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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO  
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 26 OCTOBER, 2021

AT 10.30AM

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Can I apologise for the delay.

MS CALLAN: Commissioner, I'm sorry, before Mr Robertson commences with this witness, I've just got three matters that I would wish to raise at this juncture of the hearing.

10 THE COMMISSIONER: Were you going to go straight to the witness or were you going to make some other - - -

MR ROBERTSON: I was. I'm not aware of what any of these three matters are.

THE COMMISSIONER: Yes. Yes, Ms Callan.

20 MS CALLAN: Commissioner, the day after Counsel Assisting opened this public inquiry, the legal representatives for Ms Berejiklian wrote to those assisting the Commission, seeking clarity about what I might describe as the section 11 allegation. A week later, that is this morning, we have received a response which, in my submission, is wholly unsatisfactory. In its present terms, the section 11 allegation is in the widest form, both as to date and substance. And notwithstanding the way Counsel Assisting opened, which focused on the period 13 July, 2018 and thereafter, by the letter in response he has stepped away even from providing that level of clarity or focus. In my submission it is no answer to say, as indicated in today's letter, that procedural fairness will be afforded by written submissions exchanged at the close of this public hearing. In my submission, that misses the point, which is that in order for this public hearing to serve a meaningful purpose, at least insofar as my client has been granted leave to appear, she is entitled to know what it is that is alleged in respect of section 11. And in making that submission, Commissioner, I wholly recognised, as was indicated in our letter, that this is an ongoing investigation. We are not impermissibly seeking to bind the Commission but we are seeking procedural fairness be afforded to our client in substance, not just form. In that respect, I invite those assisting the Commission to revisit our letter and give us a response, which contained such substance. Commissioner, the second matter to raise concerns the witness list.

40 MR ROBERTSON: Can I deal with that matter immediately?

THE COMMISSIONER: Why don't we let Ms Callan tell us what her three matters are rather than deal with them seriatim, Mr Robertson. Yes, Ms Callan.

MR ROBERTSON: May it please the Commission.

MS CALLAN: Thank you. The other matter to raise, Your Honour, concerns the witness list. We have today been informed that Mr Maguire is now scheduled on Thursday and my client's evidence is to be split over the weekend, that is Friday and next Monday. Not only does this affect her legal representation over the coming days but it drags out this public hearing and it does not, with respect, indicate the discharging of the Commission's investigative function with the greatest efficiency. I have already indicated to Counsel Assisting several times that surely we can start earlier and/or finish later, of course recognising the strain that that may place on  
10 Commission staff, both as to make up for lost time this morning but also to seek to get this hearing, keep this hearing on track so it can conclude within the two weeks that have been scheduled. And, Your Honour, the third matter is that this Commission has been prepared to receive evidence from a number of witnesses, on my count seven men now, who have expressed their opinion as to whether my client was in a position of conflict by reason of a close personal relationship with Mr Maguire. Whether that evidence can rationally bear on your assessment, Commissioner, as to whether in fact a conflict existed is a live issue, and I would wish to make clear that the lack of objection to those questions or evidence being given should in no way  
20 indicate that my client accepts that any of that evidence by way of opinion from those witnesses could inform Your Honour on that matter, Commissioner.

THE COMMISSIONER: I think you've only got two matters to deal with, Mr Robertson.

MR ROBERTSON: Yes. Can I deal with them in reverse order? I don't need to deal with the third issue. In relation to the second issue, can I confirm that I don't intend to call Mr Maguire tomorrow. An issue has  
30 arisen in the investigation that requires me or puts me in a position where I am not in a position to call Mr Maguire tomorrow. It's quite necessary and appropriate for me to put forward all of the public evidence in advance of calling Ms Berejikian, and whilst it's certainly desirable to bring this public inquiry to a close at the earliest reasonable opportunity, I have been very clear, I have made announcements at the earliest opportunity to make clear that there was always a risk of the matter of the public inquiry spilling over until the third week, and that appears to be what is going to take place. But there are necessary investigative reasons as to why I am not in a position to call Mr Maguire tomorrow and so that has the necessary effect, and so in my  
40 respectful submission the Commission would take no steps of any particular kind in relation to the second of the three matters my learned friend Ms Callan raised.

In relation to the first matter, in effect the request for particulars, it proceeds under a fundamental misapprehension as to the nature of proceedings before this Commission. These proceedings are not a trial. They're not an accusatory process at which a formulated issue is resolved. They are not, as the authorities make clear, proceedings that are shackled by the formal rules

as to particulars that apply in civil proceedings. I, as Counsel Assisting, do not have a case. I am not putting forward, by way of particulars or otherwise, a particular view one way or the other as to whether the allegations that the Commission has announced are true, false or anywhere in between. My role, as you know, Commissioner, is to assist the Commission in attempting to get to the truth in relation to the allegations, and this Commission's role is to seek to investigate those allegations and ultimately make a report to parliament. It's fundamentally inconsistent with that investigative role to in effect ask for particulars in the nature of  
10 particulars that might be asked for in relation to an indictment, for example, in relation to particulars in civil proceedings.

And so what my learned friend has correctly drawn attention to, a flow of correspondence between her instructors and those who assist you, Commissioner, and I will tender those bits of correspondence in a moment so that they're available for those who are interested in them, it was entirely appropriate in our respectful submission that for this Commission to respond, or at least the solicitor assisting this Commission to respond, in a way that was entirely consistent with the authorities that deal with matters  
20 of the way in which a public inquiry before this Commission should proceed, and thereby to indicate the particulars of the kind that are requested would not be provided.

