Mr Rayment in this compulsory examination if the Commission pleases.

THE COMMISSIONER: Yes. I grant that leave. Thank you.

MR NEIL: Thank you.

THE COMMISSIONER: Yes, thank you, Ms Murnain. Yes, now, Ms Murnain, you take an oath or an affirmation?

20 MS MURNAIN: Affirmation.

THE COMMISSIONER: It's a matter for you.

MS MURNAIN: Mmm.

THE COMMISSIONER: Thank you.

<KAILA LEAH MURNAIN, affirmed

[10.30am]

THE COMMISSIONER: Yes, just take a seat there, thank you. Just state for the record your name, occupation?---Kaila Leah Murnain, General Secretary of the Australian Labor Party, NSW branch.

Thank you. Ms Murnain, you attend here today in answer to a summons that has been served on you.---Yes.

10

Just before we commence with the examination, I'll deal with some directions. Firstly, that I direct the following persons may be present at this compulsory examination – Commission officers including, transcription staff; the witness; and her legal representatives, Mr Neil of Senior Counsel, Mr Chin of counsel, and their instructing solicitor, Mr David Rayment.

MR ROBERTSON: Sorry, Mr Rayment's counsel and Ms Williams is their instructing solicitor.

20

THE COMMISSIONER: I'm sorry, Mr Rayment. I correct that. Appearing with Mr Neil is Mr Rayment, and, instructed by Jennifer Williams, all entitled to be present. The compulsory examination is to be made subject to a direction I'll shortly give under section 112 of the Independent Commission Against Corruption Act of 1988. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes, or pursuant to any further order of the Commission. The direction may be varied or it may be lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest. I note that it is a criminal offence for any person to contravene a section 112 direction.

30

40

I make such a direction in the following terms. Being satisfied that it is necessary and desirable in the public to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to her, any information that might enable her to be identified, and the fact that she has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to a further order of the Commission.

BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THIS WITNESS, THE

CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO HER, ANY INFORMATION THAT MIGHT ENABLE HER TO BE IDENTIFIED, AND THE FACT THAT SHE HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO A FURTHER ORDER OF THE COMMISSION.

10

THE COMMISSIONER: Now, Ms Murnain, I understand that you wish to give evidence subject to a declaration made under section 38 of the Act. Is that so?---Yes.

And provisions of that section have been explained to you?---Yes.

As a witness you understand that notwithstanding a declaration being made under that section, firstly, you are required to answer all questions truthfully. Do you understand that?---Yes.

20

And you are required to produce any document as may be required.---Yes.

Do you understand that the evidence given under a section 38 declaration nonetheless can be used in proceedings against you for an offence under the provisions of the Independent Commission Against Corruption Act, such as an offence of giving false evidence, you understand that?---Yes.

But subject to that, you have the protection of the provisions of section 38. ---Yes.

30

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Ms Murnain as a witness in this compulsory examination and all documents and things produced by her during the course of her evidence, if any are produced, are to be regarded as having been given or produced on objection. That being the case, there is no need for her to make objection in respect of any particular answer given or document or thing produced.

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MS MURNAIN AS A WITNESS IN THIS COMPULSORY EXAMINATION AND ALL DOCUMENTS AND THINGS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE, IF ANY ARE PRODUCED, ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR HER TO

MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Yes, now, Mr Robertson.

MR ROBERTSON: Ms Murnain, you participated – just pardon me for a moment, Chief Commissioner.

10 MR NEIL: I wonder if I could get, just before my learned friend begins, deal with two things. Might I with respect ask you, Commissioner, to revisit the section 112 declaration to vary it to add the names of two people, both of whom are also Ms Murnain’s legal representatives. They are - - -

THE COMMISSIONER: Are they present?

MR NEIL: No.

20 THE COMMISSIONER: Well, is there a need for me to make such a direction? You want to be entitled to convey that information to legal practitioners employed in Ms Williams’ firm. Is that the position?

MR NEIL: As to one, and also to Mr Chin, who is also my junior in the matter.

THE COMMISSIONER: Who was junior counsel on the last occasion.

MR NEIL: Yes, yes. So I wish to be able to discuss what happens today with each of them, as well as with Ms Williams.

30 THE COMMISSIONER: And what’s the solicitor’s name?

MR NEIL: Roland Hassall, H-a-s-s-a-l-l, of Sparke Helmore.

THE COMMISSIONER: Roland Hassall.

MR NEIL: And David Chin of counsel.

40 THE COMMISSIONER: Yes, very well. I vary the section 112 order which I made a few minutes ago to permit Mr Neil, Mr Rayment and Ms Williams to communicate with Mr Roland Hassall, solicitor, who is a lawyer in Ms Williams’ firm, and to David Chin of counsel who appeared on the last occasion as counsel for Ms Murnain.

VARIATION OF SECTION 112 ORDER: CHIEF COMMISSIONER VARIES THE SECTION 112 ORDER TO PERMIT MR NEIL, MR RAYMENT AND MS WILLIAMS TO COMMUNICATE WITH MR

ROLAND HASSALL, SOLICITOR, WHO IS A LAWYER IN MS WILLIAMS' FIRM, AND TO DAVID CHIN OF COUNSEL, WHO APPEARED ON THE LAST OCCASION AS COUNSEL FOR MS MURNAIN.

THE COMMISSIONER: Does that cover it?

10 MR NEIL: Yes, it does, if it please Your Honour, Commissioner.

THE COMMISSIONER: All right.

MR NEIL: In due course, perhaps while I'm here, I will also ask that the section 112 direction made in relation to the earlier compulsory examination, the first compulsory examination, be further varied to allow disclosure of what occurred during that compulsory examination to my junior today, Mr Rayment.

20 THE COMMISSIONER: Yes. All right. Well, perhaps just - - -

MR NEIL: That can be dealt with in due course.

THE COMMISSIONER: - - - draft up the variation you want and we'll deal with that at the end of proceedings today.

MR ROBERTSON: There was discussion with my learned friend - - -

THE COMMISSIONER: Mr Neil - - -

30 MR ROBERTSON: I'm sorry, Your Honour. I'm sorry.

THE COMMISSIONER: Sorry?

MR ROBERTSON: I've had a discussion with my learned friend about that and we should be able to deal with that administratively one would hope.

40 THE COMMISSIONER: Yes, yes, thank you, Mr Robertson. Mr Neil, it's necessary to ensure that the direction under section 112 is binding upon Roland Hassall and David Chin in the same way as it binds those present here today, and accordingly I vary the order to so provide. You understand what I'm saying?

MR NEIL: I do entirely, Your Honour, Commissioner, yes.

THE COMMISSIONER: All right. Thank you.

MR NEIL: Yes. And I - - -

THE COMMISSIONER: Yes, Mr Robertson.

MR NEIL: I wonder if, Commissioner, you'd just bear with me for one moment so that I can say to formally record, notwithstanding the declaration that's been made under section 38, so that Ms Murnain can hear me record that she does object to answering any questions asked of her in this compulsory examination on the ground that it may incriminate her or tend to do so, or on any other grounds that may be available of the kind referred to in section 37(2).

10

THE COMMISSIONER: Yes, I understand that's the basis on which she has sought the section 38 declaration.

MR NEIL: Correct.

THE COMMISSIONER: Yes.

MR NEIL: So that's now formally recorded. Thank you.

20

THE COMMISSIONER: Thank you. Yes, Mr Robertson.

MR ROBERTSON: Ms Murnain, you participated in a compulsory examination before the Commission on 29 July, 2019. Correct?---Yes.

And you'll recall that I asked you a number of questions regarding the Chinese Friends of Labor dinner on 12 March, 2015?---Yes.

And in particular about donations that may have been made in connection with that event?---Yes.

30

So other than what you told us on 29 July, 2019, has any other information come to your knowledge as to the circumstances in which donations were made in connection with that event on 12 March, 2015?---Yes.

And what's that information?---Thank you. So in 2016, I was the General Secretary of the Labor Party. I recall receiving a phone call from Ernest Wong, the member of the Legislative Council. Ernest asked me to come and see him. He didn't want to speak over the phone. And I said to him I would come and see him at parliament. I drove to parliament. I parked on Hospital Road, to meet Mr Wong, Ernest Wong, and we, I thought we would walk to get a coffee over at the art gallery or somewhere around there, as it was Friday afternoon. Mr Wong – this is at approximately 6.00pm at night, or just after 6.00pm at night. Mr Wong texted me to say that he – I texted him asking him where he was. There are text messages that I've found to this effect, which I've provided to my lawyers in relation to this, and that's helped refresh my memory. He met me out the back of the Parliament House. I recall that Ernest was agitated. He was sweating, and he was very nervous. He proceeded to tell me that a donor to the Labor

40

Party in 2015, from the state election from 2015, had not given the funds that he had said or she had said – he didn't use a name – had given, and so, effectively telling me that this person hadn't given funds to the Labor Party despite saying they had. I - - -

10 So when you say this person, do you mean, is he referring to one person or more than one person?---At this stage it was one person. He, he didn't give me a name. He, he, he was incredibly agitated, I remember that. He said to me that – and I, I reacted, and asked him, I was pretty shocked, I don't remember the exact words at this point, but it was something along the lines of, “What the shit?” I asked him whether he could get them to come forward, encouraged him to get them to come forward, whoever this person was. Again, he wouldn't give me the name, or didn't give me the name, as best as I can recall. I then, we then continued to speak. I kept saying to him, “You should get them to come forward, whoever they are.” And then I proceeded to ask him who actually gave the money. I asked him specifically, “Well, who donated the money?”, or who gave it. He then said, Mr Huang, Huang, Xiao, Mr Huang, Huang - - -

20 Mr Huang Xiangmo?---That one. Yes.

30 H-u-a-n-g, Xiangmo, X-i-a-n-g-m-o?---That, that's the one. And I responded to him saying, “The, the Chinese property developer?” realising the significance of this. What I can't recall is whether I asked him how much was donated. That shocked me. I was, I took a step back. I remember feeling just in shock, and obviously Ernest was pretty shaken up. He, I kept saying I wanted that person to come forward, they just needed to talk to us. He told me, I believe because I was general secretary and he, he sought help for this issue. He, I proceeded to say that I would speak to either the governance director or the lawyers and I then encouraged him again to get those, or get the, the person who had said they'd donated the money to come forward to us. Then I don't remember how the conversation finished, but we were walking towards the, the Art Gallery at the back of parliament, so I'd parked my car on Parliament Road, Parliament, on that - - -

On Hospital Road?---Hospital Road.

40 Behind Parliament House?---Behind parliament, yeah. We had started walking but he sort of blurted this information out as we started walking, and we stopped walking at that point, somewhere in the vicinity of The Domain area behind parliament. He, I don't recall how we left, the specifics of how we left the conversation, but I just remember saying to him, “You need to get this person to come forward.” I, needless to say I panicked a bit. I, within minutes, so this is about 6.45pm, within minutes of heading back to the car, called the former general secretary, Sam Dastyari. Sam knew both Ernest Wong and Huang, the Xiangmo, Huang, Huang.

Huang Xiangmo.---Yep. He knew both of them. I was not, I was not on speaking terms with the former general secretary immediately prior to me, and so Sam was the next closest who had done my job before.

When you mean the preceding secretary, you mean Mr Clements, correct?
---Yeah. Mr Clements and I have not been on speaking terms for a very long time. He - - -

10 THE COMMISSIONER: When did the relationship with him and you break down?---Um, ah - - -

Did it break down over a particular matter?---He, our relationship was very difficult towards the end of his tenure. I was pretty intimidated by him. I, he, he was a pretty intimidating character.

Sorry, a pretty what?---Intimidating character. A little scary at times. But I continued to try and serve in my job despite that. The, our relationship completely stopped when he was accused of sexual harassment by a staff member's partner [REDACTED]
20 [REDACTED].

MR ROBERTSON: And that was part of the context in which Mr Clements resigned. Is that right?---Yeah.

And when you refer to towards the end of Mr Clements' tenure, I assume we're referring to towards the end of 2015. Is that right?---Yeah. The relationship was already, I already felt like the relationship wasn't very strong. He, he was, as I said, an intimidating character who, it wasn't a pleasant place to work and I, in 2015 I was looking at – sorry, sorry. Can I
30 just have a moment?

Of course.

THE COMMISSIONER: That's all right, Ms Murnain.

THE WITNESS: It was a horrible place to work and I was looking at leaving in 2015 (not transcribable) he asked us to do things. But when he left there was a lot of relief. I, I don't, I don't want to go into, I'll do whatever you need me to do, but it fell apart then, and it was incredibly
40 difficult. He, he left the office, there was, and he's continued to sort of say things about me and tweet and text message and, like, just, oh, you know. It, the relationship has been terrible for a long time. It was difficult working for him, but I did the best I could. But I haven't had much, I haven't had anything to do with him since 2016, other than where he's texted me to abuse me about things or tweet about me some terrible stuff.

MR ROBERTSON: So is it fair to say that that relationship broke down over time, but it broke down completely during the course of 2015?---In, at the end, yeah.

And that's why - - -

THE COMMISSIONER: At what - - -

MR ROBERTSON: I'm sorry.

10

THE COMMISSIONER: Sorry, at what point in time in 2015 was the accusation of sexual harassment made?---So, it was first made to me at the national conference in 2015, the - - -

So what month are we talking about?---Oh, gosh. It was late. It would have been, I think, I, I think August.

The second half of 2015?---Yeah. Yep. [REDACTED]

[REDACTED]

30

[REDACTED]

[REDACTED]

40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms Murnain, let me come straight to the point.---Yeah.

Are you aware of Mr Clements's activities in relation to the, what I'll call the fundraising event of March 2015 which was under investigation by the Electoral Commission?---I, I'm now aware that he received the funds.

20 Right. And how did you become aware of that?---Someone in the office told me.

Who was that person?---I actually don't remember which person told me.

What were you told?---That he had received the money and that he had passed it to Kenrick Cheah.

When did you come to hear about this?---I just don't remember.

30 Well, I think you're going to have to do better than that.---Yeah.

The fundraising dinner was in March of 2015.---Yeah.

The Electoral Commission were investigating it - - -?---Ah hmm.

- - - as you know, throughout 2016.---Yeah.

40 Doing the best you can, when did you become aware of the information you've just referred to? Bearing in mind, I should add, that on 19 December, 2016 you wrote as general secretary to Mr Smithers at the Electoral Commission about this very matter.---Yes. I, I think sometime in 2015 or '16. I can't, I really can't remember.

So in either 2015 or 2016. Is that right?---Yep.

MR ROBERTSON: And just to be clear about that - - -

THE COMMISSIONER: Well, as I've said - - -

MR ROBERTSON: I'm sorry, Chief Commissioner.

THE COMMISSIONER: Sorry, just finish it.

MR ROBERTSON: Just to be clear about that, this was information that you knew at the time that you signed the 19 December 2016 response to the Electoral Commission. Is that right?---I believe so.

I'm sorry, Chief Commissioner.

10

THE WITNESS: Did you want me to finish - - -

THE COMMISSIONER: No, just pause there. That account that you received, that in fact Mr Clements had received cash donations which he then passed on to Mr Cheah, was no doubt an alarming piece of information, was it not?---Yes.

And why was it alarming to you as assistant general secretary at that time, to hear that?---I - - -

20

I'm sorry?---(No Audible Reply)

Why were you alarmed?---I suppose because of the amount of money.

And the amount of money was, as told to you, was how much?---Was a large amount.

How much?---At the time I wasn't told, until later, that it was 100,000.

30 And when you say later, how much later are we talking about?---I don't know, in the vicinity of, be 2015.

By the end of the 2015, somebody had told you the amount of the moneys that - - -?---Yep.

- - - Mr Clements had handed to Mr Cheah?---Yep.

As being 100,000?---Yep.

40 Can I suggest that part of your alarm, at least, would have been attributed to the fact by the time you heard about these moneys being in the hands of Mr Clements, you had formed the opinion that he was a man of dishonesty, from what you've said, is that right?---Yes.

That your opinion of him as being a dishonest person was based upon some of the matters you've already referred to here this morning, is that right? ---Yes.

And was your alarm also that the activities of Mr Clements raised a real question as to whether or not he was party to activities that might have run counter to the obligations under the Electoral Funding, Expenditure and Disclosures Act of 1981?---Yes.

Your concern was, I daresay, the source of the \$100,000, where it had come from, from whom, in other words. Is that right?---Yes.

10 And certainly by the time you had met with Mr Wong at the back of Parliament House, you put one and one together, or two and two together, if you hadn't already done that, and concluded who the person was who had given that money.---Yes.

And who did you conclude, based on the information you had by that time, was the person who had supplied the \$100,000?---Huang, who Ernest told me.

Hmm?---Who, the, Huang Xiangmo.

