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COMPULSORY
EXAMINATION

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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 THURSDAY 22 AUGUST, 2019

AT 10.00AM

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.

MR ROBERTSON: Chief Commissioner, Mr Ian Robertson attends in response to the summons that was issued to him.

THE COMMISSIONER: Yes, thank you, Mr Robertson. Ms Cheeseman, you seek leave to appear?

MS CHEESEMAN: I do, with my learned friend Mr Sharp. Thank you, Chief Commissioner.

10 THE COMMISSIONER: Yes, I grant leave for you to appear on behalf of Mr Robertson.

MS CHEESEMAN: I am.

THE COMMISSIONER: Yes. I grant that leave. Just before we commence with some directions that I'll make, Ms Cheeseman, is your instructing solicitor here? Do you have an instructing solicitor as such here?

20 MS CHEESEMAN: I do not, no. It's - - -

THE COMMISSIONER: That's all right, I just wanted to see who was in the hearing room, that's all.

MS CHEESEMAN: If it's convenient at an early point, I'd like to address briefly on the circumstances in which we find ourselves here.

THE COMMISSIONER: Yes, I'll just deal with some directions before I get to that point.

30 MS CHEESEMAN: Thank you.

THE COMMISSIONER: I direct that the following persons may be present at this compulsory examination – Commission officers, including transcription staff; Mr Ian Robertson; his legal representatives, Ms Elizabeth Cheeseman, Senior Counsel, and Mr Phillip Sharp of counsel.

40 In respect of this compulsory examination, I propose to make a direction under section 112 of the Independent Commission Against Corruption Act 1988, restricting the publication of information with respect to this compulsory examination. The effect of the direction will be to 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 made by the Commission. A direction under section 112 of the Independent Commission Against Corruption Act may be varied or lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest. It is important and I

note that it is a criminal offence for any person to contravene a section 112 direction. With that explanation I make a direction under section 112 of the Independent Commission Against Corruption Act in the following terms.

10 Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by the witness, Mr Ian Robertson, the contents of any exhibits tendered, the contents of any documents that may be shown to him, any information that might enable Mr Robertson to be identified and the fact that he has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

20 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THE WITNESS, MR IAN ROBERTSON, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS THAT MAY BE SHOWN TO HIM, ANY INFORMATION THAT MIGHT ENABLE MR ROBERTSON TO BE IDENTIFIED AND THE FACT THAT HE HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

30 THE COMMISSIONER: Now, I propose to call Mr Robertson to the witness box, but before I do that, Ms Cheeseman, you want to raise something?

MS CHEESEMAN: Yes, thank you, Chief Commissioner. As the Commission is aware, Mr Robertson - - -

40 THE COMMISSIONER: Sorry, just could I interrupt you. If you could try and move closer to that microphone, it may be that needs to be extended upwards, but we'll see how we go.

MS CHEESEMAN: I apologise.

THE COMMISSIONER: No, that's all right.

MS CHEESEMAN: I'm battling a bit with a sore throat, so I'll try and keep my voice up.

THE COMMISSIONER: That's all right. If we have any trouble I'll let you know.

MS CHEESEMAN: Thank you.

THE COMMISSIONER: Sorry, just before we get going, we might ask one of our technical people to see if they can get an extension for the microphone so it's easier for counsel to speak, but let's try it for the moment, Ms Cheeseman, and if we need to interrupt you to adjust the microphone we'll do that.

MS CHEESEMAN: Is that any better?

THE COMMISSIONER: Yes, I think it is, yeah.

MS CHEESEMAN: We'll rearrange at the bar table.

THE COMMISSIONER: All right. I think we'll still get somebody in here to make it easier for you by putting an extension on the microphone so you don't have to bend over to reach it. Okay.

MS CHEESEMAN: Thanks, Chief Commissioner. As the Commission's aware, Mr Robertson is the National Managing Partner of the firm Holding Redlich. The firm has been granted leave to appear for two of the associations that will be appearing at the public hearing starting on Monday. Mr Robertson is the principal solicitor with carriage of the matter for each of those clients. The circumstances in which he's been required today have come about only during the course of yesterday. Mr Robertson became aware of it. Permission has been sought to communicate the fact of this to his clients in circumstances where the Commission has indicated that Mr Robertson should not continue to act. I understand, based on the most recent exchange of correspondence that that position may be reviewed at the end of today's examination and at that point in time I may wish to address in terms of a variation of the section 112 direction that has been made because the circumstance at the moment is on the Thursday before the Monday hearing the solicitor representing two of the organisations has been both precluded from speaking to them and from explaining to them why he is not present to provide advice at a critical stage of the preparation for appearance before the public hearings next week.

In addition to that, in terms of the circumstances of requiring the solicitor with carriage for two of the parties who have leave to appear at the public hearing, it is a matter of significant concern to Mr Robertson that, as things stand, he has come as required to answer the summons but is unable to have prepared himself in any sense for what he might be being asked to answer today. So I just want to put on the record that there is a concern about the lateness, the effect that it will have on his representation of his clients, and that is again something that we might wish to revisit towards the end of

today. If it's convenient to do so at this point, Chief Commissioner, I indicate that Mr Robertson will be seeking a direction under section 38 of the Act.

THE COMMISSIONER: All right. There's nothing else you want to add?

MS CHEESEMAN: No, thank you, Chief Commissioner.

THE COMMISSIONER: All right. Thank you.

10

MR ROBERTSON: Can I just deal with some formal tenders that arise in light of what my learned friend has just said. As my learned friend just indicated there has been an exchange of communications between officers of the Commission and my learned friend's instructing solicitors since the service of the summons on Mr Robertson. I tender as a bundle pages 25 through to 31 of the bundle that's been prepared for this compulsory examination. It's not a copy of a bundle that my learned friends have but they do have each of the letters within it. We'll identify each of the letters on the transcript.

20

THE COMMISSIONER: Sorry, does Ms Cheeseman have a copy?

MR ROBERTSON: Has each of the letters, but not in the - - -

THE COMMISSIONER: Ms Cheeseman, have you been given - - -

MR ROBERTSON: - - - same format as identified.

THE COMMISSIONER: Sorry. Just to confirm what you have, Ms Cheeseman.

30

MR ROBERTSON: In fact I might deal with it this way, Chief Commissioner. I'll provide my learned friend with a copy of pages 25 through to 31 which is the bundle that I now tender as a bundle. That's comprised of the following documents. First, a letter from the Commission to Mr Robertson of 21 August, 2019. A response from Holding Redlich of the same date. A further letter of 21 August, 2019. A further letter from Holding Redlich again 21 October, sorry, 21 August, 2019 and a further letter of this morning from the Commission 22 August, 2019. I tender that as a bundle.

40

MS CHEESEMAN: Chief Commissioner, may I address one aspect of that bundle.

THE COMMISSIONER: Yes, certainly. Just pardon me a moment. Yes.

MS CHEESEMAN: My learned friend addressed the bundle by saying it's a bundle of correspondence between my instructing solicitors and officers of

the Commission. The correspondence has been written by the managing partner of Holding Redlich in the particular circumstances of the events of 21 August in the service of this summons. Mr True is not instructing, like, as apart from having an involvement in communicating with the Commission, I am not taking instructions from Mr True nor is Mr Sharp. We do not have an instructing solicitor and that has been out of concern to preserve what might happen if there is an necessity to put in what I might call a Chinese wall afterwards. So apart from the correspondence and from having Mr True be the vehicle to communicate rather than having
10 Mr Robertson doing it in his own right, he's not in the capacity of being instructing solicitor in these proceedings.

THE COMMISSIONER: Thank you for that explanation. Very well. Then that bundle of documents will be admitted and marked Exhibit 147.

#EXH-147 – CORRESPONDENCE BETWEEN OFFICERS OF THE COMMISSION AND HOLDING REDLICH OF 21 AND 22 AUGUST 2019

20

MR ROBERTSON: Can I just draw two matters to the Commission's attention in relation to that bundle. First, in relation to the letter that's paginated page 25 to which I think my learned friend made a passing reference this morning, that involves the Commission drawing attention to Mr Robertson to the effect to the fact that he may – I emphasise the word may – be put in a position of conflict, see that in the second paragraph, the second line. So it's not correct, with great respect, for my learned friend to say the Commission has set in terms there is a conflict and he must
30 withdraw, but there is force with respect in what I understood to be her suggestion, which is to revisit the question of what Mr Robertson might tell his firm's two clients, Australian Labor Party NSW Branch and Country Labor, after the end of the substantive parts of the compulsory examination. That's the first point. The second point is that in the letter that starts at page 29 of the tendered bundle, there was a suggestion of some breach of section 30(3) of the Independent Commission Against Corruption Act. I apprehend that's not pressed in light of what my learned friend has said this morning, and I'm certainly proceeding on that basis.

40 THE COMMISSIONER: Yes. Sorry, that's in the letter of the, page - - -

MR ROBERTSON: The letter of 21 August, 2019, from Holding Redlich.

THE COMMISSIONER: 26?

MR ROBERTSON: The second page of that letter, page 30 of the bundle.

THE COMMISSIONER: That's page - - -

MR ROBERTSON: Page 30 of the bundle.

THE COMMISSIONER: 30. Okay. Just a minute.

MR ROBERTSON: The second full paragraph is a reference to section 30(3) of the Act, which my learned friend hasn't addressed on, and I assume is not pressed.