So in our respectful submission, you would take no action in respect of the second matter that my learned friend has raised. In relation to the first matter, the appropriate course is for me to tender the correspondence both for my friend's solicitors and the response from the solicitor assisting in relation to this inquiry, but you wouldn't in our submission direct either me or anyone else assisting you to provide anything by way of further  
30 particulars. The obligation as indicated in the Independent Commission Against Corruption Act is to provide to the public at large, but also to those who are examined, an indication of the scope and purpose of the public inquiry and the nature of the allegations to be investigated. That's what the Act makes clear. That's what's been provided, including in the very summons that was provided to Ms Berejiklian some number of weeks before she was called in the public inquiry, and similarly she was given notice of the matters that were being investigated by this Commission in advance of her being called before the compulsory examination some number of weeks ago. That's what the Act relevantly requires. Requesting  
40 or insisting on anything further is a submission that is inconsistent with the authorities relevant in this area but fundamentally is inconsistent with the nature of the proceedings before this Commission which, as I make clear, is not a trial in respect of which I have a case, rather it's an investigation in relation to certain allegations, the nature of which the Commission has given notice both to Ms Berejiklian but also to the public at large.

THE COMMISSIONER: Yes, thank you, Mr Robertson. Dealing with them in the order in which Ms Callan identified them, I'm sure if, Ms

Callan, you were seeking a direction as to any further information being provided but you wouldn't be surprised to know I'm familiar with the correspondence and I don't propose if that was what you were seeking to make any such direction. And as to the second matter, the conduct of an investigation can proceed, can take its own course in various twists and turn, and sometimes witness lists just have to be adjusted to accommodate that, Ms Callan, and we'll proceed in accordance with the witness list as Mr Robertson has proposed. Do you wish to tender that correspondence at this stage, Mr Robertson?

10

MR ROBERTSON: Yes, Commissioner. I tender the letter from my friend's instructing solicitor, Johnson Winter & Slattery, and the response dated today, being 26 October, 2021.

THE COMMISSIONER: Very well. Those two letters will be Exhibit 475.

20 **#EXH-475 – LETTER FROM JOHNSON WINTER & SLATTERY  
DATED 19 OCTOBER 2021 AND RESPONSE FROM ICAC DATED  
26 OCTOBER 2021 REGARDING CLARIFICATION OF COUNSEL  
ASSISTING'S OPENING ADDRESS**

MR ROBERTSON: In terms of the program for witnesses today, I will in a moment call Mr Neil Harley, former chief of staff to Ms Berejikian. I will then call Mr Burden, a former senior adviser to Ms Berejikian. I expect to finish both of those witnesses by lunchtime. I will then call Ms Sarah Cruickshank, who was also a former chief of staff to Ms Berejikian. As my learned friend Ms Callan has indicated, I won't be calling, and as I've confirmed, I won't be calling Mr Maguire tomorrow. I'll call Ms Berejikian on Friday. In the event that I don't finish the examination on Friday, that will continue on till Monday of next week. I anticipate that I will need more than a day with Ms Berejikian, although of course if I can finish the examination within a day, then I'll do so. Mr Barnes I will recall tomorrow morning to finish the examination that was commenced on Friday of last week, and then the only other matter of housekeeping is that I'm informed both by Ms Callan and by Mr Agius that neither of them wish to cross-examine or seek leave to cross-examine Mr Hanger. You'll recall that that was left open as to whether - - -

40

THE COMMISSIONER: Yes.

MR ROBERTSON: - - - an application would be made, and in the face of that Mr Hanger wasn't released from his summons. In light of that indication, I respectfully suggest that Mr Hanger be released from his summons.

THE COMMISSIONER: Yes, I think I did agree to that yesterday evening, Mr Robertson.

MR ROBERTSON: I'm so sorry.

THE COMMISSIONER: But I can do that in public now. Mr Hanger is released from his summons.

10 MR ROBERTSON: I'm so sorry, Commissioner. That wasn't otherwise known to me.

THE COMMISSIONER: Yes.

MR ROBERTSON: I call Mr Harley.

THE COMMISSIONER: Mr Harley, do you wish to take an oath or make an affirmation?

MR HARLEY: Affirmation please, Commissioner.

THE COMMISSIONER: Mr Patterson, have you explained to Mr Harley his rights and obligations as a witness?

MR PATTERSON: I have, Your Honour, but I would ask that you make the usual declaration.

10 THE COMMISSIONER: Very well. Mr Harley, will you listen very carefully to the explanation I'm about to give you before I make the declaration.---I will.

As a witness, you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or  
20 disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. I can make a  
30 declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I'll now make the declaration.

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

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS**

**NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you understand that, Mr Harley?---I do. Thank you, Commissioner.

Yes, Mr Robertson.

10

MR ROBERTSON: Can you state your full name, please, sir?---Neil Daniel Harley.

You were the chief of staff to Ms Berejiklian from about February of 2020 until her resignation as Premier. Is that right?---That's correct.

You succeeded Ms Sarah Cruickshank as chief of staff. Is that right? ---That's correct.

20 You worked in the office of Ms Berejiklian from about May of 2017. Is that right?---That's correct.

Your first role within that office was as head of the Parliamentary Liaison Office. Is that right?---That's right.

I think you then proceeded to deputy chief of staff. Is that right?---Correct.

And then, ultimately, to chief of staff. Correct?---Indeed.

30 Just in relation to the Parliamentary Liaison Office, is it right that as the name suggests, the principal function is in liaising with members of parliament?---That's exactly right.

And that within the office of the chief of staff to Ms Berejiklian was heading up a team of parliamentary liaison officers. Is that right?---That's correct. About three or four people.

40 And so does it follow from that that the main form of contact, at least as a matter of practice, between members of parliament and the Premier's Office is through the parliamentary liaison officers?---Yes, most often, not always, because some members of parliament obviously have relationships already established with other members of staff, but for the most part the main source of contact would, would be through the PLO.

So at least as the usual course, that would be the ordinary form of communication with the Premier's Office in your experience. Is that right? ---Yes.