20 Do you say that you've raised that matter or discussed that matter with Mr Wong? That is to say, the \$100,000 that Clements provided to Cheah. ---That was the 2016 conversation out the back of parliament.

And on that occasion, you concluded that what Mr Wong was saying, when you met him at the back of Parliament House, related to the \$100,000. You drew that inference, is that right?---Yep.

Did he say - - -?---I thought - - -

30 - - - on that occasion, that it was Mr Huang who had supplied the 100,000? ---He said Mr Huang had provided the donation.

Did he specify the amount?---I, I thought he had, but I also can't be sure what he said, it was a long time ago, but yes. I've, I took this to mean that that was the money, that it was related.

Yes, very well.

40 MR ROBERTSON: First, Chief Commissioner, in my submission you should make a direction under section 35(2) for the witness to produce the text messages that she referred to this morning. It sounds like they've been prepared in a bundle that could be easily produced.

THE COMMISSIONER: Yes, you can do that?---Oh, easily. Yep.

Yes, thank you.

MR NEIL: May I say something about that, Commissioner?

THE COMMISSIONER: Yes, Mr Neil.

MR NEIL: I can, under, in answer to the direction, under objection of course, on behalf of Ms Murnain, show Mr Robertson the text messages. But I have them available only in an electronic form this morning.

THE COMMISSIONER: That's okay. We can deal with that in due course.

10 MR NEIL: I can do that now, if that's, if it's a course he wishes.

THE COMMISSIONER: All right, perhaps then we may take a short adjournment, and we can see what's the most practical way of getting those text messages.

MR NEIL: Yes, so there's – I think I've said all I need to say.

THE COMMISSIONER: Thank you. Is that satisfactory to you, Mr Robertson?

20

MR ROBERTSON: Yes, Chief Commissioner. Ms Murnain, can we go back to the meeting that you had with Mr Wong that you started to talk to us about before.---Mmm.

Doing the best you can, when abouts was that meeting?---It's in the text message, so 16 September, 2016. It was a Friday night.

30 And is that the first time that you had any discussions with Mr Ernest Wong regarding donations in relation to 2015?---No. I believe there were other conversations prior and after which I'd be happy to go into.

Was that the first occasion in which Mr Wong indicated that there may have been anything wrong with the donations in relation to 2015?---I believe so, yes.

And so you're quite sure that concerns regarding the donations in 2015 were only brought to your attention by Mr Wong at that meeting in 2016?---Yes, to the best of my recollection, yes.

40 THE COMMISSIONER: That's 16 September, '16?---Yeah, yeah.

MR ROBERTSON: And prior to that point in time did anyone else draw your attention to any concerns regarding donations in 2015?---There were conversations early on when I became secretary, people thought that we should do an audit of the funds in the parliamentary, in our campaign accounts. I thought we should and then we got carried away with by-elections, so, so the short answer to that is I think there were concerns broadly.

And when you say people, what people are you now referring to who thought that an audit should be done of donations?---MPs, certain MPs had suggested it, and other people that had had a relationship or knew Jamie.

Do you recall any particular individuals who drew those matters to attention?---Well, I did, I, I raised it on a few occasions with the officers.

10 Why at that point in time were you raising concerns that might call for an audit?---Around 2016?

Yes.---Because of this event.

Perhaps I misunderstood you, but I thought you were saying that before you had - - -?---Oh, yeah.

- - - any discussions with Mr Wong there was already calls for conducting an audit in respect of donations in relation to 2015. Have I got that right?
---Yeah.

20

And one of those people suggesting that an audit might be appropriate was you. Correct?---Was me, yeah.

And that was you when you were, when you had the role as general secretary.---When I'd taken the role on, yeah.

30 And so why at that point in time, before you spoke to Mr Wong, did you think that an audit of donations might be an appropriate course?---Because I was, having had worked for Jamie I was worried that the party wasn't following procedures. I introduced immediate disclosures online the minute I became secretary at the conference in February, mainly because I felt I didn't have oversight, I didn't have enough information about what was going on in the office as the new general secretary when I came into the job, and obviously the rumours around Jamie and his expenditure concerned me, but like any job, we got caught in by-elections, successive by-elections and the, the, the forensic audit that I would have preferred to have done didn't occur. I know the governance director did an audit and then came up with a fundraising document about policies around donations, there was a Governance Oversight Committee that would oversee these things, but I had
40 concerns.

But other than rumours, what led you to be concerned toward the start of your tenure in 2016 and before you spoke to Mr Wong as to whether or not donations had been properly made and accounted for?---Honestly, there – it was rumours, yeah.

Well, let me ask it this way. Were you concerned just about the expenditure side or you were also concerned about the receipt side of donations?---I was concerned about everything.

And why in particular were you concerned about the receipt side?---Because there weren't processes to manage the receipting and I felt, I felt like practices in the past, I wanted to make sure never happened again, where we weren't sure where money had come from.

10 So to be clear about that, you were concerned that during Mr Clements' tenure as general secretary there was a lack of procedures in place to ensure, amongst other things, the appropriate receipting and notice of donations. Is that right?---Yeah, that's right.

And that's one of the reasons why you were concerned that audits and the like should take place once you took over as general secretary.---Yeah.

20 But are you saying, doing the best you can, at that point in time and before you spoke to Mr Wong, you weren't aware of any specific concerns associated with 2015 and in particular with the Chinese Friends of Labor dinner in March of 2015?---In 2016 about 2015, it wasn't, it wasn't at the forefront of my mind.

30 Well, what do you mean by that?---That it wasn't, that specific event and the circumstances around it wasn't the, the, the event that – I mean I had been concerned about how, how things were done and how money was receipted, I was concerned that office staff weren't trained, I was concerned, I think I said before, that, you know, at points we discovered money had been deposited into our accounts that we didn't know where it had come from, because our accounts are so publicly available - - -

THE COMMISSIONER: Can I ask you this, though. As discussed you recall in your evidence on 29 July, the practice had been, after a fundraising event, for the moneys, including particular cash moneys, to be processed and deposited in the ALP's bank account quickly, that is, as soon as practicable after the event?---Yeah.

40 But that in this case, that did not occur, and something of the order of almost a month elapsed before funds were deposited in the ALP bank account, namely 9 April, in or about the amount of \$100,000.---Mmm.

Is that right?---Yeah.

You came to, by inquiry to - - -?---Later, yeah.

- - - be informed of the fact that that had happened, that moneys had been deposited into the bank account on or about 9 April in the amount I've just mentioned. Is that right?---Ah hmm .

And once you became seized of those facts and formed the conclusion, you having, as you said quite frankly earlier, been shocked and panicked by what you had come to learn about matters concerning this March 2015 fundraiser. It would have then become apparent to you, wouldn't it, by the end of 2016, that there had been activities undertaken which threw a real question up as to the legality of the fundraising dinner and whether or not donations by various alleged donors were in fact the source of the 100,000. Is that right?---Yes.

10

So that once you were seized of all of those facts and so concluded, there wouldn't have been any doubt left in your mind by the end of 2016 but that those responsible for organising and conducting the fundraiser were involved in a sham. Is that right?---Yes.

And that was your concern?---Yes, in 2016.

20

Both from a legal point of view, as to what liabilities might arise out of people having done that, and of course, political fallout which would accompany disclosure of such activity, is that right?---Yeah, I was - - -

Oh, and don't let me put words in your mouth.---Oh, there was - - -

But I'm saying that it was apparent to you that the consequences of what you concluded had happened raised the real spectre of both legal consequences but also political fallout that might come associated with it. ---Yes.

30

So, you were placed in a very difficult situation by the end of 2016.---Yes.

Having concluded that that had all taken place the previous year and which the Electoral Commission had been busy investigating.---Mmm.

Is that right?---Yes.

Well, there must have been operating very strong forces on you which would have led you to, as it were, keep quiet about all of that, especially with the Electoral Commission enquiries.---Um, - - -

40

Is that true, or not? Were there forces at work on you to, as it were, keep quiet about it?---So – I'm sorry.

That's all right.---So on the day Ernest told me about this, I - - -

I'm sorry, just pause there.---I'm so sorry.

Just – that's all right. There's no rush here. We'll take an adjournment shortly, but we just might - - -?---Okay.

- - - give you a chance to collect yourself.---Yeah, I'm so sorry. I'm obviously worried for the staff, and the organisation. When I called Sam Dastyari, I thought he would help me with it, because he knew Wong and Huang. He said to me, in my view, what was the right advice at the time, he said, "Go and see the lawyers immediately." He, he came to meet me, because I was still at Hospital Road, this is all in the space of 30 minutes.

10 I'm sorry, who are we talking about now?---6.45, so, oh, Ernest had just told me about Huang. I had a bit of a, I had a meltdown about it. I called Sam Dastyari for advice.

20 What was his advice?---He, he said to me, "You should go and talk to the lawyers immediately and do whatever they say." I was pretty shaken. I hadn't dealt with anything like this before. Like, I, I didn't know what to do. So I, after, I got in Sam's car to tell him about this, and then I got out of the car, and went straight to the lawyers. This was about 7.20. I'd texted Ian Roberts, I called Ian Robertson and asked to see him, it was a Friday night, for Holding Redlich, and I texted him to let him know that I was downstairs at his office. And then he came down to get me, because the doors were locked. I told him what Ernest had told me - - -

Well, just pause there for a moment. So you went into the building.---Yeah.

And had a conversation with Ian Roberts, is that right?---Robertson. Yep.

Yes, right. Sorry, Mr Robertson.---Robertson. He's the Managing Partner of Holding Redlich.

30 And just pause there for a moment. Mr Neil, we were going into an area which would normally be covered by legal professional privilege, but it seems to me that the provisions of our Act would enable this evidence to be given, but I just wanted you to have the opportunity of raising the matter you want to - - -

40 MR NEIL: The privilege would, in our submission, would be that of Ms Murnain's employer. To the extent that she is required to reveal the content of, by your questions, Commissioner, and that of Counsel Assisting, the content of the conference, it would be covered by legal professional privilege, but that in our view is a privilege within (2) of 37 of the ICAC Act. She takes the objection.

THE COMMISSIONER: All right. Well - - -

MR NEIL: But does so knowing that you can direct her and require her to answer.

THE COMMISSIONER: In other words, privilege does attach to communications between client and lawyer in relation to the subject matter of an investigation that we're dealing with.

MR NEIL: Yes.

10 THE COMMISSIONER: But that would seem to be the metes and bounds of where privilege can be maintained successfully. Arguably what we're dealing with here is at an antecedent stage before there was any investigation by this Commission, I think I'm right, I'd need to check the chronology but I think that's probably right, it doesn't seem it's a communication by a person entitled to privilege for the purposes of proceedings of the Commission, and if that be right, then it would seem to me that the provisions of the Act enable the questions to be put and answered.

MR NEIL: That - - -

20 THE COMMISSIONER: Do you want to put anything against that?

MR NEIL: No.

THE COMMISSIONER: I just simply thought, though, I mean the question of privilege is a very important matter.

MR NEIL: It is.

30 THE COMMISSIONER: And I simply just wanted to alert you so that if there's any matters that need to be raised we can deal with it.

MR NEIL: We have nothing to put against the proposition that you have put, Commissioner.

THE COMMISSIONER: Yes. Thank you.

MR NEIL: Except, and it follows from that, that we accept that you can properly direct this witness to answer questions about the content of her conversation with Mr Robertson.

40 THE COMMISSIONER: Yes, thank you, Mr Neil. Mr Robertson - - -

MR NEIL: Commissioner, just for, to be, so that there's no doubt later about what has happened, would you be good enough to specifically direct the witness to answer those questions?

THE COMMISSIONER: Yes, yes. Mr Robertson, do you want to say anything about this?

MR ROBERTSON: Can I just confirm the factual chronology with the witness first?

THE COMMISSIONER: Yes, sure.

MR ROBERTSON: Which is the premise on which what you've just identified - - -

THE COMMISSIONER: I'll leave it to you, Mr Robertson.

10

MR ROBERTSON: Just to be clear about the timing of the meeting that you had with Mr Robertson, that was on the same day as you met with Mr Wong?---Yeah.

And doing the best you can, that seems to have been on 16 September, 2016. Is that right?---Yes, yeah.

20

For your assistance, Chief Commissioner, the referral from the Electoral Commission to this Commission occurred on 15 January, 2018. In the face of that it seems unlikely that any communications could have been in relation to an appearance or reasonably anticipated appearance at a compulsory examination or public inquiry before the Commission within the meaning of section 37(5)(b) of the Independent Commission Against Corruption Act.

THE COMMISSIONER: Yes.

30

MR ROBERTSON: And so the premises on which you made your comments, Chief Commissioner, appear to be right in light of what Ms Murnain just said.

THE COMMISSIONER: Thank you, Mr Robertson. Well, I'll simply put one more question to the witness and if you want to take it any further, I'll leave it to you, Mr Robertson.

40

Coming back then, Ms Murnain, to this meeting you say you had on the Friday night after you'd spoken to Mr Wong, with Mr Ian Robertson of Holding Redlich, you said you went inside the building with him and then proceeded to make, to have conversation with him. Is that right?---Yeah.

Can you then, I direct you to answer this question. Give us the essence of what it was that you said to him.---I told him I'd just met with Ernest - - -

MR NEIL: Just, I want to pause for a minute. Sorry, just for abundance of caution, would, Commissioner, you be good enough also to direct the witness to answer any questions relating to what Mr Roberson said to her.

THE COMMISSIONER: Well, I have given her a direction to answer this question.

MR NEIL: Yes, I see.

THE COMMISSIONER: I'm just asking for the substance of what you said to him on this occasion.---Yeah.

10 As for what he might have said to you, we'll leave that for the moment. You understand?---Okay.

MR NEIL: I see, I see, thank you.

THE WITNESS: Okay. I went up in the lift with him, I went into a meeting room, there were chairs around the edges, I remember that. I was pretty shaken by this stage, realising the significance of Ernest and him talking to me about Huang. I told Ian Robertson what Wong had told me, that someone who'd given money hadn't, hadn't actually given the money from the state election in 2015, that Huang was, that Ernest had told me that
20 Huang had given the money. I was pretty shaken by this stage, so I don't know whether I, oh, for some reason, I, I – there were two wealthy billionaires, one was Chau, one was Huang. But I definitely said to the, to Ian Robertson that, I explained to him what I'd asked Ernest, as well, that I'd asked him who'd given the money, that I'd told him that he should get the person to come forward, and that I needed advice on what to do next. Sorry, this is hard without him, what he said back to me, but - - -

THE COMMISSIONER: Yes, all right.---Yep.

30 Yes, Mr Robertson.

MR ROBERTSON: Can we just go back a little bit in time, Ms Murnain, because I just want to make sure I understand the chronology of events. ---Yeah.

So do we take it that on 16 September, 2016, Mr Wong, Mr Ernest Wong made contact with you to request a meeting?---Yes.

40 And he did that by text message, was that right?---No, he, he called me, and then, and then, I think he called me and then, he was panicked when he called me, and MPs are very panicked all the time on, on the phone to me, so I normally go straight away. Normally it's not anything like this. Normally it's not, not this serious. But he was panicked.

So you had a telephone conference with Mr Wong. Mr Wong made it clear that he wanted to speak to you urgently, correct?---In person.

And wanted to speak to you in person?---Yep.

And so you went straight to Parliament House, is that right?---Half an hour later. So, I would have done a bit of work and then headed over.

And I think you told us you parked in Hospital Road, behind Parliament House?---Correct.

10 In the telephone call, had you made arrangements with Mr Wong as to where that meeting would take place?---At parliament, and I said I was at the back, and in the text messages, I mean, I don't remember the specifics, but it's in the text messages.

But when you were turning up - - -?---Ah hmm.

- - - you thought you were meeting Mr Wong in Parliament House, is that right?---Or around for a coffee. There's a bunch of coffee places around parliament.

20 And so when you were in the vicinity of Parliament House, you made further contact with Mr Wong, is that right?---Um - - -

To say that you were nearby?---Yeah, I texted him. Yeah, "I'm out the back," or something. It's all there. I can, do you want me to read it out?

Perhaps we might adjourn if that's convenient.

MR NEIL: Commissioner, if you direct me to show counsel, produce the electronic copy, I can do so.

30 THE COMMISSIONER: Yes, all right, thank you. Well, I think, as Mr Robertson has indicated, it's an appropriate time to take the morning tea adjournment. Mr Neil, unless you have a need to speak to your client - - -

MR NEIL: I would not propose to do so.

THE COMMISSIONER: Right. It might be as well in her interest that she doesn't discuss this with anyone, then we'll - - -

40 MR NEIL: Yes, I want to make that - I would not do so.

THE COMMISSIONER: Okay, thank you.