10 THE COMMISSIONER: Yes, thank you. All right.

MR ROBERTSON: Subject to that, I'm starting to see my friend half standing up.

THE COMMISSIONER: Ms Cheeseman.

20 MS CHEESEMAN: Commissioner, it's correct that I'm not pressing an application at this stage under section 30. The concern articulated in the letter remains, Mr Robertson is here to do his best, but that it might be difficult in the circumstances, and if it's necessary to revisit, then I will certainly ventilate that point.

THE COMMISSIONER: All right. Thank you. All right, well, we're ready to proceed then. Thank you, Mr Robertson. Do you take an oath or an affirmation?

MR I. ROBERTSON: An oath, sir.

<IAN ROBERTSON, sworn

[10.27am]

THE COMMISSIONER: Yes, thank you. Just take a seat there. And just put on the record your full name.---My full name is Ian Lyall Robertson.

Mr Robertson, I understand from what Senior Counsel has said that you wish to invoke the provisions of section 38 of the Independent Commission Against Corruption Act, is that so?---I do, yes.

10

You're familiar with those provisions?---To an extent, sir.

You understand the effect of them?---(No Audible Reply)

You have an understanding of the effect of the provisions of section 38? ---Yes.

20

Thank you. Mr Robertson, you appreciate of course that whether or not a declaration is made under section 38, you remain under the duty to answer all questions truthfully?---I'm sorry, could you say that again, Commissioner?

Well, you understand that the making of a declaration under section 38 still requires you to answer all questions truthfully?---Yes.

And to produce any document or item that may be required of you either in the summons or in due course?---Yes. Yes.

30

The effect of the provisions of section 38, as you apparently are aware, is that it does offer the protection for a witness so that the evidence you give in this compulsory examination can't be used against you in other proceedings in the future such as criminal proceedings, civil proceedings, or administrative proceedings, but that it can be used in circumstances of a witness committing an offence under this Act, such as – that is, the ICAC Act – such as giving false evidence. You understand that?---Yes.

40

Commissioner, could I perhaps make it clear that the concern I have, as you would be aware, is that I am here in the capacity of a partner of a law firm which advises the two unincorporated associations which are, are subject to the investigation here. My firm and my role is solely that of legal advisor. Everything to the best of my knowledge that I know about these matters, I know on an occasion of legal professional privilege. As you would be aware, sir, that privilege is the clients' and I don't have the clients' authority to waive it. I sought the Commission's permission to inform the client in order that I could obtain those instructions, but that permission was denied. So I need I think to make it clear that I can't waive the legal professional privilege of our clients. I do not have those instructions and I have been prevented from obtaining them.

I understand what you say, but that's not addressing what I've just put to you a moment ago. I'll put it again. You understand that the provisions of section 38 provide the type of protection to which I've referred a moment ago?---Yes, Commissioner.

But the exception to that is that the evidence may be used against you in the event of any offence under the Independent Commission Against Corruption Act, such as giving false evidence. You understand that's the operation and effect of the provision?---Yes, I understand that, yes.

10

Thank you.

Application has been made on behalf of Mr Robertson to invoke the provisions of section 38 and I propose to make an order accordingly. Accordingly, pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Robertson and all documents and things that are or may be produced by him during the course of his evidence at this compulsory examination are to be regarded as having been given or produced on objection and there is accordingly no need for him to make objection in respect of any particular answer given or document or thing produced.

20

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

30

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Robertson, can you state your business address, please.---Yes. Level 65, MLC Centre, 19 Martin Place, Sydney.

40

What's your mobile telephone number?---[REDACTED].

Have you maintained that mobile telephone number since 2015?---Yes.

The mobile telephone that you're presently using, is it the same mobile telephone as you used in 2015 or 2016 or a different one?---No, it's the same.

The same physical device and same telephone number?---No, not the same physical device, I don't think, it will have changed, but the number has remained the same.

So doing the best you can, you probably had a different physical device in 2015 and 2016, but the same telephone number. Is that right?---Yes.

10 What mobile telephone provider have you used for that mobile telephone number, for example Telstra or Optus, if you recall?---It's arranged by my firm but I believe it's Telstra.

And that hasn't changed since 2015, has it?---No.

You're the National Managing Partner of the firm Holding Redlich. Correct?---Yes.

20 And as you've explained to the Chief Commissioner, you have acted for the Australian Labor Party NSW Branch and for Country Labor from time to time. Correct?---Yes. To be clear, my firm acts. I am usually the supervising partner, but not always.

And so various individuals have acted and provided advice to both of those two unincorporated associations. Correct?---Yes.

And you're usually the managing, you're usually the responsible partner but not always.---Correct.

30 And presumably you don't do all of the work associated with those matters, some of that's delegated to more junior employees?---Correct.

You have met a Ms Kaila Murnain before I take it?---Yes.

You know her to be the General Secretary of the Australian Labor Party NSW Branch?---I do.

And you know that she took over that role towards the start of 2016? ---Yes.

40 You've met with her on a number of occasions?---Yes.

You also know a Mr Ernest Wong. Correct?---No, I don't believe I know Mr Wong.

You at least know of who he is?---Yes, but only vaguely, frankly. I know him to have been a Labor member of the Legislative Council of New South Wales. I don't believe I've ever met him.

So at least in 2016 you would have known that Mr Wong was a member of the Legislative Council. Correct?---I'm actually not sure that I did know that in 2016. I know that, I know that he was now, but I don't know that I knew that then.

What about Mr Huang Xiangmo, H-u-a-n-g Xiangmo, X-i-a-n-g-m-o, noting that sometimes it's said Huang Xiangmo, sometimes it's said Huang Moxiang.---I've never met him. I only know of him because of extensive media publicity about him in a number of ways.

10

And you at least knew him during the course of 2015 and 2016. Is that fair? ---No.

What about during the course of 2016, would have you known of his existence in that period of time?---No, I don't think so.

You're aware of what line of work Mr Huang is in or at least is reported to be in?---Not of my known knowledge, no.

20

When you say that, you mean you've seen media reports as to that matter? ---Yes. The first time I believe I took some notice of Mr Huang's name was when the former General Secretary of Labor Party, Mr Dastyari, was the subject of a great deal of publicity involving Mr Huang, but I think that was subsequent to 2016, in fact I'm almost certain it was.

Are you saying that was when Mr Dastyari was general secretary or when - - -?---No, subsequently when he was a senator.

30

So you're aware of reports about Mr Huang when Mr Dastyari was then Senator Dastyari. Is that what we take from that?---Yes, I'm aware of the media reports.

And the media reports drew to your attention that fact that Mr Huang was at least reported to be in the property development industry. Correct?---No, I'm not aware that Mr Huang was in the property development industry.

40

Well, from those media reports, what did you take Mr Huang's line of work to be?---I understood him to be a very high net worth Chinese businessman, but I'm not aware and I don't recall reading the source of his wealth or his business activities.

You're aware aren't you that for at least a substantial period of time, New South Wales law had prohibitions on the classes of persons who were entitled to make donations to political parties on a state level?---Yes.

And you've been aware that one of those classes of prohibited donors is property developers?---Yes.

And you're aware that that's been the position in New South Wales law since before 2015?---Yes.

At least at the time that you became aware through reports of Mr Huang, you must have known, mustn't you, that there would be some question as to whether Mr Huang would be entitled to make donations to the Australian Labor Party NSW Branch or Country Labor. Correct?---No.

10 So you're saying that when Mr Huang's identity came known to you by way of media reports, that didn't lead you to question whether Mr Huang might be a person who was prohibited from making donations on a state level to the two unincorporated associations or either of them that you've identified? ---No.

Have you later become aware of information which would lead you to that view or at least that suspicion or concern?---No.

20 So to be clear about that, are you saying that on no occasion – I withdraw that. I want to ask you about an event in late of 2016, and just to help you get your bearings, I think you've accepted from me that Ms Murnain became general secretary towards the start of 2016. Correct?---I think so.

And that's consistent with your best recollection as to when she started in that role. Correct?---I'm not certain of the precise time she became general secretary but that sounds about correct.

And her predecessor was Mr Clements. Correct?---Correct.

30 And his predecessor was Mr Dastyari?---Correct.

I want to suggest to you that in September of 2016, this is while Ms Murnain is the general secretary, she made contact with you by telephone on a Friday night after business hours, was distressed and asked to speak to you urgently. Take as much time as you need to think about that proposition I've just put to you and whether you recall it, but I want to know whether you recall Ms Murnain making contact with you by telephone on a Friday evening in or around September of 2016, asking to speak to you urgently and in circumstances where she showed some concern or perhaps distress. ---No, I don't.

40

Are you quite sure about that?---Yes.

So to be clear, you don't have any recollection of a telephone call of that kind and any invitation by you for her to come to your office regarding that matter?---No, I don't recall that.

Can I try and assist you this way. Can we please have up on the screen Exhibit 144, which is page 24 of the bundle that you have, Chief

Commissioner. It's not a document that my learned friends presently have but they will see it on screen shortly. Mr Robertson, if you just have a look at the screen in front of you, you will see a screenshot that appears to be from a mobile phone with Ian at the top of the page. Do you see that there?
---Yes.

And do you see towards the bottom there is a message of 16 September, 2016, 7.18pm saying, "I'm at the top of the escalators". Do you see that there?---Yes.