But, from time to time, when particular members of parliament had existing relationships with others within the Premier's Office, then there may well be contact through that mechanism. Is that right?---That's correct.

As chief of staff, I take it you had regular interactions with Premier Berejiklian?---I did.

On a daily basis, in fact, probably many times a day?---Some days, yes, there would be many engagements.

10

That would be both in the form of oral and written briefings?---Yes.

I take it, you'd generally have a clear sense of the Premier's attitude in relation to particular issues?---Yes.

And was that also the case while you were the head of the Parliamentary Liaison Office?---Much less so.

20

So at least to some extent but much less so because it was a less of a direct contact. Is that fair?---That, that's correct, so as head of the Parliamentary Liaison Office, I would have maybe only met the Premier perhaps once a week.

Whereas as chief of staff, at least in the ordinary course, daily. Would that be right?---Correct.

Are you aware that this Commission is investigating allegations concerning grant funding promised and/or awarded to the Riverina Conservatorium of Music?---I am.

30

During your time in Ms Berejiklian's office did you become aware of a proposal to establish the Riverina Conservatorium of Music on a site at 1 Simmons Street in Wagga Wagga?---Yes, I did. I became aware of that proposal and the funding applications around the time of the Wagga by-election. I don't recall having any awareness of that project before that.

Do you recall how that particular proposal came to your attention?---It was a piece of correspondence from the Conservatorium of Music in Wagga.

40

Can we go, please, to page 223 of volume 31.0. I'll show you what I think might be that piece of correspondence. Do you see there a letter from Dr Wallace of the Riverina Conservatorium of Music to Ms Berejiklian?---I do. Yes.

And we'll just turn the page, so I can show you the date of that document. Do you see there a date of 31 July, 2018?---Yes

Does that appear to be the piece of correspondence to which you referred a moment ago?---Yeah. It is, yes.

And so you see there it says, “We have three basic questions that lie at the heart of this letter.” If you have a look at number 2 in particular, “Are you in a position to promise the completion of the popular RCM initiative in the upcoming by-election or in the general election in 2019?” Do you see that there?---Yes, I do.

- 10 So is this right, at least your recollection sitting there now, is that if the thing that’s here described as the RCM initiative first came to your attention when this letter came to your attention?---That’s correct.

And I take it there’s a system of correspondence management within the office of the Premier that would have, in effect, picked up this letter and ensured that it got before the right eyes, as it were, during the course of a by-election campaign?---That’s exactly right.

- 20 Did you at least, as at the time that this letter came to your knowledge, have any awareness of the RCM initiative as being some wish or desire of the then current member of parliament, Mr Maguire?---I don’t know whether I was aware of that at the time that this correspondence was received, but certainly if not at this time, very, very shortly thereafter I became aware that this had been a longstanding, what’s known as a wish list item for Mr Maguire.

- 30 Are you using that phrase wish list item in any particular respect?---It’s the terminology that’s used to just record, if you like, all of those projects that all government backbench MPs, in fact all government MPs, projects that they want to achieve or champion for their communities, and are in effect fighting for. Colloquially within the office they would be called wish list items.

So this letter comes to your attention in the context of the by-election for the electorate of Wagga Wagga, correct?---Correct.

That arose by reason of Mr Maguire’s resignation from parliament, correct?---Correct.

- 40 Why did it matter one way or another as at, say, the end of July or into August 2018 whether this particular initiative was or was not a wish list item for the outgoing member of parliament, Mr Maguire?---It only mattered to the extent that, you know, any wish list item represents generally the desires of the community for a particular piece of infrastructure, a particular project. So it only mattered to the extent that it was already a recorded project, if you like, that had the support of the then local member of parliament, and so therefore was something that needed

ongoing consideration as to whether or not, following his departure, it should still be supported.

And so are you saying that the existence of this project on Mr Maguire's wish list or otherwise was not something that you knew before the letter that is on the screen at the moment was brought to your attention?---It, I may have been. I mean, I can't recall whether or not I'd reviewed the wish list at the time at which this letter was received or not, but the two would have been very close to each other.

10

And when you say a wish list, are you saying there was some kind of record, pre-existing record of wish lists of members of parliament?---Of all members of parliament, yes.

20

I asked you before about the way in which members of parliament would engage with the Premier's Office, and you said that at least in the ordinary course it would be through the Parliamentary Liaison Office. To your recollection, as someone working in Ms Berejiklian's office, was that the route through which Mr Maguire would approach the Premier's Office when he wished to approach the Premier's Office?---No, it wasn't. In Mr Maguire's case, he had a previous existing relationship with another adviser in the office, and so it was through that other adviser that he would predominantly have his contact, I believe.

And who was that other adviser?---Mr Zach Bentley.

And what was his role in the office of Ms Berejiklian?---He was an adviser. I believe he was a strategy adviser at the time.

30

And so he was a relatively junior staff member within the office of Ms Berejiklian, is that right?---Yes.

And he was a strategy adviser. So does that mean that he reported through to the Director of Strategy?---That's correct. So he would have reported through to Mr Burden at that time.

Can we go, please, to page 231 of volume 31.4.

40

THE COMMISSIONER: Did you want to tender Mr Wallace's letter or is it already an exhibit?

MR ROBERTSON: That's Exhibit 467.

THE COMMISSIONER: Thank you.

MR ROBERTSON: Just while that's coming up, to your knowledge, was Mr Maguire consulted on what election or by-election announcements might or might not be a good idea in relation to the Wagga Wagga by-election, to

your knowledge?---I don't recall being advised that he was. I can't definitively say that he wasn't, but I don't recall sort of any advice to indicate that he was.

And presumably Mr Maguire, at least as you understood it, was in a bit of a position of persona non grata in light of what had occurred in particular before this Commission on 13 July, 2018?---I think that's an apt description, yes.