MR ROBERTSON: But can I ask you, Chief Commissioner, to formally make the direction under section 35(2) for production of the text messages that Ms Murnain referred to?

THE COMMISSIONER: Yes.

MR ROBERTSON: Then that can be responded to during the course of the adjournment, and we can proceed thereafter.

MR NEIL: Yes, and perhaps, I can talk with Counsel Assisting about how that can be done.

THE COMMISSIONER: Very good. All right, well, thank you. Well, I do make a direction under section 35(2), that the text messages referred to by the witness in her evidence this morning - - -

10

MR NEIL: If it please Your Honour, Commissioner, Ms Murnain objects to producing those documents.

THE COMMISSIONER: Yes. Well, I understand, and - - -

MR NEIL: But we understand that you may then direct her to do so.

THE COMMISSIONER: - - - she will, she already has the protection under section 38. So is there any other problem?

20

MR NEIL: There is not.

THE COMMISSIONER: Very well. Well, I make a direction that they be produced.

**COMMISSIONER'S DIRECTION TO PRODUCE TEXT MESSAGES
PURSUANT TO SECTION 35(2) OF THE ICAC ACT**

30

THE COMMISSIONER: You may step down, Ms Murnain. What we're going to do is we'll probably take a morning tea adjournment of the order of 15 minutes, okay? So long enough for you to go and have a cup of coffee. ---Okay.

All right. Thank you. I'll adjourn.

SHORT ADJOURNMENT

[11.29am]

40

THE COMMISSIONER: Ms Murnain, you understand you're still on the affirmation that you took earlier?---Yes, yeah.

Thank you.

MR ROBERTSON: Ms Murnain, I'd like to ask you some more questions about the meeting with Mr Wong on 16 September, 2016.---Yes.

You provided in advance of today's compulsory examination a screenshot of text messages you exchanged with Mr Wong on 16 September, 2016. Correct?---Yes, yes.

10 Can we just have that screenshot on the screen, please. And for your assistance, Chief Commissioner, on the screen at the moment is one of the documents produced in response to the direction that you made briefly before the adjournment. Ms Murnain, is that the screenshot that I referred to a moment ago?---Yes.

And do we take it that your texts are on the right-hand side in white text on a blue background?---Yeah, yeah.

And Mr Wong's texts are on the left-hand side with black text in a grey background?---Correct, yeah.

20 And do we see the first text message, "Please ring me," at 6.06pm. Do you see that there?---Yes.

And so just to clarify, was that the first contact that you had from Mr Wong, a text message on 16 September, 2016 at 6.06pm, or was there a telephone call before then?---He may have called me before then but I don't have any of my records so I don't know.

When you say you don't have any of your records, you've checked your telephone to see?---I don't, I don't have my telephone records from then, so I've asked my IT director whether he could get it off the, off Telstra.

30 I see.---Yeah.

So it's possible that you had a telephone call with Mr Wong before or after the first of those messages. Is that right?---Oh, it's, I believe he, I mean he would have, he may, he may have called me but I wouldn't have answered if he's sending me a text message saying, "Please ring me." I just don't remember.

40 But it's likely though, isn't it, that if Mr Wong on 16 September, 2016 asked you to ring him, you would have rung him?---Not, not always, but yes, I did on this occasion.

So you do have a recollection of calling Mr Wong after receiving the message that says, "Please ring me," is that right?---Yes.

And is it right to say that the effect of the discussion you had with Mr Wong was that Mr Wong wanted to see you in person?---Yes.

And you then went to the area round Parliament House within relatively short order. Is that right?---After I'd spoke to him it would have been, yes, yes, within half an hour, so yeah.

And then you sent him a message at 6.36pm saying, "Come down." Is that right?---Yeah, yeah.

10 So is that you asking him to come down from Parliament House and meet you outside of Parliament House?---Yeah.

So at that point in time you're on Hospital Road, having parked in the vicinity of Parliament House. Is that right?---Yeah, yeah.

And then he responds to you, "On the way."---Yeah.

There's then an exchange where you try and find each other.---Yeah, yeah.

20 And so you then ultimately saw each other I take it around about 6.42 or maybe 6.45pm on 16 September.---Yeah.

And that was somewhere on Hospital Road near Parliament House. Is that right?---Walking towards the Art Gallery.

So you met each other towards the back of Parliament House, somewhere on Hospital Road. Correct?---Yes, on The Domain side, yeah.

So in effect behind Parliament House in the vicinity of the side of The Domain that's near Parliament House. Correct?---Yes, yeah.

30 And then you walked together across The Domain in the direction of the Art Gallery. Is that right?---Yes, but we didn't make it far. He - - -

And so what, you stopped somewhere in The Domain to have a chat?
---He started talking to me as we were walking and when, when he told me that there were donations issues we stopped partway through The Domain.

And do I take it one of the reasons you stopped was that you were pretty shocked at what you were being told?---Yeah.

40 And just to be clear about what he told you, we understand from what you said before that he told you words to the effect of someone has been identified as a donor to the, to NSW Labor who was not in fact a donor.
---Yes.

Is that right?---Yeah.

And to be clear, did Mr Wong identify who that donor was?---No.

But he did make it clear, did he, that Mr Huang Xiangmo had in fact made a donation to NSW Labor. Is that right?---Yes.

And so just to be clear about that, what you took away from the conversation was that someone had been disclosed as a donor but had not in fact been a donor. Is that right?---Yes.

And that was in respect of NSW Labor and not in respect of for example the federal level?---Yes, yeah. He, he, he made it clear it was about state.

10

And that makes it clear that it's NSW Labor, does it, or could that also have been Country Labor?---It could have been either party, the party.

So it's at least clear that Mr Wong was talking about a donation at the state level. Correct?---Yes.

And he identified Mr Huang Xiangmo as the true donor. Is that right? ---Huang, yeah.

20

And at least at that point in time was the suggestion that there was only a single putative donor, someone who said that they were a donor who was not in fact a donor. Is that right?---He, he was only talking about one person and, and this is the part that I'm, I can't be sure about, but I got, I thought I'd asked him how much but I can't remember whether he'd said \$100,000, how much was the question.

So to be clear, you have a recollection of asking Mr Wong how much money we were talking about?---Yeah.

30

And he may have said \$100,000, but you're just not quite sure?---Yeah.

But he at least made it clear that we were talking about a significant amount of money. Is that right?---Yeah, yeah.

And that was one of the reasons why you were shocked at what you were hearing. Correct?---Yeah.

And I think you said to us that you encouraged Mr Wong to get the person who donated the money to come forward. Did I understand that correctly?

40

---The person who said they made the donation to come forward.

So to be clear about that, you made it clear to Mr Wong that you wanted the person who said that they donated money but who did not donate money to come forward?---Yes, on multiple occasions in the conversation.

And what did Mr Wong say in response to that suggestion?---I don't remember. He was, I just remember he was agitated, very agitated.

Do you recall whether Mr Wong gave you any indication as to who that pretend donor may have been, even if he didn't use the name?---No.

He didn't give you any indication as to what line of work for example that person might have been in?---I don't remember if he did or didn't, it's sort of a - - -

10 But was it relatively clear to you that Mr Wong knew the identity of that individual, even though he didn't tell you who it was?---Oh, yes.

You're quite sure about that?---Yeah.

What led you to be sure about that?---He had told me that the person who we were talking about had, had, like, had spoken to him.

So just to understand that, you had understood from your conversation with Mr Wong that this pretend donor, I'll call it, made contact with Mr Wong? ---Yes.

20 And do we take it from that that there was some suggestion that that pretend donor might actually come forward? Is that an explanation as to why Mr Wong was agitated or concerned?---No, I, like, I, it was, oh, I wish I'd recounted it at the time, he, oh, I did to the lawyer. He, he was, he was - I, I didn't really understand what was going on, except that he was upset about this donor, and this donor was upset that he hadn't given this money, well - -

30 THE COMMISSIONER: Sorry, just say the last bit?---Ernest told me that he was, that the, the person, the man or woman who'd come to him, was upset about the fact that they hadn't given money, and they were worried about it, and I, what I'm, what the chronology is on that, I'm not sure in terms of whether they'd been asked questions, or whether it'd just come to this person's attention.

40 MR ROBERTSON: But did Mr Wong give any indication as to why he was drawing this matter to your attention now, as opposed to at some earlier time?---I can't remember, I think, I mean, I can't remember. I think, I, I'm doing my best to remember the exact conversation, and I - to the best of my recollection, he, he said that this fellow or woman had not donated the money, and that - I just can't remember. I'm, I'm sorry, I'm, I'm trying hard to - - -

THE COMMISSIONER: You said at the time you first met him, at approximately 6 o'clock, Mr Wong was agitated, and he was nervous - - -? ---6.45.

- - - and that's when he proceeded to tell you about this donor for the state election in 2015.---Yep. About 6.45, yep.

Is that right?---He launched into it. Yep.

He, that's correct what I just recounted?---Yep.

As I understood your evidence.---Yes.

And your evidence was that you encouraged, you asked him if he could encourage the person to come forward, and you also asked specifically who did give it.---Mmm.

10

And he responded, Mr Huang.---Yeah.

And I think you then responded by, according to my note, referring to a Chinese property developer.---Yeah. I asked the question, because I, there are lots of Wangs and Huangs, and - - -

And sorry, what was that segment of conversation? How did that go? You asked him who gave it, he said Mr Huang. Is that right so far?---Yes. Yep.

20

And then, how did you respond?---I stepped back. I stepped back, I couldn't, I was sort of processing it, and I, I said that, I asked him the question, "You mean the Chinese property developer?" Um, he said, "Yes."

And you said in earlier evidence today that you then realised the significance of all of this.---Yeah.

Is that right?---Yep.

30

Meaning, well, meaning amongst other things, perhaps Mr Huang was a property developer and therefore a prohibited donor under the legislation. ---Yep.

But it also reflected upon, is this right, what had gone on before with the fundraiser and whether it was, had been run on legitimate and lawful lines or not.---Ah hmm.

Is that right?---Yeah.

40

MR ROBERTSON: So I take it that at that point in time, September, 2016, you knew who Mr Huang Xiangmo was?---Yep.

On the last occasion, you spoke to us about a meeting that you had with Mr Huang, do you remember that?---Yeah, I think I told you about two meetings. Yeah.

And was your meeting with Mr Wong, did that happen before or after your first meeting with Mr Huang Xiangmo?---Wong, with Ernest?

Mr Ernest Wong.---Yep. So that was after, because I met with Huang, Huang in, earlier that year, during the federal election.

So you'd met Mr Huang Xiangmo before your meeting with Mr Ernest Wong in September, 2016, correct?---Yep. Yep.

And that was part of the circumstances in which you understood what Mr Huang Xiangmo did for a living, namely as a property developer?---I met with him to – sorry, can you ask the question again? Do you - - -

10

You knew who Mr Huang Xiangmo was at the time that you met with Ernest Wong in September, 2016?---Yep.

And part of that knowledge arose from the fact that you'd met Mr Huang Xiangmo by that time?---Yep.

And you knew him to be a property developer, or at least a close associate of one, correct?---Yes. Yep.

20

And so you therefore knew that he was a prohibited donor - - -?---Yes.

- - - for the purposes of state law, correct?---Yes.

I'm sorry, Chief Commissioner.

THE COMMISSIONER: Did you also know at the time you were having this conversation with Mr Wong on 16 September, 2016, that Mr Huang had been a donor to ALP federally?---Yep.

30

You'd come to know that in the course of your duties that that had been the case, that he had been a, might be said to be a generous donor to the Federal Labor?---Yes. Yep, he, yes, in fact, I was in the meetings to - -

Sorry?---To ask him for those donations with Chris Bowen and Veronica. There were two different meetings.

I'm sorry, could you just clarify that?---I had met with Huang earlier in the year, because of the federal election, to seek donations from him with Chris Bowen, and I, I believe Ernest was there as well, and, and his staff, Huang, and I, and we had asked him for donations for the federal campaign.

40

All right. Thank you.

MR ROBERTSON: And so you made it clear during this meeting with Ernest Wong in September, 2016, that you thought that the pretend donor should come forward, correct?---Yes. Yes.

And what, doing the best you can, what did Mr Wong say in response to that suggestion?---I just remember him being really agitated about it - - -

As best you can recall, did he suggest that he was trying to, he would try and make that happen or not happen, or that he would do or not do that?
---He was freaking out. He wasn't really, he wasn't really responding – I, I just remember he wasn't responding in a way that was sort of rational. He was, he was sort of sweating and kept asking, “What do I do?”, and I just kept saying, “Get the person to come forward.” So, he wasn't making a lot of sense. He didn't make, it was left very open-ended. At one stage, I do recall him saying, “Okay, okay,” but that didn't mean he was going to do it.

But it was clear to you that he did know who this pretend donor actually was?---Yeah.

But you're quite sure that he didn't identify that particular individual?---Not that I can remember.

Around about how long did this meeting take?---Mmm, oh, well, I thought we were going to go and have a coffee and talk about his, whatever problem we were having, he was having. But it, it took less than 10 minutes. Once we stopped in The Domain, I then obviously wanted to figure out what on earth I'd do about it. It was a Friday night. And I, I, we ended the conversation, but I don't remember how we ended it, exactly. Like, it wasn't a very long conversation. Once he'd told me this, I thought I'd better start figuring out how to deal with it.

So the conversation ends and Mr Wong, I take it, walks back in the direction of Parliament House?---Yeah.

Correct?---Yeah.

And then you decide that you need some advice as to what to do now?
---Yep.

You don't call Mr Clements, your immediate predecessor, for the, for some of the reasons that we've already dealt with this morning, correct?---Yes. Yep.

And his immediate predecessor was Mr Sam Dastyari, correct?---That's correct.

And so that's why you sought Mr Dastyari's advice?---He knew both Wong and Huang, and he, as former secretary, I wanted to find out if he'd had any problems like this.

And so you then called Mr Dastyari up, are you still in The Domain at this point in time?---Yep, mmm.

And doing the best you can, tell us that conversation between you and Mr Dastyari.---I said, "Are you in your office, or are you in the city?" something like that, "Can I talk to you for five minutes?" and he said, I, I, to the best of my recollection, I think he was going to drive home. And I was in The Domain, behind the parliament, and I said, "Well, would you mind coming by here?", because he was around his office, there was a Sydney office just near there, and I said, "Well, would you mind dropping by here for a couple of minutes, can I talk to you about this?" He couldn't stop, so
10 instead of stopping and jumping out, I got into the car for somewhere between five minutes and 10 minutes, it wasn't very long, we did the loop of the, near the back of The Domain there.

So just to be clear, you met Mr Dastyari in his vehicle on Hospital Road. Is that right?---It was somewhere around parliament.

Or somewhere nearby.---I don't remember where

And you spoke to him as you were effectively driving around the block?
20 ---Yeah.

And that was a conversation that went for about five or 10 minutes?---Max.

And doing the best you can, what was the words spoken in that conversation?---I remember telling him what Ernest had just told me. I was worried, I was concerned that Ernest, Ernest was sort of quite stressed about the whole situation. I recounted asking him about who donated the money, I recounted that it was about the state election, and I didn't know what to do. I was worried for the office, I was worried for everyone involved.
30

When you say you were worried for the office, what exactly do you mean by that?---On how we deal with it, because we hadn't dealt with this before.

So this is a concern about the mechanics of how to deal with what on its face seems to be a donation by, a substantial donation by a prohibited donor. Is that right?--- Correct, yeah. I also asked him whether he thought Huang had done it, thinking he might know. He had no idea. So when you say done it, what do you mean by that?---Given the money for the, the state campaign.
40

But at least at that point in time you were fairly sure that at least some money had been donated by Huang Xiangmo because Mr Wong told you. Correct?---Yeah, yeah. But I just, because of the way that Ernest was speaking to me I just wanted to speak to someone who also knew the person he was talking about and wanted to see whether, how I'd check this as well, because at this stage I didn't have a direct relationship with, I couldn't just call this man up, he was a wealthy person who you dealt with via your EAs and your staff and setting meetings. But his advice, Sam's immediate

advice to me was, "Go to the lawyers." I remember being upset, I was concerned that Ernest was speaking in a way that indicated he thought I knew about it. That's how I recounted it to Sam.

What gave you that impression, that he thought you might have known about these arrangements?---He just spat out Huang, he just spat it out, like he didn't even hesitate. Like, when I said, "Who donated the money," he literally, he just spat it out, like there was no waiting.

10 So he gave you the impression that you knew that Mr Huang Xiangmo had in fact donated money on a state level - - -?---Yeah.

- - - and that you knew that there may have been pretend donors covering up that fact.---It was more that Huang had donated, that element of it. It was just the way he, he said immediately, "Huang."

But not just donations generally, donations on a state level.---Yeah.