10

Now, I want to suggest to you that at about 7.18pm on 16 September, 2016, Ms Murnain sent you a message saying, "I'm at the top of the escalators." Does that ring any bells?---No.

So doing the best you can sitting there now, you have no recollection of receiving a message of the kind that you've now seen on the screen from Ms Murnain?---No.

20

Do I take it from that that you have no recollection that on or around that date you met Ms Murnain at the top of the escalators that ascend to the front door of the MLC Centre on the corner of King and Castlereagh Streets?---I have no recollection of that.

And does it follow from that that you have no recollection of taking her up to your office and having a discussion with her?---No, I have no recollection of that.

30

Chief Commissioner, before I ask the next questions I just want to make some very brief submissions on the question of whether you should permit me to ask the questions. I next want to put to Mr Robertson that there was a meeting on that date and that certain matters were uttered both by him and by Ms Murnain. Given that that is a meeting between a legal adviser and an individual, in my respectful submission it's appropriate for the Commission to first pause to consider whether firstly, that's a permissible question and secondly, even if it is a permissible question, whether the Commission should in the circumstance of a particular case permit me to ask it. That directs attention first to section 37 of the Independent Commission Against Corruption Act. As you know, Chief Commissioner - - -

40

THE COMMISSIONER: Those provisions relate to the first of the two points you just raised.

MR ROBERTSON: That's so. As you know, Chief Commissioner, subsection 2 amounts to a general abrogation of privileges, duties of secrecy and other restrictions on disclosure and makes clear both on its terms and in its context that it abrogates all forms of privilege including legal professional privilege. There is then a limited reinstatement of legal professional privilege by subsection 5 but it's not a general reinstatement of

the kind recognised at common law or under the Evidence Act but rather, as the Chief Commissioner will note, by reference to subparagraph (b) of subsection 5 it's only associated with providing or receiving legal professional services in relation to the appearance or reasonably anticipated appearance of a person at a compulsory examination or public inquiry before the Commission.

10 As you've heard, Chief Commissioner, I'm asking questions at the moment about what may or may not have occurred on 16 September, 2016. As you know, the referral to this Commission from the Electoral Commission did not occur until 15 January, 2018. Plainly enough that meeting, if it happened, couldn't be for the purposes of providing legal professional services in connection with an actual compulsory examination or public inquiry in circumstances where of course there was no investigation at that point before the Commission at all. But also not in my respectful submission be reasonably arguable that that meeting, if it happened, could have been in connection with a reasonably anticipated appearance because of course at that point in time there was no reason to think that there would be any referral to this Commission at all.

20

So on the face of that, in my submission, there would be no reason of privilege that would prohibit me from asking or permitting me to ask the questions regarding that particular meeting. As Mr Robertson has, with respect, fairly pointed out, he is not in a position to waive any privilege with respect to any meeting that may or may not have occurred on that date. But as the terms and context of section 37 make clear, in my submission, it could be reasonably arguable by his client that that meeting if it happened occurred in circumstances of privilege.

30 There's then a second question, in my submission, which is even if it wasn't a privileged meeting if it happened, whether the Commission should nevertheless stay its hand in relation to that matter. In my submission, there may be circumstances in which there may be communications which are general or may have been protected by legal professional privilege, which privilege is then abrogated by section 37, but as a proper exercise of the Commission's powers, the Commission decides to, as it were, stay its hand and not press for information of that kind. Plainly enough, that decision to proceed or not to proceed would be a matter that the Commission would need to consider having regard to its functions generally, and in particular,
40 its functions to pursue matters in the public interest.

Here, as the Commission knows, there is a question as to whether there was a meeting that occurred on the date that I've identified, and if so, what the substance of that meeting is. In those circumstances, and given that it's an important matter for the investigation generally, in my submission, even accepting that there's something in the nature of a discretion or evaluative judgment for the Commission to undertake, in this particular circumstance

the Commission would not stay its hand and would permit me to ask those questions.

10 There's an allied question as to whether the Commission should deal with this matter immediately or whether it's appropriate for those acting for the, what I'll call NSW Labor and Country Labor, to make submissions as to that matter. This of course is an investigation, and an investigative Commission, not a court process. Matters of procedural fairness and the like need to be viewed in that manner. In circumstances where it does not
10 seem to be reasonably arguable that what occurred at the meeting on 16 September, if it happened at all, were privileged, and in circumstances where there is a significant interest in the progression of the investigation for questions to be asked in relation to that matter, in my respectful submission, the Commission would rule that I should be permitted to ask this next line of questions concerning whether a meeting occurred on 16 September, 2016, and if so, what the content of that meeting was. Please the Commission.

20 THE COMMISSIONER: Yes, thank you, Mr Robertson. Yes, Ms Cheeseman.

30 MS CHEESEMAN: Thank you, Commissioner. In terms of Mr Robertson's position in answering questions, and whether or not section 37(5)(b) operates so that he does not need to answer the question, the first submission that I would make, and I take the objection under section 37(5)(b), is that Mr Robertson is not in a position to know what his clients', what information his client had on the occasion that's suggested to have been 16 September, 2016, and it may well be that the circumstances that the client was aware of were such that notwithstanding this inquiry was not
30 commenced until some time later, the client would be in a position to demonstrate to the Commission that the occasion was one where there was a reasonably anticipated appearance at an examination or public inquiry before this Commission, even if it took some time for that Commission to in fact, sorry, for the Commission to in fact establish that inquiry. It depends entirely on what is in the client's remit, which Mr Robertson has been precluded from obtaining instructions or discussions to enable him to be in a position to know whether or not the client wishes to make an application under section 37(5)(b). That same issue would flow through to the second
40 issue that my learned friend has identified as to whether or not in the circumstances the Commission might stay its hand. Mr Robertson, if compelled to answer in circumstances will be doing so over objection, given he is not in a position to know whether his client wishes to make the objection and it is a circumstance in which the client should have legal representation available to press the objection before this questioning is embarked upon.

THE COMMISSIONER: Well, Ms Cheeseman, just on the first issue, it's plain that the provisions of section 37 do abrogate the privilege in question

here, the question being whether or not the limited restoration of privilege in the circumstances of section 37(5)(b) exist or may exist. As to that, the provisions of section 37(5)(b) are expressed to be addressed to privileged communications passing between the persons mentioned specifically in relation to the appearance or reasonably anticipated appearance of a person at a compulsory examination or public inquiry before the Commission. In circumstances in which the meeting about which questions are sought to be asked occurred in September 2016 or are said to have alleged to have occurred in September 2016, whether or not the Electoral Commission at that time had commenced its investigations, it certainly hadn't finished them. There's no suggestion that there might be a referral of the matter by the Electoral Commission to this Commission, and the referral in fact occurred a great deal of time later, as Mr Robertson has stated in his submissions. It seems to me there's absolutely no basis upon which it can be said or could be said by the clients in this case, the two associations to which reference has been made, to say that there was going to be an appearance or reasonably anticipated appearance in this Commission. It seems to me that it's unarguable that the exception in that provision section 37(5)(b) applies. But am I missing something? It seems to me that Mr Robertson's, Counsel Assisting's, submissions to me must be correct and I can't see how any matter that's known to us or that could be addressed by the two associations who are legally represented could possibly establish that those provisions apply.

MS CHEESEMAN: On, on, the, the only basis upon which I can advance an argument, Commissioner, is in terms of the statutory construction not being privy to or advising or in any way taking instructions from the primary clients. The statutory construction point would be that the words in relation to are of broad ambit and that the use of a compulsory examination or public inquiry before the Commission, it may well be that the clients may wish to mount an argument based on what was known to the individual at the time that circumstances existed such that they thought it would be, it was reasonably anticipated that they would be called to appear and although not disclosed to Mr Robertson as a hypothetical, that was the purpose of seeking his legal advice on that particular occasion. I just can't advance the factual premise but the client should have an opportunity to be heard on it.

THE COMMISSIONER: Well, you say the clients may wish - - -

40 MS CHEESEMAN: May wish - - -

THE COMMISSIONER: - - - to argue, but if they do or did wish to, they'd be seeking to argue the unarguable. I mean, it's not just a question of strict statutory construction. The provision is there. That's important of course, but in the factual matrix with which this present matter arises is there could not be an argument by the associations that it was anticipated, because the Commissioner of the Electoral Commission plainly had not even addressed whether or not his commission's inquiry would complete and would satisfy

10 him that the material uncovered in his inquiry would not require the matter to be taken any further. It's just simply impossible to know at that point in time whether the Electoral Commission was going to run their inquiry to completion or whether the commissioner of the Electoral Commission would apply his mind to whether or not the provisions of section 13A could be, should be, would be invoked, and of course the evidence suggests the material before the Commission is that the Electoral Commission was not done with its investigation, it was continuing, and the fact of the matter was the referral was made a great deal of time later, by which time the Electoral Commission had completed its investigations but only after a number of steps took place between September 2016, in that period, and the date of the referral. So the associations you say may wish to argue it, but they'd be arguing the unarguable. It would be allowing no space for common sense in this matter to invite somebody to come along to argue the unarguable so I think in the public interest - - -

MR ROBERTSON: So, Chief Commissioner, before you just - - -

20 THE COMMISSIONER: - - - the provisions of section - - -

MR ROBERTSON: I'm sorry. Chief Commissioner, can I just draw one other date to your attention and to the attention and assistance of my learned friend. The notice to produce that was issued to NSW Labor from the Electoral Commission was not until 6 December, 2016 which you will see from Exhibit 123 in due course and you'll recall that I'm asking questions about something that may or may not have occurred in September of 2016. I just thought I should draw that to the Commission's attention, to my learned friend's attention because that obviously affects the chronology in which any argument might be put as to what might be reasonably anticipated.