- 10 So it would at least be a little bit strange from your perspective to be requesting him for his direct advice as opposed to, for example, looking at a pre-existing wish list, would you agree?---Correct, and unnecessary because we had the pre-existing wish list and in fact we had the letter from the conservatorium making clear that Mr Maguire was clearly a supporter of their particular project.

And so if you have a look at the email on the screen, do you see an email from you to a Mr Crocker, C-r-o-c-k-e-r, 1 August, 2018?---I do.

- 20 And so you say to Mr Crocker, "Just as an FYI re corro from Riverina Conservatorium of Music, you're probably aware that this has been a longstanding wish item for the current member." Sorry, "wish list item for the current member". See that there?---Yes.

So how did it come to your knowledge that this was not just a wish list item but was a longstanding wish list item for the current member?---I, I don't know. I think I just would have been reflecting on perhaps previous media reports as to the, you know, the campaign that had been run by the Riverina Conservatorium of Music.

- 30 So are you saying that, doing the best you can, after the letter of 31 July, 2018, came to your notice you did some sort of, in effect, research to see what the nature of that project was and whether it had been the subject of previous communications and things of that kind?---Yeah, previous communications, a previous announcement. I was basically getting my head around the proposal.

- 40 But this email doesn't suggest to you that it was something that you knew about before 31 July, 2018, but rather was something that you did some investigations with respect to between the, between the 31 July, 2018, letter coming to your notice and sending this email to Mr Crocker on 1 August at 5.06pm, is that right?---That's to the best of my recollection, and in fact I think the final line of my email there, where I indicate that I haven't formed a view yet as to whether this is something we should all go out to support, just reminds me that this was something that I was trying to understand what it was, what the value was, how deep the support was within the community for it et cetera.

And so you were able to confirm that this matter was on the wish list because that was a pre-existing list that was in operation, as it were, when Mr Maguire was the member of parliament before he resigned, correct?  
---Correct.

But is this right, doing the best you can, finding out that it was a longstanding wish list item was something that may have required a little of research on your part?---Indeed.

10 As at 1 August, 2018, what role did Mr Crocker play in Ms Berejiklian's office?---He would have been the Director of Policy at that stage.

Now, in relation to by-election periods in your experience, I take it it is standard practice for announcements to be made during the course of a by-election in a similar or at least analogous way to the way in which announcements are made in general elections? As in the relevant part goes out and says here are my commitments or my promises or my suggestions that are connected with the particular by-election, is that right?---Indeed. As all political parties do that are contesting in a by-election.

20

As a matter of practice within the Coalition of the Liberal Party and the Nationals, in a by-election, in whose gift is it to decide whether or not to make a particular election – sorry – a by-election announcement?---It, it would generally be within the leader's office of the respective party, depending on the, you know, party who held the seat. The leader's office would generally take the lead in terms of determining whether or not a particular announcement should be made.

30 So if it was a by-election in respect of which there was a Nationals candidate and not a Liberal candidate, it would be a matter for the leader of the Nationals, correct?---Yes, correct.

In the case of a seat in which a Liberal candidate was standing, such as in Wagga Wagga for the by-election on the seat of Wagga Wagga, that would be a matter for the leader of the parliamentary Liberal Party, correct?  
---Correct.

40 So, in the case of this particular by-election, the decision-making role, or the person responsible one way or the other, was Ms Berejiklian, is that right?  
---I would say that Ms Berejiklian was obviously a critical part of any decision-making process, but she would be informed not only by her staff but by other ministers and other ministerial officers as well about particular announcements that may be made, may be appropriate to be made within the parliamentary - - -

Oh, I'm not suggesting for a moment that she would just decide completely herself without any advice or input from anyone else, but in terms of the

decision itself, is this right, it's a matter for the leader, in this case Ms Berejiklian, for the Wagga by-election, is that right?---Yes.

Now, in the third line you say, "I haven't formed a view yet as to whether this is something we should go all out to support." Do you see that there? ---I do.

10 Did you ultimately come to a view as to whether this, by which you seem to be referring to the proposal regarding the Riverina Conservatorium of Music, is something that we should go all out to support?---No. I was of the view that, given the particularly circumstances at the time, this wasn't a project that should be supported.

20 Why?---New South Wales was deep in drought at this stage and I felt that providing what was a substantial amount of money to the Conservatorium of Music would not be well regarded by either the Wagga community or for that matter the broader New South Wales community. I think I also had in mind that it wasn't too long ago that the conservatorium had been given I believe \$10 million for initial works for their proposal and I therefore didn't think that an additional 20 million at this time in this context would have been a good announcement for the government at that time.

So you're now drawing to attention, is this right, the fact that the Riverina Conservatorium of Music proposal so far as the government was concerned had two stages or components to it?---That's correct.

What we'll call a stage 1 and a stage 2?---Yes.

30 Stage 1 had already been the subject of government support as you understood it. Correct?---That's correct.

And so what Dr Wallace was trying to put forward as part of the 31 July, 2018 letter, as you understood it, was the second stage sometimes referred to as stage 2. Is that right?---I believe so, yes.

In particular what was being proposed is the construction of a recital hall in connection with or perhaps adjacent to the facility at the 1 Simmons Street site.---That's as I understood it, yes.

40 Now, is it right that ultimately, though, despite your, I might call them reservations or despite the points that you've just raised, an announcement ultimately was made during the course of the Wagga by-election in relation to RCM stage 2?---That's correct, yes.

Now, I take it for that announcement to be made it would have had to have had the support and decision of the Premier herself, Ms Berejiklian. Is that right?---That would be my expectation, yes.