20 THE COMMISSIONER: Could I ask you this. Based on what you've learnt on the night you met with Mr Wong and subsequently to that meeting about this, this concerning event of the \$100,000 coming in from Huang, you must have applied your mind as to how Mr Huang had come to even make the donation, being sizeable amount of money. Is that right?---Mmm, yeah.

30 And did you ascertain whether the 100,000 had been solicited from Mr Huang by someone acting on behalf of the ALP or in the interests of the ALP or who came to some agreement with Mr Huang to do that?---Oh, Ernest didn't talk about that. I've put my mind to that a great deal, and I, I just, I don't know. I have many theories on what happened, but – I also feel like because it's so long ago, I, recreating events in my head over and over to try and work out how this happened.

Well, clearly Mr Huang was not working solo. He had to give the money to someone, for a start. So that person then in due course took the money and brought it into the office, and it was then processed and banked. Is that right?---Yes.

40 Well, who was involved with the receipt of the money from Mr Huang in the first place?---Well, later I found out that, well, after the donation came in, and I don't know exactly when I found, I can't remember, and I don't want to say something to make it work in my head - - -

Yes, what did you find out?---That Jamie had received the money.

Sorry?---That Jamie had received the money.

That's Jamie Clements?---Yep.

Well, what was your source of knowledge of that, as to that fact?---I just can't remember. I don't know whether it was Kenrick or someone else in the office, or - - -

You mean Kenrick Cheah?---Cheah.

10 Or somebody else?---It could have been somebody else, one of the other staff. There was, there were lots of discussions in the staff about people walking in, meeting with Jamie, and I've been trying to put it all back together in my head, and I just, I can't remember.

Well, what on the face of it, based on what Mr Wong had told you, there was every likelihood, in your mind, wasn't there, that there had been an offence committed under the relevant legislation?---Yeah.

That of itself could, as we earlier discussed, have legal and other ramifications, is that right?---Yep.

20 Well, what I'm wondering is, given the seriousness and significance of the matter, why wasn't the person responsible within ALP NSW tracked down and confronted with what had happened, apparently without knowledge of you or others?---(No Audible Reply)

Why wasn't that done, if it wasn't done, or was it done?---Um - - -

MR NEIL: I wonder if I could just interrupt for one moment, with your permission, Commissioner.

30 THE COMMISSIONER: Yeah, all right, Mr Neil, I'll put it another way.

MR NEIL: I just – may I - - -

THE COMMISSIONER: Yes, certainly.

MR NEIL: - - - explain the purpose of my, I – it might be better if I were to do so in the witness's absence.

40 THE COMMISSIONER: All right. Ms Murnain, I'll ask you just to wait outside for a short time. This often does happen in court proceedings and others so that the witness is not affected by legal argument or other argument.---Okay. Okay.

So if you wouldn't mind just waiting outside for a short time.---Okay. Thank you.

And we'll let you know when we're ready to continue. Yes, Mr Neil?

MR NEIL: I have an apprehension, and it is only an apprehension, that the answer to the question that you have asked will involve the witness giving evidence about legal advice that was given to her by Mr Robertson, and that's not the subject of any direction that you have so far given.

THE COMMISSIONER: Ah hmm. Well, at the end of the day, as you'll gather from my question, it's simply designed to establish who if anyone took up the, took the initiative to track down who Huang had been dealing with, and - - -

10

MR NEIL: I understand.

THE COMMISSIONER: Whatever advice might have been given as to who should do what or how such an inquiry should be made at the end of the day I would have thought that this witness would be in a position to know who took, as it were, the lead, whether it was the governance officer or somebody else who would confront - - -

20

MR NEIL: I'm not suggesting - - -

THE COMMISSIONER: - - - Mr Clements with this to get his acceptance or denial or whatever. That's really what I'm aiming at.

MR NEIL: I'm not suggesting otherwise, but if she were to be directed to - - -

30

THE COMMISSIONER: Well, she can be told that in order to answer the question she, if she's required to refer to legal advice then she's not being required, at this stage anyway, to go to that, but simply go to the question as to regardless of who gave advice as to what should be done, I want to know her knowledge as to what was done in terms of Mr Clements being confronted with this allegation, that's the - - -

MR NEIL: Yes. If, if the - - -

40

THE COMMISSIONER: I mean she was assistant general secretary, true she didn't have a relationship with Mr Clements for the reasons she's explained, but that wouldn't prevent her from ensuring that someone took the step, the obvious step of getting Mr Clements to face up to this transaction.

MR NEIL: Yes.

THE COMMISSIONER: So I don't think it's necessarily - - -

MR NEIL: The what would not I think involve the content of any legal advice, or advice that was given by Mr Robertson - - -

THE COMMISSIONER: No, I'm not seeking that, I'd make a - - -

MR NEIL: - - - but the why probably would.

THE COMMISSIONER: I'm not seeking to get from her, and I'll make it clear, whether she was acting on somebody's advice in doing this.

MR NEIL: Yes.

10 THE COMMISSIONER: And indeed she need not and she should not refer to any advice given by anyone as to what she should do. I'm simply wanting to get to the point as to accepting, as I think she already has, it's obvious that an inquiry had to be made with Mr Clements as to whether it was true that he was the one who had been dealing with Huang, whether she knows he was interrogated and what her understanding of the results of that interrogation were.

MR NEIL: Yes, yes.

20 THE COMMISSIONER: So I think if it's handled in that way, surely at the moment we're quarantining the content of legal professional privilege, although I apprehend that there's going to be possibly a ruling that there is no embargo on the Commission.

MR NEIL: Yes. My, my – yes. And if I can perhaps say this much, my anxiety is that if she is to disclose the content of legal advice that she do so pursuant to a direction that you give. That's my principal anxiety.

30 THE COMMISSIONER: All right. Well, I'll seek to ensure that she doesn't go into that territory of legal advice in order to answer my question. So we might be able to get around your concern in that way .

MR NEIL: The concern is – Commissioner, would you excuse me for one moment?

THE COMMISSIONER: Yes, sure.

MR NEIL: I wonder if I could just have the indulgence of a short word with Counsel Assisting for a moment?

40

THE COMMISSIONER: All right. Very well. Yes, all right, well - - -

MR NEIL: Perhaps as the shortest way forward.

THE COMMISSIONER: Very well. Well, I'll adjourn for a short time and just let me know when you're ready.

SHORT ADJOURNMENT

[12.39pm]

THE COMMISSIONER: Yes. Mr Robertson, I'll leave you to continue where you left off and we'll come back as necessary to deal with other matters that have been discussed.

MR ROBERTSON: Thank you, Chief Commissioner. Ms Murnain, back to 16 December, 2016. We got to the point at which you were meeting with Mr Dastyari in his vehicle and you told us that Mr Dastyari advised you to speak to the lawyers. Correct?---Yes.

Did he give you any other advice during the course of that meeting in his car?---Just talk to Ian Robertson and get advice from the lawyers.

And what did you then do after you finished with Mr Dastyari?---I called Ian Robertson straightaway on his mobile.

And can we just have up on the screen, please, a further screenshot of a series of messages. Do you see there a message of 16 September, 2016, 7.18pm, and it says, "I'm at the top of the escalators?"---Yeah.

So was that a message that you sent to Mr Robertson - - -?---Yeah.

- - - drawing his attention to the fact that you were at his office ready to see him?---Yes.

And you then had a meeting with Mr Robertson?---That's correct, yeah.

And you explained to the Chief Commissioner earlier about what you said to Mr Robertson.---Part of, yeah.

What else did you say to Mr Robertson? At the moment I just want you to focus on what you said to him rather than any advice that he may have given you.---It's hard without – I had said to him, I recounted the story about what Ernest had told me. I – it's, it's hard without the other side of the conversation.

Let me deal with it this way. Around about how long was your meeting with Mr Robertson?---Probably 20 minutes, I got out, maybe a little longer.

And having finished that meeting, what did you then do?---Went home.

What steps did you take in relation to the matters that Mr Wong discussed with you after the meeting with Mr Robertson?---None.

And the decision to take no further steps, was that affected by the conversation that you had with Mr Robertson?---Yes.

Prior to meeting with Mr Robertson, what was your intention as to what to do regarding the matters that Mr Wong had drawn to your attention in the afternoon of 16 September, 2016?---The things that went through my mind and some of the things I said to Ian as well, I told Ian I thought we should return the money or give it to the commission.

10 When you say the commission, you mean the Electoral Commission at that point?---Yeah, yeah, sorry, yeah. I, there was an extra element to this which was I can't be sure, but I thought at some point that night, but I don't have my phone records, I had tried to contact my governance director but she wasn't at the office anymore, which was part of the reason for the call to Sam as well.

When you say your governance director, you mean Julie Sibraa. Is that right?---Yeah, yeah, she wasn't there. She had gone for the day, it was Friday night.

20 THE COMMISSIONER: She was then the governance officer?---She was, yeah, she'd just, she was the first ever governance officer.

Was she, in terms of the line of authority, somebody who reported to you?
---The governance role was designed to be independent of the officers, so the idea was to keep an eye on the officers, so to speak. I mean it's a strange organisation where you're elected and there's a minority election as well for the assistant secretaries, and so to stop what, or some of the problems that had been happening under Jamie, this role was created to separate her from me so that the secretary didn't make recommendations on matters of governance.

30 Ah hmm.

MR ROBERTSON: Is that a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes, very well. I'll take the luncheon adjournment and we'll resume at 2 o'clock. So if you'd be back here at 2 o'clock.---Okay.

40 Thank you.---Thank you.

LUNCHEON ADJOURNMENT

[1.00pm]

AEROPVT01854
20/08/2019

AERO
pp 01854-01896

COMPULSORY
EXAMINATION

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION AERO

Reference: Operation E18/0093

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 20 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.

<KAILA LEAH MURNAIN, on former affirmation

[2.10pm]

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Chief Commissioner, I'm about to ask some questions of Ms Murnain regarding the meeting with Mr Robertson that was the subject of some questions before lunch. Before I do, I propose to make some submissions as to whether you should permit me to ask those questions in circumstances where it was a discussion between an individual and a lawyer. As you know, Chief Commissioner, section 37 of the Independent Commission Against Corruption Act 1988 deals with matters of privilege, and subsection 2 amounts to a general abrogation of objections to answering questions on the grounds of privilege, on the grounds of a duty of secrecy, or other restriction on disclosure, or on any other ground. Subsection 5 then reinstates some privilege, but in a very limited fashion. Subsection 5(b) in particular does provide something in the nature of client legal privilege or legal professional privilege, but only in relation to legal professional services in relation to the appearance or reasonably anticipated appearance of a person at a compulsory examination or public enquiry before the Commission.

In the present case on the evidence that's already been received from Ms Murnain, there was a meeting that happened between her and Mr Wong on 16 September, 2016, then leading to a further meeting between her and Mr Robertson, a solicitor, on that same date. As you know, Chief Commissioner, the referral to this Commission from the Electoral Commission didn't occur until 15 January, 2018. In the face of that, it seems very unlikely that it could be open to anyone to argue that any advice that Mr Robertson gave to Ms Murnain, or, either in her personal capacity or in her capacity as General Secretary of NSW Labor, could be argued to be in relation to either an appearance or reasonably anticipated appearance of a person at a compulsory examination or public enquiry before the Commission.

At that point in time, it was unknown as to the extent of any investigation that the Electoral Commission may have chosen to conduct, but also unknown as to whether the Electoral Commission may have made a referral under section 13A of the Independent Commission Against Corruption Act. So on the face of that, it would appear that any matters that might otherwise be subject to legal professional privilege at general law during the course of the meeting on 16 September, 2016, would not be protected by reason of the abrogation of privilege under section 37(2) and wouldn't fall within the, as it were, reinstatement of privilege in section 37(5).

Can I also indicate that Mr Neil has advised me that to the extent that any privilege in favour of Ms Murnain may have existed in relation to the meeting of 16 September, 2016, with Mr Robertson, that privilege has been

waived? Mr Neil is not in a position to communicate any waiver of privilege on behalf of the Australian Labor Party NSW Branch, or Country Labor, or any other body, but in my respectful submission, there's no, on the material and on the evidence of Ms Murnain, there's no reasonably arguable grounds to think that the meeting that occurred on 16 September, 2016, with Mr Robertson would fall within the limited form of legal professional privilege that forms part of section 37(5) of the Independent Commission Against Corruption Act 1988.

10 If that last submission is accepted, then the Commission nevertheless needs to consider whether this is a matter that should properly be the subject of questions. For example, in a particular case, the Commission may take the view that although a particular line of enquiry is not privileged or might at general law have been privileged, but that privilege is abrogated by section 37(2) and not reinstated by 37(5). There may be particular cases in which the Commission decides not to pursue a particular line of enquiry in deference to a privilege which, although abrogated, should nevertheless inform the exercise of the Commission's powers.

20 In my respectful submission, the evidence that Ms Murnain might give in relation to the meeting with Mr Robertson on 16 September, 2016, doesn't fall within the class of cases in which it may be appropriate for the Commission to, as it were, stay its hand. We already know from the evidence Ms Murnain has given this morning that a significant meeting happened between her and Mr Wong earlier in that day, and which then led to a meeting to be convened with Mr Robertson. The gist of her evidence this morning, as I apprehended it, is that she had at least a provisional view as to what to do in light of the information that Mr Wong provided to her,
30 events that occurred during the course of the meeting with Mr Robertson.

In the face of that, it seems that evidence as to what occurred on that occasion is of very significant relevance to the matters that the Commission is investigating. It seems based on Ms Murnain's evidence of this morning that Mr Wong was in substance informing her of a significant breach of the then Election Funding, Expenditure and Disclosures Act 1981. And so on the face of that, the evidence that might exist in relation to the meeting with Mr Robertson doesn't fall, in my submission, within that small class of cases in which although the material is not privileged the Commission might
40 nevertheless stay its hand. So on the face of that, in my submission, in the face of the waiver of any privilege in favour of Ms Murnain, and in circumstances where there does not appear to be any legally, any reasonably arguable case that that occasion was privileged in light of section 37 of the Act, and in circumstances where that material is of significant relevance and importance to the enquiry before the Commission, in my submission, the Commission should permit me to ask the line of questions that I propose to ask in a moment.

THE COMMISSIONER: Thank you, Mr Robertson. Mr Neil, do you want to be heard any further?

MR NEIL: No, other than to confirm that Counsel Assisting has accurately stated my and our client's position.

10 THE COMMISSIONER: Thank you, Mr Neil. On the matter that's been raised during the course of Ms Murnain's evidence, I will give a ruling in relation to that matter, Counsel Assisting having addressed the relevant matters for consideration in determining whether the proposed line of questioning should be permitted. The witness, Ms Murnain, attended the Commission under a summons for a compulsory examination being conducted by the Commission in private pursuant to and in accordance with the provisions of section 30 of the Independent Commission Against Corruption Act which section provides for the power to undertake compulsory examinations for the purpose of an investigation if it's satisfied that it is in the public interest to conduct such a compulsory examination.

20 Ms Murnain previously attended for the first of two compulsory examinations on 29 July, 2009 [sic] and again today as I've indicated. This morning leave was granted to Mr Ian Neil, senior counsel, and Mr David Rayment, counsel, to appear on behalf of Ms Murnain. That leave having been granted the evidence has continued throughout the morning. It's noted that the Commission is conducting this compulsory examination prior to the commencement of a public inquiry which is due to commence on 26 August, 2019. The evidence given by Ms Murnain in both of the compulsory examinations is directly relevant to the investigations that have been undertaken by the Commission upon the referral to it by the Electoral Commission and relevant to the scope of the public inquiry.

30 Counsel Assisting has summarised the circumstances in which the evidentiary issue or question that has arisen concerning Ms Murnain's meeting with Mr Ian Robertson and I need not therefore repeat the facts which clearly indicate that the evidence the witness is giving is highly relevant and of significance to the investigation. As Counsel Assisting stated, the question of whether or not there is any basis for a claim of legal professional privilege is to be made having regard to the provisions of section 37 of the ICAC Act to which he referred and it is clear that the communications between Ms Murnain and Mr Ian Robertson, solicitor, on
40 16 September, 2017 does not bring those communications within section 37(5)(b) of the Act and I accept the submission that was put that therefore the provisions of the Act which override legal professional privilege otherwise than in the circumstances provided for under section 37(5) entitles the Commission to elicit evidence from the witness in relation to the communications on the basis, with Mr Robertson, on the basis that the privilege has been abrogated by the provisions of the Act for the purposes of enabling the investigation to get to the true facts and circumstances that bear

upon its investigation. And as he has indicated, Mr Neil has not sought on behalf of his client to argue to the contrary, understandably so.