30 THE COMMISSIONER: Yes, thank you. Thank you for adding that.

MS CHEESEMAN: Commissioner - - -

THE COMMISSIONER: So, Ms Cheeseman, unless there's anything further to be said on the first point we'll move to the second point.

40 MS CHEESEMAN: Commissioner, in terms of whether or not in fact, as we know it now, this particular inquiry had been established, I'm not making that submission. I'm not quibbling with the chronology. The argument that the client may wish, and I'm not in my position to advance it either way, and in my submission procedural fairness would require the client to be afforded the opportunity to consider and take advice and bring the application if they wish to. But it's on this reading of the section, if I might, Commissioner, because I think to some extent my argument has not been put as clearly as it should have been. The purpose is the client's purpose in 5(b). To assess what the client's purpose is you need to know

what's in the client's head. If the client's purpose in seeking the professional services is in relation to what they, on what they know but may not have communicated to their legal adviser is reasonably anticipated to result in an appearance at a compulsory examination or a public inquiry. If it had meant, if the section as a matter of statutory construction meant this very inquiry, the drafters would have used at the compulsory examination or public inquiry. It may be that the, what was within the clients' knowledge at this point in time, unknown to Mr Robertson, was such that they were on high alert for an inquiry of this nature before this Commission, and given
10 the role of the particular person attending the meeting on the 16th, that's been referred to as the meeting on 16 September, she was in a position to be providing instructions and as head, due to her position in the association, it's in those circumstances that the associations should be afforded the opportunity to take instructions, find out what was known, and ascertain what the purpose was of seeking the meeting if it was sought with Mr Robertson.

THE COMMISSIONER: Ms Cheeseman, in no way does one diminish or disregard the importance of legal professional privilege, the High Court has
20 made that perfectly plain, and it's a bedrock which can only be altered by statutory abrogation. But what the provisions of 37(5)(b) are addressing is the providing or receiving of legal professional services in relation to either the appearance, that is, the actual appearance or reasonably anticipated, and "reasonably anticipated" are carefully chosen words by the legislature to indicate the metes and bounds of the exception. And in circumstances where even if theoretically somebody with a prescient mind could foresee that perhaps one day the Electoral Commission might refer this to the Commission and the Commission might take up an investigation of the matter, and they're all gateways through which the process would have to
30 go, to say that it was reasonably anticipated at a point in time when the Electoral Commission's work was not done, not completed, in which there's no suggestion that there had ever been or could have been any indication by the Electoral Commission that it might seek to invoke the investigative provisions of this Commission under section 13A, and in fact, didn't. And in fact, there was a great deal of time that elapsed between September 2016 and the date of the referral. It would be fanciful, not reasonably anticipated, it would be fanciful to say that any human being, whether a member of the association, either of the associations, or anyone else, even the Electoral Commissioner, could have reasonably anticipated that this matter would be
40 in this Commission on referral. I mean, it's just, it might be fanciful to say, it might be theoretically possible, as I say, for somebody with a very prescient mind to say, "Look, one day this might end up being referred," but in terms of reasonably anticipated, no, I don't think so.

MS CHEESEMAN: Your Honour, sorry, Commissioner, you've heard my submission.

THE COMMISSIONER: All right. I have, thank you for those. Now, the other issue is the, what might be said to be the requirement for the Commission to hold its hand, notwithstanding the abrogation of the privilege, and I proceed on the basis that the Commission's powers, every one of them, must be exercised in a proper manner, and not simply because we have the power. So, it seems to me that it's necessary to indicate any circumstances that would operate to cause the Commission to hesitate before allowing the questions if they would otherwise apart from the abrogation have fallen within an area of privilege, balancing that on the other hand with the requirement of the Commission to serve the public interest for which the legislature has provided such coercive powers and to then determine what it should do.

So you have indicated that, the only matters you've raised at this stage is that Mr Robertson's been compelled over objection. I fully understand that, that of itself I don't see, with respect, as being a matter that would operate of itself anyway to not require the witness to answer the questions foreshadowed, on the matter foreshadowed, but whether in combination with any other matter, and the other matter, one other matter you've pointed to is that he's not in a position to know in effect what the clients' wish, instructions would be and that he should be given the opportunity or they – I withdraw that – that the clients, not Mr Robertson, should be, not Mr Robertson's firm, should be given that opportunity. Well, the fact that he's not in a position to know what the clients would wish to do about this matter is again a difficult question, because a difficult question I think for you to deal with.

The powers of this Commission to undertake investigations and specifically to use the power to conduct compulsory examinations is well recognised as being a necessary power to investigate the type of activities that this Commission is required to investigate, and it is in those circumstances that the Commission's consideration has to be using the powers, in this case the power to hold a compulsory examination, if there is a proper basis or evidentiary material available to the Commission to press the witness, require the witness to answer the questions. You of course are not in a position to know the material available to the Commission at this point that would bear on this very question as to the need for, the perceived need for a proper exercise of the power to require the witness to deal with this matter, but I am satisfied on the material that is available that there is a sound, indeed a necessary basis for these questions to be put to Mr Robertson. But I'm afraid I'm not persuaded by the fact that the matters you've raised would require the Commission to hold its hand on the matter, as it was put by Counsel Assisting. I've sought to articulate as best I'm able to the position that operates at the moment, on the one hand respecting the importance of the legal professional privilege and how it should operate and should only be abrogated if the statute permits it and then again only if there's a proper reason or basis for exercising the examination power. Are there any other matters you want to raise?

MS CHEESEMAN: Commissioner, there is one, brief. I should have referred to it expressly. No doubt you have taken it into account but I should put it on the record. The particular context in which Mr Robertson's evidence can be used, notwithstanding he's taken, he sought a section 38 declaration which has been made, is, is as, with respect, Commissioner, you drew to Mr Robertson's attention at the outset that the evidence that he gives now may be used directly in other proceedings against his clients, not against him in his individual capacity, and that is an important matter of context that I didn't expressly refer to and I just add that to the basis for the objection.

THE COMMISSIONER: Well, the direction having been made, the evidence is not available for anyone to use unless the variation order or an order is made to withdraw the direction.

MS CHEESEMAN: I'm sorry, Commissioner, I'm referring to the fact that answers given over objection cannot be used in any proceedings directly against this witness, but if the proceedings, civil, criminal or administrative, were brought against others, including people whom the witness represents, then there would be a live issue as to whether or not, if otherwise admissible in those proceedings, as for relevance or for whatever purpose, the transcript here could be tendered against third parties, including his clients.

THE COMMISSIONER: How could it be?

MS CHEESEMAN: And that, and that I should have added expressly to the argument and that's the only additional point I wish to raise.

THE COMMISSIONER: But how could the transcript be used in other proceedings so long as the section 112 order is in place and remains in place?

MS CHEESEMAN: With, only in terms where the section 112 order may at a future point in time be varied.

THE COMMISSIONER: All right. Thank you.

MS CHEESEMAN: Thank you.

THE COMMISSIONER: Mr Robertson, do you want to raise any other matter?

MR ROBERTSON: The only other matter I just wanted to draw to attention given that my learned friend uttered the words "procedural fairness". Can I hand to you too, Commissioner, a copy of a case that I provided to my learned friends this morning, National Companies and Securities Commission v News Corporation, volume 156 Commonwealth Law Reports

296. It's high authority for the proposition that any considerations of procedural fairness need to be read in the circumstances of the particular case, but in particular when one's talking about an investigative body like this Commission, and can I draw particular attention to page 323 forming part of the morality judgement of Justices Mason, Wilson and Dawson. This case concerned a question as to what steps should the National Companies and Securities Commission take in relation to what was described under their Act as a hearing, and some significant directions were sought by New Corporation Limited which are set out on page 318, starting at about point 6 of the page, and the Federal Court granted directions of that kind, albeit not in precisely the terms sought, those directions are identified on page 319, but the particular point to note is on page 323 the paragraph starting at about point 8 of the page, the second sentence which starts in this fashion, "It is of the very nature of an investigation that the investigator proceeds to gather relevant information from as wide a range of sources as possible without the suspect looking over his shoulder all the time to see how the inquiry is going, for an investigator to disclose his hand prematurely will not only alert the suspect to the progress of the investigation but may well close off other sources of inquiry." That's recognition by high authority that the question of when particular sources of information might be disclosed, including in circumstances where, as there is in this Commission, a general obligation of procedural fairness before the Commission would make adverse findings against anyone, confirms that the kind of procedural fairness points to which my learned friend has drawn attention have to be viewed in the context of this being an investigative commission and not a court of law conducting a trial in the traditional way.

THE COMMISSIONER: Yes, thank you. I'll put on the record the ruling I propose to make on this question. Mr Robertson has attended in answer to a summons to attend a compulsory examination today. Counsel Assisting has foreshadowed the line of questioning that he wishes to pursue, in particular arising in respect of an alleged meeting on or about 16 September, 2016. The questioning is said to be, the questioning as proposed is said to be directly relevant to the subject matter of this investigation. Counsel Assisting has addressed the matters to be taken into account, in particular twofold considerations.