It seemed that within the office at least you weren't of the view that was a good idea. Within the Premier's Office was that a view where you were in effect in a small minority or was that a view that was widely held? What's your recollection of that?---I'm not sure that I have much of a recollection of that. I, I think I was probably in the minority. I, I think there was the adviser that provided some advice on this matter was possibly leaning towards my, my position but there were others in the office that thought that the organisation was a reputable organisation, that the initial announcement of \$10 million had been very well received and that therefore it was an important project and irrespective of the context that I've indicated today it was still a project that was worth supporting.

Who was the adviser that was leaning towards your position as you understood it?---Berge Okosdinossian.

That's O-k-o-s-d-i-n-o-s-s-i-a-n. Have I got that right?---That's right. I hope I've pronounced it correctly.

I pronounce it, and I might be right or wrong, I pronounce it as Okosdinossian. But he was a – what was his role in the Premier's Office at that point in time?---He was a policy adviser.

So does that mean a relatively junior staff member reporting to a policy director?---Yes.

And then what about in the other camp? Who as you recall it was the principal person within the Premier's Office who were not of what I might call the Okosdinossian/Harley view at least as you recall it?---Well, I'm, I'm loath to, because I don't have a good recollection and I don't really recall these as being fiercely, a fiercely held view, but I think Mr Burden was certainly more supportive of the project than I was.

And what was Mr Burden's role in Ms Berejikian's office at that point in time?---Mr Burden would have been Director of Strategy.

Can we go – in fact, I should tender that document. I tender the email from Mr Harley to Mr Crocker, 1 August, 2018, page 231, volume 31.4.

THE COMMISSIONER: Exhibit 476.

**#EXH-476 – EMAIL FROM NEIL HARLEY TO MATTHEW CROCKER REGARDING RIVERINA CONSERVATORIUM OF MUSIC DATED 1 AUGUST 2018 5.06PM**

MR ROBERTSON: Go, please, to page 55 of volume 31.4. Page 55 of volume 31.4. And would you mind just getting ever so slightly closer to the

microphone, just to make it a bit easier for that to be picked up and heard. Now, I'm just showing you the covering email at the moment, which is dated 14 August, 2018. Do you see that there?---I do.

But let me then just show you the attachment, referred to as RCM Brief. Just turn the page, please, at page 56. That's headed up Berge Okosdinossian, see that there?---Yes.

That's the adviser that you were referring to before.---It, it is.

10

Now, someone like Mr Okosdinossian – who was an adviser rather than a director – would, at least as a matter of general practice within Ms Berejiklian's office, would he be in a position to get a written brief directly before the eyes of the Premier or would it instead have to go through his immediate reports or someone else within Ms Berejiklian's office?---No, it would generally, in the case of Berge's situation, he would have, I suspect, submitted this brief through either Mr Crocker or the chief of staff or perhaps Mr Burden. It would have gone through a senior member of staff before going into the Premier.

20

Now, does it follow from that that in terms of briefings to the Premier herself, they sometimes but not always go through the chief of staff, in your experience working within that office?---That's correct. Sometimes but certainly not always.

It at least has to go through someone at a director level?---It would be very unusual for it not to go through somebody at that level.

30

So at least in the ordinary course, and at least absent very unusual circumstances, any brief to the Premier herself, at least in the office when you were working in it, would go through at least someone at the level of director, if not the chief of staff her or himself, is that right?---Yes, that's correct.

Chief of staff, I take it, would have a general idea of the kinds of things that the Premier is being briefed on from time to time?---Yes, but something of this nature I wouldn't necessarily have expected the chief of staff to have seen. May have but quite possibly not.

40

Now, at this point in time, Ms Cruickshank was the chief of staff, is that right?---She was.

She was chief of staff by way of secondment from her permanent role within the Department of Premier and Cabinet, is that right?---That's correct.

Is it right, in the face of that, that Ms Cruickshank got herself a bit more involved in the detail of what I might call policy matters, as distinct from

political matters?---Well, as chief of staff, I mean, you have involvement in all sort of aspects of the office, to some extent, and it would depend on the nature of the particular briefing or the nature of the particular proposal, the extent to which you might be involved.

So Ms Cruickshank, as chief of staff, would have at least a general understanding of what was going on in relation to all areas being dealt with within the office of the Premier, is that right?---A general understanding but not necessarily a specific understanding.

10

But is it right in terms of specific understandings on questions of things like political strategy that tended, in your experience, to be dealt with by the Political Strategy Team as opposed to Ms Cruickshank necessarily getting involved in the detail of matters of political strategy?---I think that's generally a fair statement, yes.

Now, you see here Mr Okosdinossian preparing what at least appears to be a form of a draft advice, but do you see there there's a heading called Adviser Comments?---Yes.

20

And do you see there that in the third paragraph, "Stage 2 is very much a nice-to-have for the RCM. No doubt they're using the by-election as leverage to secure funding for this next stage." See that there?---I do.

"Based on conversations I've had with DPP staff based in Wagga Wagga," and then there's a reference to a particular individual, "stage 2 is by no means a top order priority for the community and could be seen as quite a political announcement." Do you see that there?---Yes.

30

Do you agree or at the time, at least, did you agree with Mr Okosdinossian's advice as indicated in the third paragraph of this note?---Yeah, yes, that was one of my concerns that it wasn't so much, my concern was not around the project itself. My concern was around the context of the announcement, its proximity to the previous announcement in terms of the \$10 million commitment, the context of the drought and, indeed, just the fact that it was, I, I didn't want the, any announcement to be seen as being, if you like, unnecessary.

40

Was there a concern that you held at the time that the Wagga by-election, b-y-election, was at risk of being criticised as being something in the nature of a buy-election, b-u-y-election?---Well, I wouldn't use that terminology, Mr Robertson, but equally it is a concern for governments, and indeed for oppositions, that during, whether it's a by-election or an election campaign, there is often a particular focus on how much money a particular side of politics is committing to a particular endeavour and that quite often becomes a, a, a point of contention and debate.