10 Mr Neil, in fairness, did raise the question as to whether or not some consideration should be given to any possible claim of privilege or at least an opportunity for ALP NSW to be heard on whether or not questioning should be permitted of Ms Murnain in relation to the communications she had with him on 16 September, 2017. As Counsel Assisting has pointed out, there could be circumstances that would arise whereby the Commission would not undertake or permit questions to be asked, even if
15 communications that would ordinarily be regarded as privileged have been abrogated by the Act. One can envisage circumstances where, for example, the communications may relate to a very personal matter that has no real bearing on the issues before the Commission, and the Commission would be entitled to, as it were, prevent those matters being exposed for no gain or no real purpose being served, so far as the investigation is concerned.

20 Investigation of course is being carried out as a matter of public interest in accordance with the provisions of the Act. The Act evidences a legislature's intention that in order to provide the Commission with an effective jurisdiction in relation to matters which of their nature are often secretive, it has been provided with far-reaching coercive powers, which are invasive, in order to be able to, where the circumstances would warrant it, uncover the full facts and the circumstances. That is very much the intent in Counsel Assisting examining the present witness in relation to those communications to which I refer with Mr Robertson, on 16 September, 2017. It is directly relevant to a central issue in relation to the investigation, in particular to the question as to whether the funds provided to ALP NSW, said to have been in the order of \$100,000, was illegally obtained and obtained contrary to the
30 provisions of the Act to which reference has been made.

The referral from the Electoral Commission itself is based upon a reasonable suspicion held as stated in the referral letter, and there are no circumstances which, in my view, would warrant the Commission staying its hand on the questioning of the witness on the matters arising out of the meeting she held, not long before seeing Mr Robertson, with Mr Wong. In truth, we're not considering this issue in terms of whether there's a discretion in the Commission not to prevent the questioning. The basic question is whether the questioning is in the public interest, and for the
40 reasons I have stated, and which Counsel Assisting had mentioned, it's very much in the public interest, in my view, that the questions be on this area concerning the, a central matter in the Commission's investigation be allowed.

The effectiveness and integrity of the Commission's investigations, in particular, its compulsory examinations, is quite different from an inter partes hearing, where often an opportunity to be heard by a party that might be affected should be permitted, but that approach does not apply in a

compulsory examination of an investigative commission for obvious tactical and other reasons. There is an additional matter also which bears upon why the questioning should be allowed, on the assumption that there could be argued to have been privilege not only in Ms Murnain in the communications but also in ALP NSW. The fact that she has waived privilege is not irrelevant, as Counsel Assisting has said. But in permitting the questioning I have in mind that as I would apprehend, the witness would wish to have the full communications before the Commission. It may be that it's said at the end of the day that the matters disclosed could operate in some way in favour of the witness, and without a complete account of the two sides of the conversation, the true position in that regard could never be reached. That is an added reason why in my view this line of questioning should be permitted and I so order.

10
20
MR ROBERTSON: May it please the Commission. Ms Murnain, do I understand your evidence of this morning to effectively be that after you had the meeting with Mr Robertson on the evening of 16 September, 2016, you decided to do nothing further regarding the information that Mr Wong had communicated to you on that afternoon?---Yeah.

Is it also right to say that coming into the meeting your provisional view was not that, but rather was to do something in relation to that information? ---Yes.

Is that fair?---Yes.

30
40
What led you to change your view from on the one hand proposing to do something as you entered the meeting and on the other hand to do nothing as you left the meeting?---So I went up to see Ian who was the party's lawyer who had always given very, very good legal advice, and that is why this is all very difficult. I asked, I told, I recounted to him the events that had happened with Ernest and told him about Sam saying that I should come and see him. I was pretty upset and shaken when I got up there, I was upset downstairs and I didn't know what to do and I needed help. I went in and I explained to him what Ernest had told me and he asked me whether I believed it, I said yes, that Ernest was shaken up and that, that, that, did I believe him and he asked me that question a few times and he, I kept saying I did and it could have happened and I believed him. He then asked me, he then told me to put it in a different way, did Ernest give me any evidence to say that this had happened, anything concrete. I said that Ernest hadn't, like he hadn't handed me anything, he hadn't given me anything. I was concerned about the party, I was concerned about myself and what to do with the information, I was concerned about what had happened in 2015 and all of the events that led to that, and - - -

So what are you referring to now when you say all of the events of 2015? ---The fundraising dinner and the money that came in for the fundraising dinner. And, and Ian asked more questions, I can't recall all of them, the

conversation went for about 20 minutes. Got to the end and I was, like, I was quite upset, I was crying, I didn't know what to do. Ian, to Ian I said I thought, I like, I said, "We should return the money or talk to the Commission." He said, "Well, we don't have to do that just yet. Has Ernest given you any real evidence?" Like that was the, the sort of gist of it. I said that he hadn't given any physical evidence. He recounted the story about the donor not giving money and that he admitted that the Huang money had been given and that Huang was a Chinese developer.

10 Sorry, that was you drawing that to Mr Robertson's attention or the other way?---Yeah, I drew that to Robertson's attention. The conversation went on for some time about the matter but essentially I kept, I told him about how I told Ernest to get the person to come forward, I told him, I recounted everything that had happened in the last sort of half hour because it was all, it was within one hour of the meeting, and Ian I trusted to give me good advice. He said, he gave me the advice that, that if Ernest had given me no evidence then I didn't need to do any, take any action, that I should forget that I'd met with Ian, that I shouldn't diarise the meeting, sorry, and that I shouldn't talk about it with anyone. Sorry. And I didn't.

20

THE COMMISSIONER: Just pause there for a moment.

THE WITNESS: Sorry.

THE COMMISSIONER: It's all right, just take your time.

THE WITNESS: And I wanted to, like, there were occasions later with the office and when we got the letters from the Commission I excused myself from the processes around it and asked Julie to check the letter with the
30 lawyers who work with the other officers, and I stood back from it and over time it went out of my head. But it just, and then Julie asked me to sign the letters because the Electoral Commission had insisted that apparently I personally sign them and that's that, and then it went out of my head because a lot of other things were happening that were pretty dramatic at the time with other matters and MPs and problems, there's always a new drama, but this was a pretty significant one and, you know, hindsight, of course I would have done something different but I just didn't know how to deal with it, I had to go on what was said to me and like, I did trust Ian, and sorry to all the lawyers in the room, I usually don't trust lawyers (not
40 transcribable) and I didn't and I just compartmentalised it and followed it religiously. I didn't talk about it to anyone. And I gave the view a few times with the officers that I thought we should return the money, I said at one point, "We should do our own investigation," but because the Electoral Commission were investigating it, the officers, not knowing what I knew, had the view that we shouldn't do our own investigation because the commission was looking into it.

MR ROBERTSON: Sorry, whose view was that?---The other officers of the party at the time. And that was it. And I left the office and I went home and I felt uneasy about the whole thing and I, but there's a lot of pressure on you when you're in this position, and when the letter came in later it was sort of a, it was the week after my wedding and I was pretty distracted with everything else and I, yeah, at the meeting with Ian, he recommended that I forget it, that I also forget the conversation with Wong, that I don't diarise it, that he wouldn't charge me for it, and he wouldn't invoice the party for the time. It was a Friday night. I mean, that's about it really, and I left, and didn't talk about it.

THE COMMISSIONER: Did you make any notes or diarise it?---(No Audible Reply)

In the course of his meeting with you, was he engaged in any notetaking, or - - -?---No.

MR ROBERTSON: And so just to be clear about it, following the meeting of 16 September, 2016, until you've given your evidence this morning, you haven't told anyone else as to the meeting between you and Mr Wong, other than Mr Ian Robertson on 16 September, Mr Dastyari on 16 September, and you may also have told some lawyers in connection with your appearance this morning. Other than those categories, I don't want to know whether you told your lawyers in connection with today's appearance.---Okay, yeah.

But other than those categories, have you told anyone else about the meeting with Mr Wong?---No.

Since 16 September, 2016, have you had any other meetings with Mr Wong?---There was the week after, I was going to try and meet with him on the Monday. He'd, there was a, I was looking through my records, and there was a bad media story about him, alleging that he was a spy. He, I was going to go up to parliament to meet with him. I don't remember whether that meeting happened or not, but it, safe to say after that, in the weeks after that, he sort of avoided me when I was at parliament. He didn't mention it again. He actually sort of about face turned and went the other direction. And then it was in, it was, oh, I would have had a few meetings with him in the lead-up to this last election, and in the lead-up to him wanting to be on the Upper House ticket as well. He asked for meetings in 2017 about federal fundraising. When he went into the Upper House, I understand, the understanding was that he would fundraise for the party. He brought in federal and state donors frequently. I obviously didn't put him on the Upper House ticket, for other reasons other than these, which I'm happy to explain, but, yeah. I, the lead, the meetings in the lead-up to 2019 weren't very positive, and he didn't mention it again in any of those meetings.

Was the meeting with Mr Wong on 16 September the first time that you had any suspicion that something may have gone awry with donations in 2015?
---Mmm, I was worried about everything we did in 2015.

And was that worry focused on the procedural matters with Mr Clements that you referred to a moment ago?---Yep, mmm.

10 Were there any other reasons that you were concerned about donations practice in 2015?---Oh, just my own experience and exposure to how everything was done and the information that we were given at the time. The communication was very poor, and we were frequently asked to do things that we didn't have the whole picture for. So I was, I was worried about a whole lot of donations, a lot of administrative activities in 2015 relating to fundraising.

When you say you were asked to do things that you didn't have the whole picture for - - -?---Yep.

20 - - - what do you mean by that?---So obviously in this time off, which I haven't had in this job, had a lot of time to think about the events of 2015 which I haven't had the time before coming to this body before, and I remember being told but only vaguely that the money was for the dinner. Then I remember being told that there were forms missing for the dinner, I remember myself asking Kenrick Cheah to go and talk to Ernest Wong and Jonathan Yee about making sure there were forms for the dinner when I was told by other staff that there were forms missing, because even though there weren't real practices back then in terms of processes, one thing that Jamie pressed us on frequently was that there had to be forms for everything.

30 Doing the best you can, when abouts was that indication that you gave, namely, make sure you've got the forms, soon after the dinner or at some subsequent time?---I don't know. It was sometime after the dinner.

I think I interrupted your answer.---It was sometime after the dinner.

40 Yes, I think I interrupted your previous answer where you were explaining why you were concerned about donations practice in 2015.---So there was that, the control issues, that no one seemed to have ownership over anything, that - - -

Does that mean you were concerned that the processes of the party may be capable of being manipulated by people who shouldn't be capable of manipulating them, is that fair?---Partially, but also the errors, like, that I was concerned that there were errors because everyone was sort of acting on information, partial information or misinformation, there wasn't a clear understanding of who was supposed to be doing what.

But is it the case on your evidence that before 16 September, 2016 when you met with Mr Wong there was no, you had no suspicion that there may have been pretend donors of the kind that we have discussed?---I didn't realise there were.

Were you aware prior to that meeting that \$100,000 in cash had been delivered to the party office in 2015?---Yes, yeah.

10 But are you saying you had no information available to you to suggest that there was anything awry with respect to that amount of money?---I mean I think I said this before, at the time I thought it was a bit out of the ordinary and a large amount.

When did you first find out who brought that money into the office?---I think I've said this a number of times, I don't, I don't know when I was told. I don't, I don't know, it was sometime in 2015.

So before the meeting with Mr Wong - - -?---Wong.

20 - - - that happened in September 2016?---Yeah.

And happened whilst you were as assistant general secretary rather than the general secretary. Correct?---Yeah, yeah.

But you don't recall who told you that information?---No.

30 And just to be clear, what precisely were you told about who brought it into the office?---And typically this is just a vague, vague understanding, that, that Jamie had been given the money and that Jamie had given it to Kenrick.

But what about who gave the money to Jamie?---I wasn't told that at the time.

So as at 2015 and as at before your meeting with Mr Wong on 16 September, 2016, you didn't know the ultimate source of the money that you were told was brought in by, was given, was given by Mr Clements to Mr Cheah?---No.

40 So is it right that the first time that you had any information that might have led you to believe that the source of that money was Mr Huang, Mr Huang Xiangmo, was your meeting with Mr Wong on 16 September, 2016?---I believe so.

THE COMMISSIONER: You said - - -?---Well, to the best of my knowledge. I mean I, I, I, I think I've said this before, that there were public, the media at some point got involved in this and I don't know when that was, so, but I believe that was after this.

MR ROBERTSON: When you say this, you mean the meeting of 16 September, 2016?---Yeah, but I could be wrong. I mean I've been spending the last two weeks going back through everything, trying to piece together what happened and when but I just don't remember.

THE COMMISSIONER: A few answers back you referred to some matters which I think you said caused you concern, things like forms missing. You said, I think one of the first matters you mentioned was that money only was vaguely seemed to be related to the dinner. What did you mean by that?

10 ---That the, that someone in the office had said to me, and I don't remember who, that it was the money for the dinner.

But what did you mean when you said the money was only vaguely either identified as being connected with the dinner, or words to that effect. That's not exactly the words you used but that was - - -?---That - - -

- - - what I understood you to say.---That - - -

What were you referring to?---(No Audible Reply)

20

Sorry, just pardon me a moment. Did it mean that you had concerns yourself that the money which was allegedly raised by the proper method of invitations and disclosure documents being signed off by donors didn't seem to you to have been adhered to, that is the proper procedures hadn't been in place to account for whatever money was raised in this dinner. Is that what you're talking - - -?---Yeah, there was - - -

30 What – yes, go on.---Oh, just that there were, I was told by someone, and I don't know who in the office, that there were forms missing and that there were no donors related to the money and I thought Ernest and Jonathan would know and fix it all up. I was also of the view that they, they had control of the dinner and the events around it and they should look after whoever gave the money and I don't know, I don't know who in the office said it to me but they said almost certainly that this was the money from the dinner.

Mr Wong became known to you as being a fairly influential person in the Chinese community. Is that right?---Yeah.

40 And that he was, as your I think earlier evidence indicated in effect took up the role as a major fundraiser - - -?---Yeah.

- - - for Labor.---Yeah.

And that with the Chinese community largely.---Yeah.

Were you aware that he was associated with people who might have had some connection or be said to have some connection with the fundraising dinner in March, sorry, yes, March 2015, such as Jonathan Yee?---Yeah.

You knew he had some sort of relationship with him, a friendship or whatever?---Yeah.

People associated with the company Wu International?---What is it?

10 Wu, W-u International?---I don't know.

You don't know?---No.

You've heard the name Alex Wu?---No.

Okay.---Sorry. Wu International.

20 Did you know of a person by the name of Liao, L-i-a-o-u [sic], who – I think I've got the spelling right, is that right?

MR ROBERTSON: Yes, that's our best English attempt at the Chinese name.

THE COMMISSIONER: Said to be associated with Wu International. Does that name mean anything to you now?---I'm sorry, no. I'd be happy to ---

No, it's all right.---Yeah.

30 I'm just asking. That's all right. Yes, thank you.

MR ROBERTSON: Was the meeting of 16 September, 2016 with Mr Wong the first time you had any discussions with Mr Ernest Wong regarding any donations by Mr Huang Xiangmo?---No. Donations from Huang, Ernest was a conduit for the federal election, he was in the meetings with Chris Bowen about the federal donations, so Huang donated federally to our accounts for the federal campaign, so we'd talked about the federal donations quite a bit.

■ [REDACTED]

THE COMMISSIONER: Can I just ask you a completely separate matter.
---Yeah.

You are aware now, aren't you, that a number of individual donors, alleged donors, said to have contributed amounts of the order of \$5,000 were waiters/waitresses who had worked in the Jonathan Yee restaurant? You're aware of that now?---I knew that one was, yeah.

20

Didn't it become known to you that there were a number of donors, all of whom were on the staff of Jonathan Yee or the Yee family in the restaurant, which you're probably aware of the restaurant I'm talking about?---Yeah, I know the restaurant, yeah.

Didn't that come to your knowledge at some stage that there were a number of his staff who were alleged donors?---No.

30

No?---No. I didn't, I didn't know any of these names especially, like, except for Jonathan Yee on the list.

Has the subject ever been raised with you as to whether Jonathan Yee obtained cooperation from staff members to fill out forms claiming they had contributed donations at the, or in respect of the March 2015 dinner but did not?---But did not?

But did not in fact donate.---That's what I now - - -

40

You've heard that?---In 20 – yes.

In what context have you heard that?---Well, the 20 – when Ernest told me that there was a donor and that there was a massive amount of money from Huang I assumed this meant - - -

You deduced that then, did you?---Mmm.

Has anybody ever referred to the fact that these waitressing employees had been approached to cooperate in this so-called scheme around this March 2015 dinner?---No one told me that.

Thank you.