Firstly, whether or not the meeting, if it did involve the provision of legal services, in particular advice, it could be said to involve that in a meeting between them. The person who I understand to be General Secretary of the ALP NSW Association was protected by legal professional privilege and that raises a question as to the construction and operation of section 37, in particular 37(1) and 37(5)(b) of the Act. Counsel Assisting submitted that the latter provisions do not apply in this case as it could not be said that any privileged communication was in relation or could be said to be in relation to the appearance or reasonably anticipated appearance of a person at a compulsory examination, observing that the subject matter of the investigation was one the subject of a referral under section 13A of the

Independent Commission Against Corruption Act that referral having occurred on 15 January, 2018. It is clear that the Electoral Commission had initiated its own investigation into the question of electoral donations, as specified within the scope of the summons to Mr McLachlan, and that there was no basis for knowing whether or not the matter would ever be referred to this Commission to conduct its investigation under section 13A the information available indicating that the Electoral Commission's investigation was one that was ongoing for some time.

- 10 The second matter related to whether or not there are any facts or matters that should be taken into account in determining whether or not even though there have been statutory abrogation under section 37 of any such communication the Commission ought not to or consider not exercising the power to require the witness to deal with the questions on the matter in question. In that regard (not transcribable) that the subject matter of the meeting is said to be directly relevant to the matters that this Commission has been and will be investigating in the public inquiry due to commence next week on 26 August. Counsel Assisting has in effect submitted that I should permit the questions to be put and require the witness to answer them.
- 20

- I note Ms Cheeseman, Senior Counsel for Mr Robertson, has advanced arguments, firstly in relation to the provisions of section 37 and in particular 37(3)(b), and has contended that those provisions can be said to apply, and that based upon a construction, in particular, that it could be said that any such communications at the meeting in question, if there was a meeting, could have been reasonably anticipated it could have led to or been associated with an appearance that was reasonably anticipated at a compulsory examination, so as to bring it within the latter provisions. The course of argument in relation to that matter and the second question, Ms Cheeseman submitted that Mr Robertson is not in a position to know what information the client has in respect of the meeting, and he's in no position to say whether or not the client could be said to have reasonably anticipated an appearance, and that he's been precluded from obtaining instructions, and that he's simply not in a position to obtain the instructions given that he is, in effect, prohibited from disclosing the compulsory examination or its subject matter.
- 30

- Emphasis was given to the fact, therefore, that he is being compelled to answer questions over objection, in those circumstances, the client association should be given an opportunity to be heard. Counsel Assisting has emphasised the nature of the investigative process before this Commission. In short compass its process, the processes are quite different from those in ordinary legal proceedings, and there's much authority over the years that have addressed procedural fairness issues, so far as investigative Commissions are concerned, and this Commission in particular.
- 40

The extensive powers that have been conferred on this Commission plainly have been recognised as necessary to effectively carry out the sort of investigation required of it, in respect of suspected corrupt conduct. The rules of procedural fairness of course do apply to this Commission, but not in the same way as they apply in other legal proceedings. It is not necessary, for example, for the Commission to now disclose to the associations what is proposed to be put to the witness so that they can appear here, have a right of appearance as it were here, in this compulsory examination, to be informed as to what the examination is about. To do that, of course, would destroy the effectiveness of the compulsory examination process.

Not only is there no authority saying to the effect that that should be done, it's plain from the principles that have been worked out over the years that it is, there is no such requirement, and that the Act expressly provides that compulsory examination proceedings shall be held in private. That's plainly necessary for strategic and tactical reasons in the Commission undertaking its work. Counsel Assisting have drawn my attention to the dicta of Justices Mason, Wilson, and Dawson, in the well-known case of National Companies and Securities Commission v News Corp Ltd [1984] 296, and in particular the passages, the last paragraph as at pages 323-324, the first paragraph which I need not here set out.

I am satisfied in all the circumstances firstly that the provisions of section 37(5)(b) do not apply, there being no case of privileged communication possibly having been given in relation to the appearance or reasonably anticipated appearance of the witness. Secondly, taking into account as I do, the importance of legal professional privilege and the role it plays and the public interest factors that underpin it, I am required, in order to discharge the statutory functions of this Commission, to proceed to consider whether there is a proper basis for the exercise of the power in this particular investigation so as to require the witness to be questioned and for him to answer questions in relation to the matter that's been identified. I have no hesitation in saying the balance is heavily in favour of permitting the questioning as being necessary in the public interest for the Commission to undertake its investigation both in this compulsory examination and in the foreshadowed public inquiry to start next week. In so saying I have regard to the material that is currently available to this Commission which indicates the importance of this examination and that it take place and the questions foreshadowed be put and answered. I rule accordingly. Yes.

MR ROBERTSON: Thanks, Commissioner. Mr Robertson, during that time in which there was legal argument and the Commissioner's ruling, has that led you to recall any further matters that pertain to the question that I asked before that legal argument? In other words has your memory improved or changed in that period of time?---No.

So it's still your recollection that there was no meeting between you and Ms Murnain on or about 16 September, 2016?---No, that's not what you asked me. I have no recollection of a meeting on that day.

So to be clear, you don't have any recollection of having a meeting with Ms Murnain during or about September of 2016, is that right?---No.

No meeting at all?---No recollection.

10 And doing the best you can, are you saying that you didn't have such a meeting or are you saying you just simply can't recall one way or the other?---I don't recall one way or the other.

Is it the case that you take file notes in respect of any meetings that you have with any client of your firm?---Not always.

20 So is it the case that, at least on many occasions, you do but not on all occasions?---In the period we're talking about, most meetings I would have with clients, I would normally have another person present, a younger lawyer, and they would take a file note. I don't customarily take many file notes myself.

30 Is it the case that you would usually ensure that a file note was taken of any meeting, whether it be taken by you or taken by someone under your employ?---That would depend to some extent on the meeting and I think you're asking me about a meeting which is said to have occurred at no notice on a Friday evening, rather late in the evening and I have no recollection of the meeting but in those circumstances where occasionally a person, a client or somebody else may just drop in for a chat about something, I may not have kept a note and I would not always keep a note of that.

So is it fair to say that if some significant matter was told to you by a client or representative of a client or if you gave some advice of some significance, it's likely that you would have recalled that in a file note?
---Yes.

40 But if it was more in the nature of perhaps not a social drop in but a more general chat that didn't deal with matters of significance either being communicated to you or being communicated by you to the client or representative, then you might not keep a file note. Is that a fair summary?
---That's correct. If I felt that I was giving legal advice to the client, I would, it would be my practice to ensure a note was taken of that or made of that, if not at the time, immediately afterwards.

And if you were the only one in the meeting, you ordinarily would take that file note but if you had employed solicitors, you would ordinarily expect them to do that exercise, is that fair?---Yes, that's correct.

And file notes of that nature, are they usually done by way of handwritten notes that find their way into a physical file or electronic notes or in some other fashion?---Usually handwritten notes. Sometimes they're dictated and, and then become in a written form.

10 In 2016 was the practice of your firm to maintain hard-copy files for matters or soft-copy files or both or some combination?---It would be a combination. Most of my files have been very predominantly soft copy for some time but that's not the universal practice across the firm. It depends on the practice area.

Is it the case that for all files, at least in 2016, there was at least a partial hard-copy file and there might also be an electronic file as well or is that not the practice of your firm?---In the matters we're talking about I think the files would have been predominantly electronic rather than paper.

20 So you're talking about in about 2016 it would be predominantly electronic and not in paper?---Yes.

And then in terms of matters like file notes would they be recorded on a hard-copy file or a soft-copy file or perhaps a combination?---They would probably start as a handwritten note which would be scanned into the file.

And does that handwritten note then get kept or does that handwritten note then be destroyed given that there's an electronic copy?---I am not sure of that.

30 But at least at 2016 is it right to say that - - -?---Sorry.

I'm sorry.---Perhaps if I can just answer that.

Please.---My firm is endeavouring to move to totally electronic files and to not keep paper that doesn't have to be kept for a particular purpose such as, for example, original signed documents. So it would more often be the case that after being scanned in that the paper file note would not be kept.

40 And so is it fair to say that that process of moving to electronic files has been a progressive process over the years?---Yes. Progressing more slowly than I wish.

And at least for your files as national partner presumably you have been moving quicker than others in moving to electronic files. Is that fair?---Yes, yes.

And so do I understand your evidence to be that in 2016 there may well have been hard-copy files in relation to matters concerning NSW Labor and

Country Labor but they would be predominantly electronic. Is that fair?
---Yes, that is correct.

And over time there will be less and less paper. Hopefully one day none or almost none?---Correct.

And more and more electronic files. Is that fair?---Correct.

10 Please take your time to consider the answer to this question. At any time in 2016, so I'm focusing just on 2016 at the moment, did Ms Murnain say to you that Mr Ernest Wong, then a member of the Legislative Council, had told her that a donor to the Labor Party in 2015 had not given the funds that he or she had said they had given? I'm quite happy to repeat that question if you want because I appreciate it was a long one and it's an important one.
---Please.

20 At any time in 2016 did Ms Murnain say to you that Mr Ernest Wong had told her that a donor to the Labor Party in 2015 had not given a donation that he or she had said they'd given? Can I just check first you understand - -?---So you're asking me that a donor who had said they had given money had in fact not given it?

Correct.---No, she did not have that conversation with me in 2016.