And so perhaps a more neutral way of putting it than the one that I used based on a media article at the time was the phraseology that Mr Okosdinossian uses in the third paragraph, that there was risk of it being seen as quite a political announcement?---Yes.

And do you see there then there's a reference to two options. So the options that Mr Okosdinossian is identifying, at least, is to, "Reconfirm the \$10 million commitment for stage 1 fit-out of the new RCM site." Do you see that there?---Yes.

10

And the alternative option identified is, "Commit to stage 2 with the additional approximately \$20 million to fund the new concert hall." Do you see that there?---Yes.

That's the same distinction that you were drawing earlier, is it, between the stage 1 \$10 million and a further commitment in relation to stage 2 with respect to the \$20 million?---That's correct, yes.

20

And can we then just turn to the next page. And this is a draft of a document I'm showing you but I just want to draw your attention to the second page. I take it that what I've shown you on the screen is, in effect, the template document for provision of briefs to the Premier from her political staffers?---That is often the way that, where written briefs are provided, that's how they will be structured, yes.

But I take it from the fact that we can see chief of staff here doesn't mean, consistent with what you said before, it always goes through the chief of staff, one - - -?---Hence.

30

And I think you're about to say, "Hence, have a look at the slash and the underline?"---Correct.

And so, at least as a matter of practice, when you worked in Ms Berejiklian's office, what might at least sometimes occur is chief of staff gets scrubbed out but instead it would be a director of, for example, strategy?---Correct.

40

But at least as a matter of general practice adopted almost all the time except perhaps in very unusual circumstances, a brief would go through someone at at least the director level, as in signed off and approved by someone at least at the director level, if not at the chief of staff level. Is that right?---Generally speaking, yes.

I tender the document that appears to be a draft briefing note from Mr Okosdinossian dated 13 August, 2018, and attached to an email of 14 August, 2018, pages 55 to 57 volume 31.4.

THE COMMISSIONER: Exhibit 477.

**#EXH-477 – EMAIL FROM MATTHEW CROCKER TO BERGE  
OKOSDINOSSIAN ATTACHING RCM BRIEF DATED 14 AUGUST  
2018 11.39AM**

10 MR ROBERTSON: Can we then go, please, to page 237 of volume 31.0. Now, this is an email chain. Do you see at the very top of the email chain, there's an email from Mr Burden to you 20 August, 2018?---Yes.

And just to assist you with the context, if we zoom in on the bottom half of the page, there's an email that you're not copied to but it seems you forward the chain from Mr Bolton to Mr Okosdinossian and others. Do you see that there?---Indeed.

And that starts by saying, "As requested, please find below information on Riverina Conservatorium of Music." Do you see that there?---Yes.

20 Now, if we then just go up the page, so that's the context. And then see Mr Okosdinossian sends that material to you, to Mr Crocker and to Mr Burden, 20 August, 2018, 4.47pm. See that there?---Yes.

And then you respond and say, "Just a couple of points." Roman (i), "Premier will now not be in Wagga today. Harwin is flying solo." Do you see that there?---Yes.

30 And then Roman (ii), "What's the announcement? The \$10 million has already been announced, so what's new?" See that there?---Ah hmm.

So does that reflect a concern that if all one was doing was simply re-announcing something that had already been announced, that might be the subject of some criticism?---Indeed.

Why are you making a big deal about the fact that there's \$10 million being advanced? Because that had already been the subject of an announcement, is that right?---That's exactly right.

40 And then you go on to say, "I personally don't want to push this project but the Premier did, so I think we need to make clear to her that there's no need to go further than we already have at this stage (and indeed there is some risk if we do so, given the context of the drought)." Do you see that there? ---Yes.

How did you know that the Premier did want to push this project?---I can't remember specifically whether or not I was either advised by another member of the staff. I have a vague recollection of having the briefest of brief conversations with the Premier about the conservatorium, but I can't

recall whether or not that conversation occurred after I had sent this email or prior to me sending this email.

And then you go on to say, “So I think we need to make it clear to her that there is no need to go further than we already have at this stage.” See that there?---Yes.

10 What was that a reference to?---Well, so again that was my belief that a further commitment of further funds, beyond the 10 million that had already been announced, wouldn't be helpful and perhaps would draw criticism as being unnecessary.

So in effect you're drawing to attention the fact that one possibility is to in effect re-announce the existing \$10 million as opposed to going further, is that right?---Well, I think essentially what I'm, my preference would have been neither of the options, if you like, that were on the adviser brief to the Premier. It would have just been to simply not make reference to the conservatorium at all.

20 So focus on other projects and other announcements as opposed to the conservatorium matter.---Correct.

And then in parentheses, where you refer to the drought, I take it that's a reference to the point that you've already explained?---Indeed.

30 Do you recall whether, in advance of a decision being made to push this project, to use your phraseology, whether any advice was sought from any relevant agency as to whether stage 2, at least in their view, was or was not a good idea?---I don't have any specific recollection. I, I think the, the normal course of events in this situation would be that you would seek guidance from the ministerial office as to whether or not they believed it would, was a good project. You would also, in the context of a by-election, seek guidance from either perhaps local party members, the party membership, the party organisation I should say, as to whether or not an announcement of this nature would be well regarded within the community.

40 Do you recall whether any of that happened?---I've got no specific recollection again about that happening. It may have but I, I don't have any particular recollection.

In the office of Ms Berejiklian at that point in time, who would have been responsible for ensuring that that kind of work, or taking the steps to cause that kind of work to take place, whose team would that be?---I may have had some role but Mr Burden would be the most likely contact with the party secretariat if that were to occur, for instance.

But what about in terms of seeking advice at the agency level? Whose team would ordinarily take responsibility for that kind of matter?---It could have been the Parliamentary Liaison Office that would have reached out.