MR ROBERTSON: In response to one of the Chief Commissioner's questions a moment ago you said that you knew one person who was associated with the restaurant industry. Who was that one person?---That
10 was Jonathan Yee. He - - -

But you weren't aware of there being any other what I'll call pretend donors associated with Mr Yee?---No. I didn't know they had an association directly with him or with him at all.

THE COMMISSIONER: What relationship do you have with Jonathan Yee?---I, I know him. He ran for council in 20 – I don't remember what year but for City of Sydney.

20 Which council?---City of Sydney. So he was a, on the business roll. He runs Chinese Friends of Labor with Ernest and he's a business owner and that's, that's about it. I mean I think we met, we, we run functions at his restaurant frequently. Young Labor does mainly because it's quite a small venue, yeah.

MR ROBERTSON: We were talking before about discussions with Mr Wong regarding donations from Mr Huang Xiangmo.---Yeah.

30 I just want to be clear about this. Before 16 September, 2016 did you have any discussions with Mr Wong regarding donations that had been made by Mr Hung Xiangmo?---Yes, we, yes.

And it's your evidence that that was focused on donations that had been made at a federal level rather than a state level. Correct?---Yes.

40 So is it the case that the first time that you had any knowledge or suspicion that Mr Huang Xiangmo had made any donation that found its way into the state party, either NSW Labor or Country Labor, was when Mr Wong told you on 16 September, 2016?---I believe so, yeah.

Well, your best recollection sitting there now is that that was the first occasion on which you had any idea that Mr Huang Xiangmo had made any donation that found its way into a New South Wales account as distinct from a federal account. Correct?---That's right. That's to the best of my knowledge, yeah.

Both to the best of your knowledge and the best of your recollection sitting there now. Correct?---Yeah. That's right.

But prior to that meeting on 16 September, 2016 you knew that Mr Huang Xiangmo had made donations that found their way into a federal account. Correct?---Correct. Yeah. Multiple.

The text messages that we saw on 16 September, 2016 between you and Mr Wong, can you just identify what telephone number you were using at that time?---[REDACTED]-5-2.

10 And is that your telephone number now?---Yeah.

Is that the only mobile telephone number that you have used in the period between 2015 to today?---I believe so, yeah.

You've never had some other mobile telephone number with a different telephone number?---No.

20 But I take it obviously you would have used landline telephones from time to time such as in your office in Sussex Street?---Yeah.

Before I forget to do it too, Commissioner, I tender the series of messages between Ms Murnain and Mr Wong of 16 September, 2016 starting at 6.06pm.

THE COMMISSIONER: Yes. I think that's 143, is it? Yes, Exhibit 143.

30 **#EXH-143 – SCREENSHOT OF MESSAGES SENT FROM KAILA MURNAIN TO ERNEST WONG DATED 16 SEPTEMBER 2016**

MR ROBERTSON: And then next I tender the screenshot of a message sent from Ms Murnain on 16 September, 2016, 7.18pm saying “I’m at the top of the escalators”.

THE COMMISSIONER: Will become Exhibit 144.

40 **#EXH-144 – SCREENSHOT OF A MESSAGE SENT FROM KAILA MURNAIN AT 7.18PM DATED 16 SEPTEMBER 2016**

MR ROBERTSON: I take it when you sent that last message, Ms Murnain, you were locked out of a secured door and you were drawing Mr Robertson’s attention that he needed to let you in?---Yeah, yeah.

Do you recall whether, when he brought you in whether he used any access card or like instrument to swipe himself and yourself into the building?---I can't remember, sorry.

Well, for example, I take it that you had a meeting with him in his office on a different level to the level that you entered the building?---Yes, yeah.

10 And do you recall whether on entering the lift or somewhere nearby Mr Robertson scanned an access card in order to obtain access?---I don't remember that but he would have because it was so late at night. It was after 7.00.

Can we please bring up the, what I'll describe as the auditor's certificate document of 2 November, 2015.

THE COMMISSIONER: 2 November?

20 MR ROBERTSON: 2 November, 2015. You're aware, Ms Murnain, aren't you, that the provisions of New South Wales electoral law require audits to be conducted on a yearly basis in relation to matters such as electoral expenditure?---Yes.

And HLB Mann, M-a-n-n, Judd, J-u-d-d, has from time to time been NSW Labor's auditor. Correct?---Yeah, yeah.

30 And you know, don't you, that the auditor will ordinarily require the party to give a certificate or other indication to the effect that the auditor has been given full and free access to the accounts and other documents relevant to its exercise?---Yes.

And can you see one of those letters or certificates on the screen dated 2 November, 2015?---Yes, yeah.

And if we can just turn the page, please, you will see there a series of dot points that identify a series of matters that are being attested to in this letter. Do you see that?---Yeah.

40 If you just note toward the very middle of the page there's a dot point that says, "All expenditure incurred has been disclosed in the disclosure." Do you see that there?---Yes.

And if you draw your attention to the first full dot point, "Any donations received that were not processed through the bank account statement has been included in the disclosure." See that there?---Yeah.

And so you understood that with letters of this kind the person who is signing it is indicating to the auditor that so far as that person is concerned, they have been given full and free access to the accounts and that they

correctly identify things like who have made donations and what expenditure in connection with elections has taken place. Correct?---Yes.

And if we turn to the next page.---(not transcribable) sign it.

I take it that's your signature on this letter?---Yeah.

Now, this is in 2015 when you're the assistant general secretary.---Yeah.

10 And it's been signed in November of 2015.---Ah hmm.

Do you recall why it was that you signed this document rather than Mr Clements?---Because he asked me to.

So you have a specific recollection of Mr Clements asking you to sign this particular form?---Yeah.

And if we just go back to the first page of this document you will see that it's in relation to the disclosure for the financial year ended 30 June, 2015.
20 Do you see that there?---Yeah, yeah.

And so that's obviously the financial year that includes the Chinese Friends of Labor event in March of 2015?---Yeah, yeah.

At the time that you signed this letter did you believe the representations that are set out in it to be true?---Um - - -

If you want time to have a look at the individual representations please let me know and we can flick through them.---No. I mean I, I, I mean it's
30 going back a long time but if the general secretary asked me to sign it I signed it.

Are you saying that you signed it because the general secretary asked you to sign it and you didn't seek to come to your own view as to whether or not the representations in it were correct or not?---No.

THE COMMISSIONER: Sorry, you're agreeing with the proposition?
---Oh, yes, yeah. It, it wasn't, as assistant secretary signing letters of this kind wasn't my usual, wasn't the practice of my position. Jamie Clements
40 asked me to on occasion sign these things, I presume because he didn't want to.

MR ROBERTSON: Well, did he give any explanation as to why he wanted you to sign this particular document rather than sign himself?---No, but this would happen, this happened frequently.

As at 2 November, 2015 when you signed this document, did you have any reason to believe that there were any issues with the accounts for the year

ended 30 June, 2015 which are the subject of this letter?---I think I've raised before that I, I had general concerns about all the activities of the party leading up to this letter, but you do rely on the information given to you by the accounts team.

10 But you had no specific information available to you at that time to suggest, for example, that NSW Labor accounts showed money as being donated by a particular person, but in point of fact the money was donated by someone else?---I really can't remember what I, what I knew and what I didn't, but I, I don't, I don't know is the answer to that question.

20 Well, is it the case that the first time you had any reason to suspect that what I've been calling pretend donors, someone who has pretended to donate money but in fact the money has come from somewhere else, was the first time you had any reason to suspect that when you had your meeting with Mr Wong in 2016 or was it at some prior time?---I think it was at the time when I met with Wong for that specific dinner, but I mean I caveat that by saying I thought the organisation had serious or fundamental issues with the way it fundraised money in 2015.

Is it fair to say you had some general concerns including as at the time that you signed this letter on 2 November, 2015 - - -?---Yes.

- - - but didn't have any specific information about specific donors or specific events?---No, not to the best of my knowledge. It's 2015.

30 Well, not just to your knowledge, but to the best of your recollection as you're sitting there you don't recall any specific reason why you would think that there were what I've been calling pretend donors?---No, not, no, not to the best of my recollection.

40 To the best of your recollection the first time anything of that nature was brought to your attention in any specific way was your meeting with Mr Wong in 2016. Is that right?---Well, I'm, I'm actually not sure of the chronology. I don't know whether the commission had started asking questions about that, his election returns in 2016. So they ask a lot of questions about donations and we're constantly submitting amended disclosures so there could have been many problems. We're constantly replying to their letters for months after the event.

So as a summary of what you just said, that there may well have been errors that you're aware of?---Yeah.

But in terms of a deliberate attempt to mislead as to who the true donor was, you had no reason to suspect that until Mr Wong drew that to your attention in September of 2016. Is that right?---Yeah.

Can we go, please, to Exhibit 123. Chief Commissioner, I tender the letter to which I made reference earlier which I've described as the auditor's certificate letter. Not the one that's presently on the screen, the one that was on the screen before.

THE COMMISSIONER: The certificate, 2 November, 2015, the auditor's certificate will be – is that the appropriate way to describe it, auditor's certificate?

10 MR ROBERTSON: Yes, if the Commission pleases.

THE COMMISSIONER: Then that will become Exhibit 144 [sic].

#EXH-145 – AUDITORS CERTIFICATE LETTER DATED 2 NOVEMBER 2015

20 THE COMMISSIONER: Thank you.

MR ROBERTSON: Ms Murnain, I have now put on the screen a document that you and I discussed on the last occasion that you were here namely, a notice that was issued by the Electoral Commission. Do you see that there? ---Yeah.

And you recall receiving this letter from the Electoral Commission?---Yes, now that, yeah, yeah, at the last, yeah.

30 And in terms of the date to assist you with that, this was a letter dated 6 December, 2016.---Yeah.

And so is it consistent with your memory that that would have been brought to your notice around about that time?---Yes, yeah.

40 And at least at that point in time you knew because it stated in the second paragraph that an officer of the Electoral Commission considered that he had reason to suspect that cash political donations made at the event on 12 March were made in contravention of relevant legislation. Correct?---Yes, yeah.

Now, at that point in time you knew because Mr Wong had told you that there were issues in relation to the Chinese Friends of Labor event. Correct?---Correct.

And if we can turn, please, to page 5 of Exhibit 123 you ultimately signed a response to that notice to produce on 19 December, 2016. Correct?---Yeah, yeah.

If we just turn to the page to the responses. You'll see in response to question 1 you were asked, "Who handed the donations to the ALP on 9 April, 2015?"---Mmm.

And you responded "Mr Cheah." Correct?---Yeah.

Now, at that point in time you knew, didn't you, that it was Mr Clements who had given the money to Mr Cheah. Correct?---Yes, yeah.

10 So to be clear about that, you were told in 2015 by someone, the name of whom you presently don't know, that Mr Clements had given money to Mr Cheah on 9 April, 2015. Correct?---Yeah, yeah.

20 So at the time that you signed the response to the Electoral Commission's letter you knew that the response to question 1 was false, didn't you?---I wouldn't, it depends how you read it and I think the last meaning or the last, I agree with you that it's, who gave the money to the party on 9 April was the question, but if, if it's who handed the donations to the ALP I, because Julie Sibraa presented all of these questions and I asked her to send this to the lawyers to check it all, is if the question is about well, who gave it to the accounts team to bank then Kenrick would have been the right answer, but because it's actually asking who handed the donations to the ALP it's obviously incorrect. So - - -

You at least agree, don't you, that the response that came under your signature to question 1 was at least misleading? You at least accept that, don't you?---It's incorrect.

30 THE COMMISSIONER: Well, it was apparent, wasn't it, from the notice to which your attention was drawn a moment ago that Investigator Smithers was saying that he had a reason to suspect the cash political donations made at the function were made for and on behalf of other persons and so on. ---Mmm.

40 So that was the nature of his investigation and that was the issue to which his questions were directed, where did money come from, from donors or not. He wasn't concerned with the internal handling of money, of one person handing money to another, he directed his question, question 1, plainly to where the money came from into the ALP. Isn't that right? ---Yes, yeah.

Given the nature of what he was investigating, it had to be so.---Yes.

There's no other interpretation you could put on it, is there?---I don't know what Julie, Julie prepared this and I didn't - - -

No, but you had to read it and sign off on it.---I gave it to, I told her to check it with the lawyers and then was told that I had to sign it and drove into work on the 19th, which the office was closed, to literally sign a cover letter.

But just follow what I'm saying. You were - - -?---Mmm, it's incorrect, absolutely.

You were dealing with a very serious matter, namely an investigation by the Electoral Commission. That is a serious matter, isn't it?---Ah hmm.

10

So that having regard to the nature of the matter, the investigation into the ALP NSW branch, you'd have to be very careful and not cavalier about how you answered Mr Smithers' questions. Isn't that right?---And if I could go back in time I would do this all very differently.

Well, that's a different question, but what I'm putting to you is, this was not some casual inquiry a person was making, this was an official employed by the Electoral Commission in the course of an investigation, directing questions to which he was entitled by law to compel answers. You appreciated that, didn't you, at the time?---Ah hmm.

20

So I only raise those matters because this was a matter that required serious attention to assist Smithers in his investigation. Is that right?---Yes.

Well, when you look at question 1 and the answer, it's fanciful to say that you were properly answering his question, isn't it, because he was concerned with where the money came from into the ALP, wasn't he? ---Yes.

30 Well, the response is just wrong, isn't it?---Yes.

Well, with your knowledge at the time as to the true story, as Mr Wong related it to you, the answer given was wrong in circumstances where you had reason to know that there was another story as to where the money came from.---Yes.

Not from Mr Cheah but from Mr Huang - - -?---Yes.

- - - according to Mr Wong. Is that right?---Yeah.

40

What's your explanation then for having given that answer to question 1? ---That I delegated it to our governance director and then asked her to check with the lawyers whether this was correct.

But she didn't have the knowledge you had.---I accept that and I'm regretting every minute of my decision-making after I met with the lawyers and I, I don't know what else to say .

Yes.

MR ROBERTSON: When you say the lawyer checks the response, do you recall which lawyer that was?---No. Holding Redlich, someone there.

Do you recall whether Mr Robertson was involved in that exercise?---No, I don't.

10 But I think you've at least accepted, based on your answers to the Chief Commissioner, that the response at least to question 1 at the time that you signed this letter was false. Correct?---Yes.

And you knew it was false at the time. Correct?---I - - -

I'm sorry, what was the answer to that question?---I don't, I, I don't know what I thought at the time.

20 But you knew as at the time that you signed this letter, firstly that what the Electoral Commission was seeking to identify - - -?---I believed that - - -
- - - was who had brought, who had brought in the donations to the party. Correct?---Yeah.

And at that point in time - - -?---I believed it to be false.

- - - you knew because you knew that Mr Wong had told you that there was money that had been donated by Mr Huang Xiangmo. Correct?---Yes.

30 And so at that point in time you knew that the response to question 1 under your hand was false. Correct?---Yes.

THE COMMISSIONER: And equally with question 4 the answer was false, wasn't it?---It is false, yeah.

MR ROBERTSON: Can we please bring up the transcript of 29 July, 2019, page 1678.

40 THE COMMISSIONER: Just while that's coming, the auditor's certificate to which I've referred, 2 November, 2015, should be recorded as Exhibit 145, not 144.

MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: Thank you.

MR ROBERTSON: You'll recall, Ms Murnain, that you and I discussed the Exhibit 123 document that's up on the screen on the last compulsory examination on 29 July, 2019. Correct?---The, the one that I just looked at?

The one that we looked at that you signed of 19 December , 2016.---Yeah.

We discussed that on the last occasion, do you remember that?---Yeah.

And on that occasion I asked you whether you were in a position sitting in the witness box then to answer questions 1 and question 4.---Mmm.

And you said you weren't. Correct?---(No Audible Reply)

10

So I'll just ask you to draw your attention, if you have a look at the number 30 towards the left-hand side of the page.---Yeah.

And can you just read to yourself the question that I asked you starting at about line 27. The number 30 is the line number. And you'll see I asked a question starting, "Is it fair to say sitting there now." Do you see that there? ---Yes.

And do you see the response that you gave to that question?---Yeah.

20

And just read to yourself the next two questions and answers.---I, this is why I wanted to come back here.

So we'll deal with that in stages. First you'd have to accept, wouldn't you, that the evidence that you gave on the last occasion and in particular the evidence that I've drawn attention to on page 1678, line 26 through to line 38, was false. Correct?---20, sorry?

30

Starting with the question, "Is it fair to say sitting there now." That's about line 27.

MR NEIL: Just before the witness answers that question, may I have one moment, Commissioner?

THE COMMISSIONER: Yes, certainly.

MR NEIL: I'm sorry. Just having regard to paragraph (a) in sub section (4) of section 37 of the Independent Commission Against Corruption Act.

40

THE COMMISSIONER: I'm sorry, what are you going to, section?