30 So are you quite sure that at no time in 2016 did Ms Murnain give an indication to you to that effect namely, that she had been told that there was what I might describe as a pretend donor, someone who had said that they had donated money in 2015 but had not in fact donated the money?---I have - she did not say that to me.

You're quite sure about that?---I am.

40 Excluding for the purpose of this question any advice that you've given in connection with a particular inquiry before this Commission, so the public inquiry which you know has been announced, and any advice that you've given in connection with compulsory examinations, are you quite sure that on no occasions has Ms Murnain said to you that there was a pretend donor of the kind that I've summarised?---I'm quite sure. Until you asked me that question I have never heard of the concept of a pretend donor or been asked about it by anybody.

Well, you've given advice, haven't you, in connection with the Electoral Commission's investigation as to circumstances surrounding an event on 12 March, 2015?---Well, it depends what you mean by give advice.

Well, you're aware aren't you that the Electoral Commission of NSW considered that they had reason to suspect that cash political donations made at the Chinese Friends of Labor function on 12 March, 2015 were made for

and on behalf of other persons. You were aware of that at least, weren't you?---Not exactly, no. I'm aware that the Electoral Commission investigated that dinner. The advice that I had given in respect of that investigation by the Electoral Commission has been essentially procedural, in other words it was the position of our client that they wanted to fully cooperate with that investigation and the role of our firm was really limited to that process. So for example, in answer to a notice or notices to produce from the commission the, our client showed us the documents it intended to disclose to check that they were appropriate and sufficient and we looked at that. At no stage has our advice been sought about that dinner itself, ever, in terms of what happened or donations made or disclosures made under electoral law or any other matter. I have not discussed, and to the best of my knowledge none of my colleagues have discussed or had advice sought on those matters by any client or any officer of any client.

Can I just unpack that. Can we have Exhibit 123, page 1 of the compulsory examination brief on the screen, please. You referred, Mr Robertson, a moment ago to a notice to produce.---Yes.

I've just put up on the screen a document entitled Notice Issued to an Organisation Pursuant to Section 110(a) of Section 1(a) of the Election Funding, Expenditure and Disclosures Act 1981. Do you see that there? ---Yes.

And that is at least one of the notices to produce that you were referring to a moment ago?---Correct.

So you've seen this document before?---Yes.

And you've read this document before?---Yes.

Can I just ask you to refresh your memory as to the second paragraph that starts with the words, "I Peter Smithers." Just let me know when you've read that.---Well, I have seen this document before, I confess I haven't previously focussed on that particular paragraph as to that suspicion.

What I want to suggest to you is that you at least by the time of looking at this document knew about the concept of what I've described as pretend donors, namely, you knew that at least the Electoral Commission suspected that donations had been made for or on behalf of other persons. Do you agree with that?---I have never turned my mind to that issue. My focus with this notice was on ensuring what it asked to be done, which is to disclose documents, was in fact done. I didn't focus on the purpose that's set out in the second paragraph there as to the suspicions of Mr Smithers. I simply focused, as I was asked to do, on ensuring that our client complied with the notice, and I think other notices that were issued, as opposed to the reason the notices had been issued.

Can we go, please, to page 33 of the compulsory examination brief? You said, Mr Robertson, you were focused on what you were asked to do. I've put up on the screen an email of 16 December, 2016, from Ms Julie Sibraa, S-i-b-r-a-a, to you and to Ms Butler. I take it Ms Butler is an employee under your employ?---Yes.

And she is a senior associate of your firm?---Correct.

10 And when you were doing what you were asked to do, what you were asked to do was communicated by this email of 16 December, 2016, is that right? ---Correct.

If we can turn back one page, please, and we'll just scroll down a little bit. Do you see there a response from Ms Butler to Ms Sibraa, copied to you, of 19 December?---Yes.

20 And do you see that Ms Butler says, "We have considered the attached documents and we think they're fine to be sent to the Commission," do you see that there?---Yes.

Now, do we take it that the "we" is a reference to Ms Butler and to you as well?---Well, normally our firm sends emails in, in the third person, "We have," rather than "I have."

That's why I'm asking the question.---But in practice, your, your question's correct. I, I, it would be, had been her and me.

30 So to be clear, you have a recollection, do you, that in response to the instructions of 16 December, you considered the proposed response by NSW Labor?---Yes.

Before I forget to do it, I might just tender that, Chief Commissioner. I tender the chain of emails at pages 32-33 of the compulsory examination brief, being emails between 16 December, 2016, at 5.17pm, and 19 December, 2016, 17.27 hours.

THE COMMISSIONER: Yes, very well. Those emails become together one exhibit, Exhibit 145. 48, is it? 148.

40

#EXH-148 – CORRESPONDENCE BETWEEN IAN ROBERTSON AND SARAH BUTLER OF HOLDING REDLICH AND KAILA MURNAIN, PAT GARCIA AND JULIE SIBRAA REGARDING NOTICE TO PRODUCE DATED 16 AND 19 DECEMBER 2016

MR ROBERTSON: Can we go, please, to page 5 of the compulsory examination brief? I'm about to show you, Mr Robertson, the response that

went under Ms Murnain's hand at 19 December, in response to the notice to produce that I've shown you. Is the text of this document something that you have seen before, do you recall? And at the moment I'm just referring to this page. I'll take you to the - - -?---I, I, I think I've seen it before.

10 If we then turn the page, please, when in the previous email you were referring to (not transcribable) when in the previous email that I showed you, you were referring to, or Ms Butler was referring to a response to the Electoral Commission, the substance of that response we see in part on page 6, do you agree with that?---Yes.

And do we take it that at the time, you say that at the time that you indicated to – I withdraw that. Do we take it that at the time that Ms Butler, on her behalf and it seems on your behalf, said that the attached documents were fine, you say you had no reason to think that any of the substance of these responses was, were false or misleading, is that fair?---Yes, the, the responses were provided by our client, and we had no reason, and I believe I still have no reason, to doubt their accuracy.

20 But just to be clear about that, if you had reason to think that one or more of these responses were either false or misleading, you would have drawn that to attention of the client?---Yes.

You wouldn't have permitted Ms Butler to say, if the documents are fine, you would have said, "No, we actually think they're not fine, because we think there might be something wrong here," is that fair?---No, I think if we had thought there was a problem, we would have, or that there was an inaccuracy or something else incorrect, we would have discussed it with the client.

30 Yes. So in other words, one wouldn't simply sign off on the document, one would have drawn to attention of the client that you were concerned that there was questions as to the accuracy or perhaps misleadingness, if there was any - - -?---Yes.

- - - of the material that was proposed to be sent. Is that fair?---Yes, correct.

40 Going back to 2016, and again I'll ask this slowly and if you want me to repeat it, please tell me. Are you clear that at no time in 2016 Ms Murnain said to you that the true source of certain money that had been donated to the party was not the person who said that they'd given the money, but was rather Mr Huang Xiangmo?---I'm absolutely certain that she never said that at any time, ever, including at any time before or after 2016.

Have you ever had a meeting with Ms Murnain in circumstances where you have said words to the effect of, "You shouldn't take any action about things you've told me, you should forget that a meeting with you ever

occurred,” that she shouldn’t diarise the meeting and she shouldn’t talk about it with anyone?---Absolutely not. I have never said that.

So you’re quite clear that on no occasion have you ever had a meeting with Ms Murnain in which you’ve said either the words that I’ve uttered or words to some similar effect?---I have never said that to anyone in my career.

Is that a convenient time, Chief Commissioner?

10 THE COMMISSIONER: YES.

MR ROBERTSON: I’m about to move on to a slightly different topic.

THE COMMISSIONER: Very well. We’re going to take a morning tea adjournment. I’ll resume at about midday. Thank you.

SHORT ADJOURNMENT

[11.47am]

20

MR ROBERTSON: Thank you, Chief Commissioner.

THE COMMISSIONER: Yes, yes, Mr Robertson.

30

MR ROBERTSON: Mr Robertson, are there any matters that you wish to clarify in terms of answers to the questions that I’ve asked this morning. ---Yes, there are, thank you. You will appreciate that I had no warning at all of, until I got here, of what you were going to ask me about, and the questions you’ve asked me just before the break have not only surprised me but they’ve deeply shocked me. I want to make it clear, or to one other matter first. You used the expression I think fake donor, and I said I hadn’t heard that expression before. That’s correct, I had not heard that expression before. But I am of course well aware that the Electoral Commission and now this Commission are looking into the facts of whether donations made in cash at a dinner or subsequent to a dinner were actually made by the people who purport to have made them. I’m well aware of that. But the thing I want to make very clear, if I could, is that if it were the case, and it is not the case, that any official of our client at any level, be it Ms Murnain or anybody else, had said we know or now know that the source of those

40 donations is somebody else, or is a different person or people, I would have said, if my advice had been sought, that that will have to be disclosed. If they had not been willing to do that in the circumstances of this, I think I would have gone to the party president and explained my views. And if it had been the position of the party, which I very much doubt that it would have, because my instructions throughout this have been to cooperate and comply, but if it had been the position of a refusal to disclose that important fact, I believe my firm would have had no choice but to cease to act. I take and our firm takes our obligations to the court very seriously and in essence

what you've asked me is whether we have or I have essentially aided and abetted the commission of a criminal act, and I say unequivocally I have not and we have not and I have never advised anybody how to avoid compliance with this body of law, a body of law I am very familiar with.

THE COMMISSIONER: Yes, Mr Robertson.