But you're not able to assist one way or the other as to whether that kind of investigation or advice was sought in relation to this particular project, is that right?---No, I'm not, I'm sorry.

10 And then if we scroll up the page, you'll see within two minutes Mr Burden says, "We need the full \$20 million, team." Do you see that there?---I do.

So is this right, as at 4.59pm, your understanding was that Ms Berejiklian wanted to push the project, although it wasn't clear which of the options that actually meant? Is that how we read your email of 4.59pm?---Yes, I think that's, I certainly had no understanding at 4.59 as to whether or not a decision had been made with respect to which option, if at all, is pursued. I am still at this point in time effectively trying to fight for my position, which was to focus on other projects.

20 So as at 4.59pm it was apparent to you that the Premier was desirous of the project, although not clear as to whether or not a decision had actually been made to make an announcement, is that right?---Correct.

And what was also obviously not clear to you, see your Roman (ii), is if there was to be announcement, what would it be, would it be Mr Okosdinossian as option 1, in effect, re-announce something that's already been committed or make a further announcement, is that right?---That's correct.

30 But I take it you took it from Mr Burden's email two minutes later that in fact a decision had been made by Ms Berejiklian by at least 5 o'clock, or 5.01, of 20 August, 2018, to make an announcement in relation to the \$20 million, the second of the two Okosdinossian options, if I can call it that?---I think maybe perhaps you're making a small leap to suggest that that was my assumption. It may have been, and I, it's difficult for me to, to recollect, but equally it may have been the case that Mr Burden was just again indicating that he was of the belief that in fact the full \$20 million would in fact be a, a good announcement and a well-regarded announcement by the community.

40 So you're drawing to attention that this email chain may simply be a debate between advisers where you've raised concerns and Mr Burden has said, well, you might have raised concern but in my view, in effect, the second option is the one that we need for the purposes of the by-election?---Correct. And at this time Mr Burden was more senior to me within the office.

Did Mr Burden have a particular special function in relation to the by-election campaign? Was he, in effect, the point person within the Premier's Office with respect to that by-election campaign or is it someone else?---No.

In, in many respects I think you would almost say that I was the point person in terms of some of the coordinating role for the announcements and the Parliamentary Liaison Office team certainly played a coordinating role in terms of ministerial visits to the electorate et cetera, but obviously Mr Burden, as Head of Strategy at the time, was instrumental in many of the, the announcements.

10 So a team effort but Mr Burden, at least in terms of matters of political strategy, would have taken at least the lead role, is that right?---I think that's a fair, fair statement.

And at that point in time Mr Burden was more senior to you in Ms Berejiklian's office, is that right?---That's correct. And I, I would just like to point out that certainly any view held by Mr Burden or anybody else to support the project was an entirely understandable view. I mean, this was a reputable organisation, it was a well-regarded project. I think it's important to note that after the by-election was lost and the new member for Wagga Wagga was elected, he himself has made representations to the Premier's Office, has in fact met with me in my role as chief of staff, advocating for  
20 that project. So, my concern at the time was not about the nature of the project, it was, as I say, about the nature of an announcement within the context that we've discussed.

And to your knowledge, has that project, the \$20 million, ultimately found favour with the government?---I believe it has not because the requirements around the business case et cetera have to date not been satisfied.

Was that something being dealt with within the Premier's Office, in Premier Berejiklian's office or on some other office?---No. In some other office.  
30 We have, I had no knowledge or awareness of where that was at, at all.

So in terms of the day-to-day, as to moving from the by-election announcement to whether or not there'd actually be a flow of funds, that wasn't something being dealt with on a day-to-day basis within Ms Berejiklian's office, is that right?---Not at all, not considered at all.

You said a little while ago that the project, by which I think you're referring to the stage 2 of the project, was well regarded. Have I got that right?---No, I, the conservatorium organisation generally was well regarded.  
40

You weren't referring specifically to what I've called today stage 2, the building of the recital hall?---Well, I can't comment as to whether or not that was well regarded within the community but certainly the, the organisation as a whole I understood to be a, a well-regarded organisation that was playing an important role in the cultural life of Wagga Wagga.

So when you were talking about it being well regarded, you're referring to the organisation, the Riverina Conservatorium itself, as opposed to any

particular part of the project that you and I have been discussing, is that right?---That's, that's what I was referring to but again I note that the current member, Dr Joe McGirr, has in fact made representations with regards to the \$20 million and the recital hall component because the current member, the current Independent member also assesses it as being an important facility.

10 As you understood it, was stage 2 of the RCM project well regarded at an agency level as in within the relevant departments or agencies of government?---I had very little understanding as to how that was regarded beyond sort of the notation there that we saw in the brief about it being a nice-to-have in Berge's terminology.

I tender the email chain ending in an email from Mr Burden to Mr Harley, 20 August, 2018, 5.01pm, pages 237 to 239, volume 31.0.

THE COMMISSIONER: Exhibit 478.

20 **#EXH-478 – EMAIL CHAIN ENDING WITH BRADLY BURDEN TO NEIL HARLEY AND OTHERS DATED 20 AUGUST 2018 5.01PM**

MR ROBERTSON: Commissioner, did you say 478?

THE COMMISSIONER: Yes.

30 MR ROBERTSON: Thank you. Sorry, I just was making a note. Now, ultimately an announcement, by-election announcement was made in relation to stage 2 of RCM during the Wagga Wagga by-election period. Is that right?---That's correct.

Did you have any involvement in any mechanics that were necessary in order to bring that announcement about, any paperwork and the like, or is that left to others to do?---Not that I can recall, because as I remember it, it was an announcement ultimately made by Minister Harwin.