MR NEIL: 37(4)(a). May I start by accepting that that provision does not cut down the effect of subsection 2, so what I'm putting is a discretionary consideration and nothing else. It is at least possible that the answer to the question that has just been asked by Counsel Assisting might fall within paragraph (a) and subsection 4 of section 37 given - - -

THE COMMISSIONER: That's the provision, but nothing in section 37 makes inadmissible any answer, document or thing in proceedings for an offence against - - -

MR NEIL: Correct. So I'm accepting - - -

THE COMMISSIONER: That doesn't help you though, does it?

10 MR NEIL: No, it doesn't help me. I'm accepting from the outset that what I'm about to put is a purely discretionary consideration, but suppose – and let me put the argument in this way – suppose that the answer given to the question that Counsel Assisting has just asked were to fall within section 37(4)(a) then if that was so there would be no protection under section 37(3). The adverse consequences to, the possible adverse consequences to the witness in that event outweigh the value of the answer to your investigation and therefore is a matter of discretion. My submission is that the witness ought not be directed to answer that question.

20 THE COMMISSIONER: But, Mr Neil, the question is really directed towards, if you, like giving the opportunity to your client to correct the record because from line 27 through to 39 can be said to be completely contradicted by her evidence today. Correcting the record - - -

MR NEIL: Yes. Well – I'm sorry, I'm interrupting, Commissioner.

30 THE COMMISSIONER: No, no. Well, simply in terms of being able to rely upon evidence that she's given today the record has to be corrected, doesn't it? I mean it sits there uncomfortably with her evidence today and it seems to me in terms of fact finding it can't just sit there unattended now that we've had the evidence from her today. It's a dilemma. It's a problem. I don't see why it now, if the evidence was wrong the only fall-back position as it were your client would have would be to give evidence of any circumstances which could explain why those answers were wrong. For example, she didn't understand what was being put or whatever else, but I don't apprehend that she's saying that, but say for that I don't see why as a matter of discretion she shouldn't be taken back to the answers she gave which are contradictory now.

40 MR NEIL: Correcting the record is one thing and of course as, Commissioner, you will have observed, she is anxious to, she is doing so.

THE COMMISSIONER: She?

MR NEIL: She is doing so.

THE COMMISSIONER: Yes, yes. Well, that's certainly - - -

MR NEIL: But requiring her under a direction to make an admission, a direct admission as to whether particular evidence was or was not false, which is the word that Counsel Assisting uses, is not going to advance that line of inquiry, in our submission at least, not in a way that is sufficiently valuable to the investigation to justify the potential prejudice that she might suffer if she answers that question - - -

THE COMMISSIONER: The other aspect - - -

10 MR NEIL: - - - as opposed to correcting the record.

THE COMMISSIONER: The other aspect of the matter is that the questions relate to not our investigations of course but the Electoral Commission's investigations and - - -

MR NEIL: We understand.

20 THE COMMISSIONER: - - - there is still an open question I think as to whether or not there are others who may share the responsibility for having given false answers to the Electoral Commission.

MR NEIL: We agree that that is an open question.

THE COMMISSIONER: And - - -

MR NEIL: That's a - - -

30 THE COMMISSIONER: It's hard to disentangle from the matrix of facts when there's obviously been more than one person has had input into the subject matter of those questions why this witness should not have those questions put to. But I understand your submission.

MR NEIL: Yes.

MR ROBERTSON: Can I just add this submission.

THE COMMISSIONER: Sorry, Mr Neil, did you want to add something.

40 MR NEIL: No, Your Honour. That was it.

MR ROBERTSON: And can I just add this submission. Relevant to the inquiry is whether or not Ms Murnain knowingly lied on the last occasion and if so, why she's changed her evidence on this occasion. That's relevant to matters such as credit and it's relevant to the investigation generally of the Commission. So on my submission it's an appropriate question to be asked.

THE COMMISSIONER: Yes, I allow the question.

MR ROBERTSON: So, Ms Murnain, you must accept now, mustn't you, that your answers to the questions that I asked you from line 27 on page 1678 on the screen through to your answer on line 38 of the same page were false. Correct?---Yes.

And you knew they were false at the time you answered those questions that I asked you on 29 July, 2019. Correct?---Yes, and that was the reason I wanted to come back.

10

I'll come back to the reasons. I just want to focus on some aspects of the transcript first.---Ah hmm.

But you're agreeing with me that that part of your evidence on the last occasion was knowingly false. Correct?---Yeah.

20

Can we go, please, to page 1664 of the transcript. Towards the bottom of the page at about line 36 you will see a question I start asking you starting with the words "The investigation that the Electoral Commission was conducting". Do you see that there?---Sorry, where - - -

We might zoom in a little bit for you. See between number 30 and number 40 you see "Mr Robertson: The investigation that". Do you see that there? ---The investigation - - -

I'll just ask you to read that question and your answer to yourself as well as the next question and answer.---Yeah, yeah.

30

And if we can then just turn the page.---Yeah.

And just below, or just next to line number 20 the Commissioner asked you "Did they concern you?" And you answered, "Yes." Do you see that there?---Yeah.

And I'll just ask you to read to yourself the next question and the longish answer that you give starting at about line 22 through to about line 37 or thereabouts.---Yeah. Yeah.

40

And if you continue that down to about line 41 where it says "What about Mr Wong", and just let me know when you've read that to yourself.---Yeah. At the time I answered that question I wasn't, I was so consumed with trying to figure out if I was even at the dinner I just, I've never been to ICAC. I've never sat in a witness box. I just - - -

But you would have to at least - - -

MR NEIL: I'm sorry, I don't think the witness has finished answering that question.

MR ROBERTSON: I'm so sorry. I'm so sorry.---It's all right you can go on.

Take your time. If you want a moment that's completely fine.---That's fine.

Sorry, had you completed your answer to my previous question?---Can you ask the question again.

10 You would have to at least accept, wouldn't you, that the evidence that I've just drawn your attention to was at least misleading. Correct?---That wasn't my intent. I'm not aware that I didn't remember. I was trying to do my best and that's why I wanted to come back.

If you'd just focus on line 41 and if you want some time just let me know. There I say, "What about Mr Wong?" And you say, "I honestly don't remember." Do you see that there?---Yeah.

20 But at the time you answered that question you knew that you'd had a discussion with Mr Wong who told you about Mr Huang Xiangmo. Correct?---That was before the Commission's inquiries, though, it was before the letter came and I thought you were asking - - -

Well, can I try and put it this way. One of the questions that I was asking and the Chief Commissioner was asking you on 29 July was why it was that you didn't engage in any investigations regarding the donations in 2015. Correct?---Yes.

30 And the effect of your answers was to say that you were busy with by-elections and that you knew that other people were looking into it, such as the Electoral Commission. Correct?---Yeah. I would add to that now.

Well, in truth there was an additional reason, wasn't there, namely that you knew that something was up with respect to the donations in 2015 because Mr Wong had told you and you had decided to keep quiet. Correct?---I took advice and it was bad advice, and yes, I didn't, but I, I, and I'm sure the officers will tell you this, but I, it wasn't that I did nothing, I wanted to do more, but everyone was of the view that we let the Electoral Commission deal with it.

40 When you say everyone, are you focussed there on the party officers?---Yes, officers.

Can we go please to page 124 of the CE brief. It might put some context around what you've just explained. You told us on the last occasion that the matter of the NSW Electoral Commission investigation was a matter that you drew attention to the Administrative Committee. Correct?---I think you asked me about it and I was trying to remember whether I did.

But it was at least a matter that I think you said was discussed at the Administrative Committee level?---Well, you, you asked me and I said it was at some point, yeah.

And it was also, the question of donations was also discussed at the party officers level. Correct?---Yeah, yeah.

10 If you just have a look on the screen, do you see there a set of minutes of a party officers' meeting of 12 January, 2017.---Yeah.

And that was a meeting at which you attended. Correct?---Yes, yeah.

And if you have a look further on down the page, you moved two motions according to these minutes, one concerning Labor Action Committees and one concerning donations and disclosure.---Yeah.

Do you see that there?---Yeah.

20 Do you recall that meeting?---I recall it from the minutes, yeah.

Was one of the things that informed your decision to move those two motions the information that Mr Wong had told you in September of 2016? ---I think it was more because of the, because of the NSW Electoral Commission notice as opposed to the Wong part of it.

30 So to be clear, you were concerned that the Electoral Commission was investigating a particular matter in relation to donations and disclosures and in relation to a particular Labor Action Committee and you wished to ensure that a review take place with respect to those matters.---And I wanted to know if there were more problems.

THE COMMISSIONER: What does the statement in (a) there towards the bottom of the screen?---Sorry, which?

“The party’s major donation practices and procedures,” it starts off, “Review the party’s major donation practices and procedures.”---Yeah.

40 What does the words, “The party’s major donation practices and procedures,” as at that date, refer to?---Donations over \$1,000.

I see.---Yes, so we, so a year before this we put all donations over \$1,000 online on our website, or five, I’m not sure, it was one of the two figures, but when all of this happened, when the letter came in and there was an issue with this, my concern as I told people was how do we make sure this doesn’t happen again.

Thank you.

MR ROBERTSON: Is it fair to say that one of the reasons why you delegated the exercise of preparing a response to the Electoral Commission's inquiries was your concern that you knew that Mr Wong had told you about Mr Huang Xiangmo's donation and you wanted to therefore leave it to others to prepare the response?---Partially, but it was also the process at the time. The governance director would deal with these issues. Like we created the role so that it would separate the political staff from the governance procedures.

10

To the best of your knowledge, what inquiries did Ms Sibraa engage in, in order to come up with the answers to the Electoral Commission's inquiries that we saw in Exhibit 123?---I honestly don't remember.

So is it right to say that you haven't had a discussion with Ms Sibraa as to either what she should have done before she did it or what she has done after the fact?---Yeah. I, there was one element which I said, "You need to talk to the lawyers about this," and then, and I, and I know she did speak to Kenrick at the very least.

20

How do you know that?---I, I don't recall how I know, but I do, that she spoke to Kenrick.

Do you know whether she engaged in any investigations as to the question of which amounts of money were to be allocated to NSW Labor and which parts were to be allocated to Country Labor?---I don't know.

30

Is that something you know anything about now?---Well, obviously there was Ernest Wong's admission that it was Huang's money and that's, that's obviously something I know now.

But is it the case that no one has told you about how it came to be that some of the \$100,000 was allocated to NSW Labor and some of it was allocated to Country Labor?---I'm, again I've been trying to recreate everything back the in my head about what happened and I remember discussions at the time between staff of the part who are all trying to do their best, trying to work out what, what to do with the fact that people hadn't disclosed who donated, the missing forms essentially, and like, I have vague recollection of that.

40

The mobile telephone number you gave us before, that's your current mobile telephone number. Correct?---Yeah, yeah.

Is it the same, the mobile telephone that you presently have, how long have you had that phone for?---I don't know. Maybe a year or two. Maybe a year.

THE COMMISSIONER: Could I just ask you something else. Just backtracking for a minute, this fundraising dinner as has been said many

times, took place in March 2015. It was not until 18 months later that Mr Wong rings you and wants to meet with you there, that day, that night to tell you about this donation.---Mmm.

What prompted him 18 months later to become agitated and wanting to meet immediately with you and tell you?---I speculate here, but I speculate that the commission was asking questions before they sent the letter to us.

But you don't know?---I just don't remember, like I - - -

10

Now, Ms Murnain, I appreciate some of the questioning today has not been a very pleasant experience for you and you deserve credit for having instigated this further compulsory examination to address these issues. It's plain that those who do have knowledge now, apart from yourself, about the donation so-called of \$100,000, knowledge of that is within the facts known by four persons at least. One of course is the donor himself, Mr Huang, the other is Mr Clements and the other is Kenrick Cheah, and of course Mr Wong. This is an opportunity for you in this examination to reveal any other knowledge you have, whether based on conversations you've had with
20 for example Mr Cheah in particular who was very closely involved - - -?
---Yes.

- - - in handling this parcel of money, as to the circumstances surrounding it and as it were, whose handiwork this really was, it wasn't just one person, it was more than one.---Yeah.

I'm providing you with an opportunity, and that's an opportunity to assist this Commission further in its investigation to volunteer to it, to the Commission, any other information you have gleaned from speaking to any
30 one of the four persons I've mentioned or any other within the ALP or connected with this fundraiser. Is there any information that you care to share with the Commission beyond what you've already given?---Yes.

What is that?---So I want to go back to the events of 2015, if that's okay. I, at the time as the assistant secretary, obviously the relationship with the general secretary wasn't, wasn't very strong, in fact I was terrified of him, and he would often give directions to us to fix things or do things. In 2015 he did that on the occasion of making sure there were forms for this, for the missing forms, the money that had - sorry .

40

Just pause there. Just collect yourself. There's no need to rush it. It's important you don't rush it but you just tell it as it is.---He would frequently ask us to do things, including back then in 2015, and that includes when these funds were discovered not to have forms with them, or some of the funds, I didn't, I didn't quite know that all of them, at the time I was only told that some didn't have forms. We in the office, I was told by several people, including Jamie, that this money was from the dinner and this was the dinner money. So when they told me that there were no forms, as in the

staff told me there were no forms, I'd asked Kenrick Cheah to go and speak to Wong and Yee to get the forms filled in by the donors. Ernest had called on a number of occasions after the dinner to say there were money being dropped off or funds being dropped off. I remember checking with Jamie to make sure he was, or what he wanted with that. He, I remember the conversation on at least two separate occasions where he'd said he just wanted forms for this dinner.

10 He said what?---He wanted forms for the dinner or wanted forms that accompanied the money, after the event and after the money had come in.

You're talking about creating and backdating in effect the forms. Is that what you're saying?---Well, I don't, he just wanted, he wanted forms, he told us that that's what he wanted.

20 What did you take him to be meaning?---That he wanted forms, that he wanted us to have forms for the dinner. And it was one of those situations where you couldn't ask more questions of him because he didn't respond well to that on any occasion, including so far as to say sort of, "Don't ask any more questions."

Whatever exact words he used, did you take his meaning to be obtaining forms improperly if necessary?---(not transcribable) I believe so, yes.

Take your time, but if you would respond to what I asked you.---Yes.

You mean yes, you did take him to be endeavouring to convey that message?---Yeah.

30 All right.---I resented the fact that I had to have anything to do with anything back then, I felt I wanted to leave Sussex Street, I wasn't paying attention. I asked Kenrick to get the forms from Chinese Friends of Labor from Yee and Wong, from the donors, and I didn't, and I don't recall much, I don't remember the other conversations around that. It was hectic and I, I didn't want to be a part of whatever, whatever was going on.

40 And one other matter, in any discussions with Mr Cheah over this matter, did he impart to you knowledge of any impropriety concerning the fundraiser in March 2015?---He said, he, I just can't remember what he said. He, I know I, I couldn't remember who had told me that Jamie had brought the money in. I thought it was Kenrick but I don't know if it was Kenrick, but I think that, that he did at some point say that to me. Yeah, I just, I don't remember our conversations. Like, I've, I've tried so hard and I don't want to invent things that – there were lots of questions all the time from people and I just - - -

All right. Now, I see the time.

MR ROBERTSON: I have about 10 minutes, 10 to 15 minutes which I prefer, if it's convenient to the Commission, to deal with that now with a view to avoiding if possible bringing Ms Murnain back. I also need to have a further discussion with Mr Neil with a view to dealing with the matter that he and I discussed a moment ago.

THE COMMISSIONER: Very well. Mr Neil, how does that affect you? Is that - - -

10 MR NEIL: It does not affect me and I must say, and subject to anything else that Counsel Assisting asks, there were a small number of matters that I had wished to ask for permission to ask about.

THE COMMISSIONER: Yes, all right. Very well, we'll deal with those in due course.

MR ROBERTSON: I just want to try and understand the chronology as best I can, as best we can - - -?---I'll try.

20 - - - in response to the questions you've just been asked by the Chief Commissioner. So do we take it that a short period of time after the Chinese Friends of Labor event on 12 March, 2015 Mr Clements made it clear that forms would be necessary to be obtained in relation to that event. Is that right?---Yeah.

30 And doing the best you can, that would have been within perhaps a week or two of the Chinese Friends of Labor dinner of 12 March, 2015?---There was one within the weeks of the dinner and then there was one after the, or after the election as well. Like, he mentioned something at a fundraising meeting and he said something after that in the office, but I just, I can't remember exactly. I can only tell you what - - -

But doing the best we can, the state election was on 28 March, 2015. Correct?---Yeah.

And so sometime - - -?---Or 23rd.

40 I'm sorry?---Or 20 - I don't remember what date. It might have been the 23rd, was it? The 28th. I don't know.

My note is 28 March, 2015 but I may well have that wrong.---Blends in together after a while.