10 MR ROBERTSON: At the start of that answer you made reference to when you became aware of, your phrase was false donors, I think mine might have been pretend donors.---Sorry.

And as I understood your answer, you became aware at least of those allegations in connection with inquiries that the Electoral Commission had undertaken. Is that right?---Correct.

20 Doing the best you can, when did you first become aware of those allegations, was it when the Electoral Commission first started making inquiries or was it some earlier time, do you recall?---I don't recall being aware of it prior to the Electoral Commission commencing its investigation.

And noting that the notice to produce that I showed you a moment ago was 6 December, 2016, does that suggest that - - -?---It's about then, yes.

- - - you became aware around about then, perhaps a little bit earlier, perhaps - - -?---Yes.

- - - around that time. Is that fair?---Yes.

30 You've made mention in the answer you gave just after the adjournment to instructions to cooperate and comply with investigations. When you say that, who are the instructions to cooperate and comply coming from, who are the individuals giving you those instructions on behalf of the two unincorporated associations to which you've drawn attention?---Our instructions usually come from the general secretary as a matter of form, others have been involved, particularly the party at about that time or a little earlier appointed a governance officer, a woman called Julie Sibraa, to assist on compliance matters. Sometimes our instructions came from her, but usually from the general secretary.

40 But as I understood your answer before, you were quite clear in saying there was no suggestion by way of instructions to you that there was some relevant information such as a true source of a donor being known that you were told to, as it were, keep quiet?---Absolutely not. I, I have never been told or asked that.

THE COMMISSIONER: Did you from time to time communicate with or did she communicate with you, with the general secretary, Ms Murnain? ---Sorry?

Did you communicate personally from time to time as necessary, I'm talking about throughout the period 2016 till the present time if you like, with Ms Murnain?---Yes, yes, regularly.

And did you from time to time meet with her as necessary in relation during that - - -?---Yes. On a wide range of matters, Commissioner.

10 Yes. I think she was appointed in early 2016 from recollection or thereabouts.---Yes.

And in that period to the present time, have you had a good relationship in terms of being able to dialogue with her?---Yes, I would have said very good.

20 And were you able to form an opinion about her in terms of her capabilities as general secretary?---Yes. She's young for the role and it's a very responsible role. She, in addition to matters such as this, has had to take responsibility for two election campaigns, state and federal. And I actually have a view that the role is almost impossible for one person. I think she has found it quite straining, particularly in recent months.

Have you found her to be a conscientious person?---Yes.

And so far as you're able to judge, straightforward and honest?---Yes.

There had been problems, have there not, you may not know this, under the stewardship of the previous general secretary, her predecessor - - -?---Yes.

30 - - - Mr Clements, is that right?---(No Audible Reply)

Is that so?---Yes, the, the - - -

Or as so far as you know, anyway.---The only problems I'm really aware of were at the end of his term and which became publically notorious involving harassment and related activities.

40 So when Ms Murnain took over her role, was she left as it were with what you might describe as a legacy which had to be addressed to lift the game, the standards at the ALP NSW office?---I think that's a fair comment, yes.

And to what extent did she, are you able to judge whether she was successful, in whole or in part, in lifting standards?---It's a bit hard for me to judge, because I, I am not a member or involved in the Labor Party. Our advice, our role is only that of advisors. So a lot of what goes on, we have no knowledge of and are not consulted. But I believe she has performed at a better level than her predecessor.

And are you able to say, and say if you can't, whether in more recent times – by that I mean, for example, throughout this year – whether there've been any divisions or dissensions within the ALP office in which she's had to deal with or been involved in?---She certainly appeared to be under much greater stress, and I would have said not, not at all happy. I am not really sure of the causes of that. I, I understand that she continues to enjoy the support of the party president, but I'm not sure what other forces are at play.

All right. Thank you.

10

MR ROBERTSON: In terms of instructions that we spoke about a moment ago, I understood you to be saying that at least nominally, your instructions come from the general secretary, is that right?---Yes, as a formal process, the, the way the organisation works – and bearing in mind it's an unincorporated association – in practice, the general secretary engages external suppliers, including lawyers, and organises, and, and is ultimately responsible for authorising payment.

20

But is it fair to say that your principal contacts, and the principal contacts of your firm, would be with party officers such as the general secretary and people like Ms Sibraa, as distinct from contacts with sitting members of parliament?---We have almost no contact with sitting members of parliament. Yes, you're correct. The other person with whom we deal a great deal is the assistant secretary. His name is Pat Garcia.

So it would be an unusual thing for you or anyone within your firm to have contact with sitting members of parliament as distinct from party officers, is that fair?---Yes, very unusual.

30

In terms of the - - -?---And perhaps if I could expand upon that.

Please.---If a member wanted advice, such as in respect of an investigation, or there's obviously been a great deal to do with compliance with constitutional requirements to be a member of parliament, that advice is provided by us but through the party office, not usually direct to the MP.

40

Would it be unusual for you or someone within your firm to have a conference with the general secretary after-hours?---Yes, that is unusual. You pointed me earlier to an example where that may have occurred, and I don't, as I've said, I don't recall that, but it's quite possible it did, but that would be unusual.

So just to be clear about that, as I understood your evidence, you have no recollection of a meeting on 16 September, 2016?---Correct.

It's possible that that actually happened, but you don't recall?---Correct.

But you're quite sure that there has never been a communication between you and Ms Murnain along the lines of what I've put to you in a series of questions, is that right?---Absolutely certain.

THE COMMISSIONER: In September, 2016, how were you able to access your office after-hours?---With a - - -

10 In other words, you'd walk in off the street, what do you, what physically do you have to do?---Yes, the, our, our lifts basically cease to operate at 6 o'clock, 6.00pm, and after that, you need a, an electronic pass, which I have.

Card. Yes.---So if someone is coming in after-hours, I would, I or somebody would go down and get them, and let them up in the lift.

Thank you.

MR ROBERTSON: And just to understand that, there's a set of escalators on the corner of Castlereagh Street and King Street. Correct?---Yes. There's also a set that come up at the Martin Place side of the building.

20

But just focusing on the corner that I have identified.---Yes.

After-hours I think you can get to the top of those escalators without an access card?---Yes, and you can get into the lobby until I think a bit later but I'm not 100 per cent certain.

30 And then to actually get to your office from that location after-hours, what does one need to do?---You need to have a pass. So if someone were coming in after 6.00pm, I or a staff member would go and collect them.

30

40 Just pardon me for a moment, Chief Commissioner. Chief Commissioner that's the examination for now subject to a couple of formal matters. In my submission, you should make a direction under section 35(2) of the Independent Commission Against Corruption Act requiring Mr Robertson to produce any file notes or other documents that may, that either constitute, touch on or concern any communications between Mr Robertson and any person associated with the Australian Labor Party during that core period of September that I have identified. Can I make it clear that that direction should apply to the Australian Labor Party in its various forms, by which I mean Federal, NSW Labor or Country Labor because plainly enough documents of that kind will be relevant to confirming or not what Mr Robertson has told us today.

THE COMMISSIONER: Yes, I will exercise that power.

MS CHEESEMAN: Commissioner, might I be heard on that?

THE COMMISSIONER: Yes.

MS CHEESEMAN: The file notes belong to the firm rather than to the witness as an individual and in circumstances where based on the content of the examination today it is possible that Mr Robertson, and we'll come to this shortly, may withdraw from appearing for either of the entities that summons should be directed to the firm and the firm should be responsible for mounting any argument as to whether or not the documents should be produced. Mr Robertson is just not going to be in a position to do it. They're not his property.

10

THE COMMISSIONER: The firm being an incorporated entity. Is that right?

MS CHEESEMAN: Might have to ask the witness.

THE COMMISSIONER: Do you know – can you assist us on that, Mr Robertson? Is the firm an incorporated entity, your firm?---No, no. We're a partnership.

20 Oh, you're a partnership. Well, you're suggesting it be addressed to what, whom, the partners?

MS CHEESEMAN: Yes, to the, the firm is, the partnership is retained to act and the partnership has been given leave to appear in representing this Commission, but similarly as I understood Mr Robertson's evidence earlier in the day he is not retained personally and indeed I don't think he holds a practising certificate that would enable him to take direct clients. He's part of a partnership.

30 THE COMMISSIONER: Yes. Very well.

MR ROBERTSON: In my submission you should make the direction as against Mr Robertson. He's the National Managing Partner of the firm. The firm would appear to be a partnership. In my submission it's entirely appropriate for it to be directed to him with a view of obtaining that material at the earliest opportunity rather than through one of the other compulsory courses that may be available to the Commission.

40 THE COMMISSIONER: Ms Cheeseman, if the direction is as is sought – that is, it's a direction to Mr Robertson – what disadvantage is there in that, in imposing that requirement on him to produce?

MS CHEESEMAN: If an argument is to be had as to whether or not the summons should be complied with or there should be some amendment of the summons and an application is to be made, then that might be informed by considerations of the client's interests, whether privilege or otherwise, and Mr Robertson is unlikely to be in a position to communicate at all with

the client or to represent the client's interests as well as the firm's interest based on the constraint that he's going to be faced with following today.

THE COMMISSIONER: We'll probably come to this in a moment, but if Mr Robertson is going to withdraw and there will be another lawyer, partner or whoever at his firm to step into his shoes on behalf of the associations in the public inquiry, and if, again I'm jumping ahead of myself, but if Mr Robertson chooses to have a, what I'll call an independent lawyer appear for him in his interests at the public inquiry, what's the difficulty if he is
10 required under this notice to produce these records, for example tomorrow, he can still, a claim of privilege can still be made and I'd deal with it of course.

MR ROBERTSON: And can I just add this in terms of the question of privilege of course, section 37 applies to any requirement to produce documents under section 35(2).

THE COMMISSIONER: Yes, that's right.

20 MR ROBERTSON: So in a sense the points that my learned friend raises now are in substance the same points that she addressed this morning and it would seem unlikely that there would be any grounds for privilege for precisely the same reasons the subject of your ruling this morning, Chief Commissioner.

THE COMMISSIONER: Well, Ms Cheeseman, I think in the circumstances the preferred approach is to require Mr Robertson to produce any such records. If there is to be an argument about privilege it probably will be along the lines we've been dealing with today and that argument or
30 any other argument can be put to me by you for example acting on his behalf, that is to say before Mr Robertson withdraws, if he's going to withdraw for the purpose of the public inquiry. You'll still have that opportunity to be heard.

MS CHEESEMAN: I don't - - -

THE COMMISSIONER: And unless there's something else I can't see how there's any scope for the associations to be heard in relation to a direction in a compulsory examination, which examination is limited and concerns only
40 Mr Robertson and remains totally confidential.

MS CHEESEMAN: The only additional thing is this, whereas the examination today has come about in the circumstances that it has and the privilege argument was dealt with given the imminence of the hearing on Monday, the public hearing on Monday, if a partner from the partnership was identified by name and the summons was directed to that person, they would have at their disposal, in order to comply with the summons, the resources that the firm brings to bear and I'm very conscious of the fact that

summons can sometimes be, even if they don't yield much, the search is required to be undertaken to make sure that the net has been cast wide enough and that the documents produced are sufficient. That would be very difficult for Mr Robertson to do in circumstances where he cannot disclose what's going on here and the expediency and the requirement for the Commission to have those materials ahead of the public hearings is also probably likely to be served by directing it to a partner that's unconstrained.

10 THE COMMISSIONER: Ms Cheeseman, I take into account there may be some practical benefits doing it the way you've sought, however the onus should be placed on Mr Robertson. If there are practical difficulties and problems encountered, they'll have to be sorted. The scope in terms of time in which records are going to be sought is limited with a view to ensuring as much as possible that people are not put to excessive tasks in locating documents. So the intention is that this is going to be returnable tomorrow. I am going to have the direction produced in written form so that Mr Robertson has the expressed terms clearly identified for him, and as I say, we'll deal with any issues of privilege or any other practical issues encountered tomorrow.

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MS CHEESEMAN: May it please the Commission.

THE COMMISSIONER: So pursuant to section 35(2) of the Independent Commission Against Corruption Act, I make a direction pursuant to that section to Mr Robertson to attend at 12.00pm – that's 12.00 midday – tomorrow to produce documents as follows: any file notes or other documents constituting, touching, or concerning any communications between himself, Ian Robertson, and any person associated with the Australian Labor Party in the period 12 September, 2016, to 30 September,

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PURSUANT TO SECTION 35(2) OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I MAKE A DIRECTION PURSUANT TO THAT SECTION TO MR ROBERTSON TO ATTEND AT 12.00PM TOMORROW TO PRODUCE DOCUMENTS AS FOLLOWS: ANY FILE NOTES OR OTHER DOCUMENTS CONSTITUTING, TOUCHING, OR CONCERNING ANY COMMUNICATIONS BETWEEN HIMSELF, IAN ROBERTSON, AND ANY PERSON ASSOCIATED WITH THE AUSTRALIAN LABOR PARTY IN THE PERIOD 12 SEPTEMBER, 2016, TO 30 SEPTEMBER, 2016.

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MR ROBERTSON: I think my learned friend wanted to ask - - -?

THE WITNESS: Can I just clarify, Commissioner, did you say file notes only or anything else

THE COMMISSIONER: It's file notes and other documents constituting, touching, or concerning.---File notes and other, thank you.

So that would embrace matters such as emails or other documents. Yes.

MR ROBERTSON: I think my learned friend Ms Cheeseman wanted to ask a question of the witness.

10 THE COMMISSIONER: Yes, Ms Cheeseman.

MS CHEESEMAN: When Counsel Assisting was asking you questions in relation to the person or persons who provided you with the instructions, as I understood Counsel Assisting's question, and I just wanted to clarify it with you, the question was directed to the time when the electoral notice was issued in December, 2016, that Counsel Assisting had been taking you to, and your answer was to identify Ms Murnain in her position as general secretary. Have I understood your evidence correctly?---Yes, and also instructions on that matter came from the governance director, Julie Sibraa.

20

And indeed you did refer to that in your answer. Was your answer limited to the particular period in time December of, the date of the notice, December, 2016?---No. That has been generally the case over a longer period.

Has it changed more recently?---Yes. But that would involve me traversing matters directly related to the preparation for the public enquiry.

Thank you, Mr Robertson.

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THE COMMISSIONER: Thank you, Ms Cheeseman. Now - - -

MR ROBERTSON: Two other mechanical matters. Obviously in light of what's happened today, Mr Robertson will need to reflect on whether he can continue to act in the public enquiry. Plainly enough, if he takes the view that he should withdraw, he will need to say something to his clients.

THE COMMISSIONER: Yes. Yes.

40 MR ROBERTSON: Can I indicate that, in my submission, the Commission wouldn't regard a limited communication by Mr Robertson to NSW Labor and Country Labor to the effect that the Commission considers that he might have factual evidence that may be relevant to the public enquiry, and in the face of that, he's decided to withdraw, if that be the position that he comes to, but I'm making that submission deliberately on the transcript because of course he has received a summons and under section 114 of the

Act, he can't disclose any information which is likely to prejudice the investigation. My submission is that a disclosure of that kind wouldn't prejudice the investigation, but my respectful submission is that you, Chief Commissioner, should indicate whether that would be the Commission's view as well, so that Mr Robertson has some comfort with respect to that matter.

10 THE COMMISSIONER: Yes, well, two points. Firstly, I do not consider that a disclosure of that kind would impair the Commission's processes, and secondly, I think you should, in fairness to Mr Robertson, so that he's absolutely clear, given the importance of compliance with a section 112 direction, that he be given in writing the terms of the disclosure, which you've already put on the record, just so there's no misunderstanding, that's at all.

20 MR ROBERTSON: May it please the Commission. And related to that is Mr Robertson may take the view that he requires an instructing solicitor in connection with either what's happened today or in connection with the public enquiry. In those circumstances, it would be appropriate that some amendment be made to the section 112 direction of today.

THE COMMISSIONER: Yes.

MR ROBERTSON: I've discussed that with my learned friends, and we'd propose to seek to deal with that administratively if we can, but I simply raise that as a matter that may need to be dealt with.

30 THE COMMISSIONER: Yes, well, it's open for that procedure to be followed in this case, and in so far as the section 112 direction needs to be amended or varied, or if there's a change in legal representation then I can make the necessary directions and orders in chambers. Is there anything else, Mr Robertson?

MR ROBERTSON: Not for my part.

THE COMMISSIONER: Ms Cheeseman, is there anything?

40 MS CHEESEMAN: By way of clarification, Commissioner, in terms of Mr McDonald taking steps to comply with the requirement to produce documents by noon tomorrow, obviously when we have the terms of it we'll check, but is he able to enlist the administrative services of anyone within his firm to assist him in that exercise?

THE COMMISSIONER: Yes. Look, Ms Cheeseman, that would be appropriate but Mr Robertson must retain as it were supervision and make the necessary checks to ensure the due inquiry and search has been undertaken subject to that. If he needs assistance then, yes, he should have it.

MS CHEESEMAN: My concern is that Mr Robertson given his position as National Managing Partner may not be best equipped to interrogate the various systems in the firm.

THE COMMISSIONER: Yes, so I've indicated.---Yes, I'm afraid, Commissioner, that is the case and I, I am supposed to be interstate tomorrow. Would it be possible for the production to be made by me, or on my behalf by noon tomorrow as opposed to by me personally?

10

Yes, I think that would be appropriate then if you have already, those arrangements are in place, are they, for you to be interstate?---Yes.

Very well. We'll proceed on that basis then, Mr Robertson. If you would have somebody from your firm attend on your behalf and answer that direction. It's only to be said, Mr Robertson, that I regret the short notice that all these matters have come on, that's today's hearing and tomorrow's return of directions. The limited notice that you've received I'm afraid has arisen in circumstances completely outside our control and required to have been undertaken with this degree of expedition by reason of the statutory function the Commission is presently discharging. Thank you. Now, I think what I should do is allow Mr Robertson to go. The summons or his attendance at the Commission which brings him here today will still remain open and operative. If there's no further requirement for Mr Robertson to attend on any further compulsory examination then he should be given notice that he is no longer required under this summons.

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MR ROBERTSON: May it please the Commission.

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THE COMMISSIONER: Anything to be said about that?

MS CHEESEMAN: No.

THE COMMISSIONER: Thank you, Mr Robertson. You may step down. ---Thank you

I'll adjourn.

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THE WITNESS STOOD DOWN

[1.03pm]

AT 1.03PM THE MATTER WAS ADJOURNED ACCORDINGLY

[1.03pm]