But at the very least you recall Mr Clements raising the issue of forms between the dinner which was 12 March, 2015 and the election which was in late March of 2015?---Yeah.

And you recall him raising that a further time after the election. Is that right?---Yeah, that's right.

And do we take from what you were saying a moment ago that you realised as assistant secretary that money had been received or perhaps money was coming in but not necessarily with forms associated. Is that what we understand your answers to the Chief Commissioner to mean?---That money was coming in. I didn't, I didn't know there were no forms till after it had come in.

10

So you - - -?---And I don't know how many times that happened.

So you knew that Mr Clements was putting a premium on ensuring the forms had been received, but you weren't across how the forms were matching the money. Is that fair?---Mmm.

But Mr Clements made it quite clear by at least his words if not his actions that he wanted forms to exist whether or not they reflected the true state of the affairs. Is that right?---Yeah.

20

And that issue of forms is a matter that you raised with Mr Cheah. Correct? ---Yeah.

Did you raise it with anyone else such as Mr Yee or anyone else within Chinese Friends of Labor?---Uh-uh.

So you're sole course of conduct in relation to Mr Clements' request to ensure that there were forms to match the money was to task Mr Cheah with the exercise of ensuring that happened. Is that right?---Yeah. And I, like, I, I asked the digital team to send him a copy of the, the, one of the, or send a form, form to, to Kenrick.

30

So you asked someone within your office to ensure that Mr Cheah had a copy of the form that would need to be signed by relevant people. Is that right?---Yeah.

Now, you've accepted a moment ago that some of the evidence that you gave before the Commission on the last occasion was false. Correct? ---Yeah, yeah.

40

And that some of it was at least misleading. Correct?---Not intentionally but, yeah.

But at least, well, at least some of the evidence you gave on the last occasion was knowingly false. Correct?---Like, I wasn't sitting there thinking about all of this. Like, I wasn't – I was sitting there trying to answer your questions.

But you're at least accepting now that some of what you told the Commission on the last occasion was false. Correct?---Yes.

10 Why was it that you told false evidence to the Commission on the last occasion?---I wasn't attempting to tell you false evidence. I was trying to do my best in what is an incredibly stressful situation, trying to remember things from five years ago. I've never been in this situation before and when I left I felt sick and like I needed to come back and that's why I told my lawyers about, I didn't have much time before I got here either to think about everything from the past and I was trying desperately to put it all together in my head and I wanted to set the record straight desperately.

20 You may have just answered this in the answer you've just given, but why was it that you decided to come back to the Commission and give the evidence that you've given today, and when you're answering that question I don't want to know any discussions that you've had with any lawyers. But other than what you've already identified what were the reasons for you coming back to the Commission and telling us what you've told us today? ---That I felt sick that I hadn't answered the questions properly and I, I don't want to, I want to do the right thing. I don't want to do the wrong thing and I felt I didn't answer the questions well or I didn't, I just didn't feel like I'd given you everything that I thought you needed to know.

Well, it was more than not just answering the questions well, wasn't it? It was the fact at least on reflection you realised some of what you told us on the last occasion was not correct. Do you agree with that?---Yeah.

30 And that was one of the reasons why you've come back to give the evidence that you've given before the Commission today. Is that fair?---Yes.

Commissioner, that's the examination subject to one matter. I wonder whether you'd be prepared to adjourn briefly in the hope that we can deal with the matter that I discussed with Mr Neil before because I'm mindful to avoid having to have Ms Murnain back again in a compulsory examination if I can avoid that. That might not be possible but if we can possibly deal with it today I suspect Ms Murnain and her counsel would prefer to do it today.

40 MR NEIL: We would prefer that.

MR ROBERTSON: And I certainly would as well.

THE COMMISSIONER: Yes. Very well. Now, Mr Neil, do you want to raise those questions with your client?

MR NEIL: Is now a convenient time to do so?

THE COMMISSIONER: Yes, certainly.

MR NEIL: Thank you. Ms Murnain, I want to ask you about some evidence that you gave about the occasion when you tasked Mr Cheah to talk with Ernest Wong and Jonathan Yee about the incomplete or missing donor forms.---Yeah.

That being an occasion that occurred in 2015.---Yeah.

10 In relation to that episode you gave evidence which according to my note is to the following effect. Ernest Wong and Jonathan Yee were in charge of the dinner and you felt they should look after whoever donated the money. ---Yes.

And when you gave that evidence you were giving evidence about your state or mind about that matter.---Yes.

20 What did you mean when you said at the time you thought that Ernest Wong and Jonathan Yee should look after whoever donated the money?---That they should get forms from the donors that gave the money.

Now I want to ask you about evidence that you gave about your meeting with Mr Robertson on 16 September, 2016.---Yeah.

You met with Mr Robertson in his firm's offices in the MLC Centre. Is that correct?---Correct, yes.

You sent a text to him which is now in evidence, at 7.18pm on 16 September. Correct?---Correct.

30 When you sent that text to him you had, you were at the top of the escalators that ascend to the front door of the MLC Centre from the intersection of King and Castlereagh Streets. Is that correct?---Correct.

When you got to the top of those escalators, the glass door into the MLC Centre was closed and locked. Is that right?---That's right.

And it was for the purpose of having Mr Robertson let you into the building that you sent the text to him. Is that correct?---Yes.

40 You saw Mr – after you sent the text, sometime later you saw Mr Robertson through the glass door approaching the glass door from the other side. Is that correct?---Correct.

He opened the door. Is that right?---Yes.

He conducted you to the lifts of the MLC Centre. Is that correct?---That's correct.

And together you ascended to his firm's offices. Is that right?---Yes.

Once you had reached his offices, where did you go?---We went into a meeting room that had some chairs around the edges.

When your discussion with him concluded, what did you do?---I went home.

Very well. Was it Mr Robertson who conducted you out of the offices?
10 ---I, I think he walked me to the lift from memory and then I left via the lift and the front doors I could get out.

Yes, you can let yourself out of the front door.---Yeah.

Throughout the whole of the time that you were present in Mr Robertson's offices on the evening of 16 September, 2016, did you see anyone else in those offices other than Mr Robertson?---No.

So far as you could observe, the offices were empty but for him. Is that
20 right?---Yes.

You gave evidence that Mr Robertson had said that he would not send you a bill - - -?---Yes.

- - - in connection with the meeting or conversation that you had had with him.---Yes.

Did he ever or his firm, Holding Redlich, ever send you, in fact send the party a bill that to your knowledge related to that meeting and conversation?
30 ---I don't believe so, no.

Have you ever seen a document that originated from Holding Redlich that referred to, from anyone at Holding Redlich, that referred to that meeting or conversation, your meeting and conversation with Mr Robertson on the evening of 16 September, 2016?---No.

Between the time when your first compulsory examination concluded and the time when, as you have said, you spoke with your lawyers, did you speak with anyone from the party about the fact or content of your
40 conversation with Mr Wong on 16 September, 2016?---No.

Or your conversation with Mr Dastyari on the same evening?---No.

Or your conversation with Mr Robertson on the same evening?---No. I followed his, Robertson's advice very strictly, you were the, lawyers generally were the first.

And apart from your legal team and have you discussed any of those matters, the fact or content of your conversation with Mr Wong on 16 September, the fact or content of your conversation with Mr Dastyari on the same evening and the fact or content of your conversation with Mr Robertson with anyone else - - -?---No.

- - - before now?---Before now, yeah.

10 The decision to speak with your lawyers about the evidence that you had given in the first compulsory examination, whose decision was that?
---Mine.

And the decision to take steps which have led to this second compulsory conference, whose decision was that?---Mine.

Anyone else's?---You, yeah, lawyers.

Anyone else?---And the Commission.

20 No one from the party?---No.

No one from ICAC?---No.

No staff member or representative of ICAC?---No.

Just your decision?---Yep.

If it please, those were the matters we wished to deal with.

30 THE COMMISSIONER: Thank you.

MR ROBERTSON: Can we adjourn for about five or 10 minutes just with a view to dealing with the other matter that I identified and I've got a formal tender to make when it's convenient as well.

40 THE COMMISSIONER: Yes. Just before, Ms Murnain, I release you, it is appropriate that I should say that it must be said that you should be given credit for taking the initiative in returning to the Commission. This appears to me to have been a genuine attempt by you to assist the Commission in its investigation. The assessment of your evidence and your credibility in relation to the evidence you've given in the compulsory examinations can of course only be properly undertaken when all the evidence, including evidence that will be given in the public inquiry has been received and assessed. You may step down. Thank you. Let me know when you're ready to - - -

MR ROBERTSON: Can I deal with the formal tender. I tender the first page of the minutes of party officers' meeting of Thursday, 12 January, 2017, being the document at page 124 of the CE brief.

THE COMMISSIONER: Yes, very well. That will be admitted and become Exhibit 146.

10

#EXH-146 – LETTER TO PAUL JOHNSTON FROM ROLAND HASSALL OF SPARKE HELMORE LAWYERS DATED 16 AUGUST 2019

MR ROBERTSON: May it please the Commissioner.

THE COMMISSIONER: Let me know when you're ready to - - -

20 MR ROBERTSON: And if we could perhaps just adjourn briefly.

THE COMMISSIONER: Yes.

MR ROBERTSON: May it please the Commissioner.

THE COMMISSIONER: I'll adjourn.

SHORT ADJOURNMENT

[4.17pm]

30

MR ROBERTSON: Chief Commissioner, I just have a couple of short questions to tidy up with Ms Murnain but otherwise that will be the examination.

THE COMMISSIONER: Very good. You go ahead.

40 MR ROBERTSON: Ms Murnain, you made reference to your telephone number before and I think you said your existing physical telephone you've only had for the last year or two. Is that right?---Ah hmm.

Your previous telephone, do you still have that or have you disposed of that, do you recall?---From what period?

The telephone that you would have had in 2015 and 2016.---I don't know.

Has that always been a party-issued telephone?---Yeah, yeah.

So throughout your time as assistant general secretary and now the general secretary you've always used a phone provided by the party?---Yeah.

And you haven't had some separate personal mobile telephone?---No.

Do you recall what service provider, Telstra, Optus or some other provider?
---I'm with Telstra.

10 And it's been Telstra with your telephones all the way from 2015 to today.
Correct?---I think so, yeah.

In terms of emails, have you deleted any of the emails that you have exchanged with anyone between 2015 and today?---I, I may have. I would have definitely and we had a server crash in 2016 at some point as well so
- - -

Just focusing on any email communications between you and Mr Wong.
---Oh, Wong.

20 Have you deliberately deleted any emails between Mr Wong and you since 2015?---Not that I can remember but when, when you took all of our documents you would have everything that I had.

But since 2015 you haven't deliberately deleted any emails that you've exchanged with Mr Wong but it's possible that some may have disappeared for reasons other than your deliberate erasing of emails. Is that fair?
---Yeah, yeah. We've had a lot of crashes. We're not, we're not the most
- - -

30 THE COMMISSIONER: I'm sorry, I can't hear you.---We've had a lot of, we had a lot of crashes on our system in 2016 so there were times when we just didn't get anything for a very long time. So, so there, yeah, there could be things missing from my inbox.

MR ROBERTSON: That's the examination, Chief Commissioner.

THE COMMISSIONER: Yes. Thank you.

40 MR ROBERTSON: At the moment in my submission you shouldn't release Ms Murnain from her compulsory examination summons only in case there are materials that have been dealt with today that require some further questioning and investigation.

THE COMMISSIONER: Very good. So, Ms Murnain, you heard the situation that you are under summons. I am not going to excuse you from that summons. That means that if there is a need for you to return to the Commission for any further evidence in compulsory examination then

you'll be required to attend. That's separate and different from a summons you may have received to attend the public inquiry commencing next week. ---Yeah.

So having said that, you may step down. You're excused from today but the summons will still operate. We'll endeavour to avoid any inconvenience to you wherever that's possible.---Okay.

Thank you.---Thank you.

10

You may step down. All right. Mr Neil, anything further?

MR NEIL: Would you give me one moment, Commissioner. May I speak to you for one second. Thank you, Commissioner. Earlier in this compulsory conference Ms Murnain was asked a question about whether Mr Clements had ever delegated to staff through her. Sorry, in the previous compulsory examination.

20

THE COMMISSIONER: I'm sorry, in the first examination?

MR NEIL: In the first examination.

THE COMMISSIONER: Yes. I'm sorry, what's the point?

MR NEIL: Ms Murnain had wished to say something about the evidence that she gave in answer to that question.

THE COMMISSIONER: I'm sorry, I couldn't quite hear you.

30

MR NEIL: I'm sorry, I'll start again.

THE COMMISSIONER: Sometimes the microphones unfortunately don't pick up.

40

MR NEIL: During the first compulsory examination Ms Murnain was asked a question I am told, I've not seen the transcript of course, about whether Mr Clements had ever delegated to staff through her, and she wishes she tells me to say something about the evidence she gave in answer to that inquiry and I wonder if she might be given that opportunity now before she goes.

THE COMMISSIONER: She can do that now if she wishes. Very well.

MR NEIL: I'm sorry, I have just heard of this.

THE COMMISSIONER: Yes. What did you want to say on that matter? ---Sorry, just that, and obviously I don't have everything I said from that, but that was one that kept me up at night. He absolutely delegated to me all

the time, and I know I made that clear in other parts of what I said, but that, for whatever reason, whenever it was asked of me I said, “Not that I can recall,” or, “No,” or something, so I just, it kept me up at night.

So I’m sorry, what’s the point you want to make about it?---Just that I – of course Jamie delegated to me, yeah, I just, I contradicted myself within my evidence.

All right.

10

MR ROBERTSON: So just to be clear about that, as I understood your evidence from the first occasion you weren’t given specific portfolio areas by Mr Clements to take responsibility for in your capacity as assistant general secretary. Is that right?---Oh, no, I was, mainly for seats and campaigns and things, but I think you, you’d asked me questions about finances or something, like I can’t remember the exact, and you said, “Did Jamie delegate to you or directly to other staff?” And I think the answer to the question should have been both, but I, I don’t know, like I - - -

20

Let me just try and understand it in stages.---Yes.

Was it the case that Mr Clements – I withdraw that. There were two assistant general secretaries at the time you were assistant general secretary. Correct?---Yep, yep.

Did Mr Clements give you portfolio areas as distinct from the other assistant general secretary?---Yeah, from time to time, yeah, yeah.

30

But is it fair to say that was done on an ad hoc basis rather than saying that you had particular responsibilities in particular areas?---To the best of my memory, yes, except the field and the seat-specific stuff, so I would look after the campaigns for the seats, so - - -

Would it be wrong to say for example that your portfolio areas included fundraising generally?---It wasn’t my main responsibility, it was sort of everybody’s responsibility. So it wasn’t my job to make sure there was money coming in, that was Jamie’s.

40

So you had some involvement in that area but it wasn’t your main responsibility.---Yeah, and that was, I said that last time but I think the part that concerned me or that kept me up at night was did Jamie direct staff directly or did, did he direct them through me, and he did both.

But Mr Clements didn’t for example say you’re in charge generally with respect to fundraising. Is that right?---Uh-uh.

Sorry, you need to answer out loud.---Yes, sorry, that’s right.

THE COMMISSIONER: Sorry, you're agreeing with the proposition?
---Yeah, I'm agreeing with you.

MR ROBERTSON: And is it right to say the delegations were more on an ad hoc basis, that he would ask you to perform particular tasks or he might ask others lower than you in terms of hierarchy to perform particular tasks. Is that right?---Yeah, yeah.

10 But it certainly wasn't the case that in respect of the whole of the business of NSW Labor that he said there were particular portfolio responsibilities for you, particular responsibilities for the other assistant general secretary and particular responsibilities that the general secretary, Mr Clements, would take care of?---It wasn't like that, no.

It was much more ad hoc, on a - - -?---It was chaotic, yeah.

Chaotic and on a really task-by-task basis rather than more general portfolio areas. Is that fair?---Yeah, and whatever Jamie wanted to avoid doing or wanted to force some of us to do, yeah.

20

Thank you.

THE COMMISSIONER: Yes?---There was a question you had before about Mr Huang and, Huang, and what I believed he wanted from the party.

All right. Well, now, I think we're going to leave that subject matter for the time being.---Yeah.

30 Should we need to take your evidence on that matter, that will be on another occasion.---Okay.

Now, does that provide you with the opportunity you wanted to explain yourself in terms of the evidence you gave in the first examination?---I think so.

All right. If you're satisfied with that, thank you for that.---Thank you for the opportunity.

40 You may step down. You're excused for today. Thank you. Yes, I'll adjourn.

THE WITNESS STOOD DOWN [4.40pm]

AT 4.40PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.40pm]