40 So does that mean you didn't have any involvement in, for example, the drafting or approval of the media release to make the announcement or anything of that kind?---No. I may have seen some drafts for the media release but I certainly don't remember having any substantive input.

Is it consistent with your recollection that at least within government what happened in relation to the RCM stage 2 was that there was a reservation of funds?---That's correct, yes.

Did you have any involvement in the process of causing funds to be reserved?---No, I did not. Not that I recall.

Do you happen to know who would have taken the running in relation to causing for that reservation to take place?---Under the normal course of events I would have expected that to be the policy adviser to liaise with other ministerial officers as necessary to facilitate, you know, the announcement.

10 You're aware I take it that Ms Berejiklian gave evidence before this Commission to the effect that she was in a close personal relationship with Mr Daryl Maguire from at least about the time of the 2015 election or slightly after it or thereabouts?---It would be quite remarkable if I were not aware so, yes, I am.

When did you first find out about that information, in other words, the existence either in existence or in the past of a close personal relationship between Mr Maguire and Ms Berejiklian?---When this organisation issued Ms Berejiklian with her first summons to attend a compulsory examination last year.

20 Wasn't something that you knew about at any earlier time?---No.

It came to your knowledge I take it because Ms Berejiklian informed you of that information?---That's correct, yes.

Did she inform you at that point in time that it was a relationship that was still in existence or that it was only in existence at some time in the past? ---At that time I think I probably left the office believing that it was a relationship that had concluded and was a relationship in the past.

30 Concluded recently or concluded sometime in the distant past?---I took it to be distant past but that was just my impression. It was a, as you can imagine, a very difficult discussion to have, so at that time after initially finding out I, I took it to be something that was more historic in nature.

The evidence that Ms Berejiklian gave was to the effect that she was in a close personal relationship from about the time of the 2015 election or slightly after or thereabouts. Do you remember that was the evidence that she gave?---Ah hmm.

40 - - - in the public inquiry?---Yes.

You referred to it before as it being a historical relationship at least as you understood it. Does that mean at least as you understood it from the conversation it's come to an end a couple of months ago or it's come to an end some number of perhaps years ago or more?---It, it wasn't a question that we went to as part of that initial conversation. As I say, you can imagine it was a very difficult conversation for both of us. A very private matter for the former Premier, who is inherently a very private person. So we didn't

go into detail about when it commenced or when it finished. I didn't believe that that was appropriate to do so at that stage. But we talked in broad terms about the nature of the relationship and the fact that it went beyond what we might normally regard as a relationship between, you know, a Premier and other members of parliament.

10 But you at least had the impression from the discussion that it was something in the nature of a historical relationship as distinct from an ongoing or recently ended one, is that right?---That, that was the impression that I left that initial meeting with. I came to learn, though, in the, you know, following weeks that it was probably, the relationship had continued on for a little longer than I had anticipated.

When you say longer than you had anticipated, what do you mean by that? What did you anticipate?---That it was, that it was more recent than I had anticipated.

20 If you'd known about the existence of the relationship at the time that you were working in Ms Berejiklian's office, would you have done anything differently to what you in fact did?---Well, I don't know that I would have done anything differently. I mean, as it relates to my engagement with the Conservatorium of Music, of course, then I think you've seen today, I mean, my position, I was opposed to that project anyway.

What if you knew about it before the calling of the Wagga Wagga by-election?---Well, I, I wasn't in a position, I mean, what are you suggesting, that I should have, what, what - - -

30 No, I'm not suggesting anything. I just asking the question as to whether or not it would have affected any steps that you either took or did not take. ---No, I don't think it would have. In terms of my involvement, the advice that I provided with respect to the conservatorium, I don't think anything would have necessarily changed.

40 But what about before your involvement in the Riverina Conservatorium of Music issue? So whilst Mr Maguire was still a member of parliament, would knowledge of information as to the existence of a relationship caused you to do anything by reference to that information?---Well, I would expect that I would anticipate that had that information been known at the time, then the chief of staff and other senior members of the team, those people who are, were better placed to provide advice to the Premier at that time, might have provided advice to her as to how that situation could appropriately be managed. I wasn't in that position.

Would you agree with this, that had the existence of the relationship been known at an earlier stage, then advice would have or at least should have been provided to Ms Berejiklian to ensure that no one at any stage could have suggested that decisions were being made affected by that personal

relationship?---Yes. But acknowledging that, I do believe that the only person who can appropriately define what the relationship was, and indeed what the relationship wasn't, is Ms Berejiklian.

So it would at least be a matter in respect of which some advice should be sought or would have been or at least in your mind should have been given, is that fair?---Yes.

10 Just pardon me for a moment, Commissioner. I'm sorry about that. Mr Harley, I just want to clarify one aspect of your evidence from a little bit earlier in relation to the question of whether Mr Maguire was consulted to your knowledge as to what announcements might be made if any in relation to the by-election campaign for the electorate of Wagga Wagga. Do you remember giving some evidence regarding that matter?---Yes.

20 And I think you said that, is this right? I think you said that it would at least be a little bit unusual to be asking him for advice in circumstances where he was in the nature of a persona non grata and in circumstances where there was a wish list available?---I don't think I indicated that it would, would be unusual but, in my view, I'm not sure that it would have been regarded as being necessary on the basis that the wish list items existed and, in fact, in reference to the Conservatorium of Music, it was a matter of public record really that Mr Maguire was supportive of that organisation. Now, it may have still been, and I just don't have a recollection, it would be under the normal course of events an understandable and entirely sort of a normal process for the leader's office to reach out to a perhaps a retiring member of parliament to see what projects were particularly important in their particular area to understand the area better, but whether or not that occurred for Mr Maguire, I can't recall any advice to me that he either had or hadn't.

30 So it may well have happened. You're just not sure one way or the other? ---It may have happened but I'm just not aware. I can't recall.

40 And I think you're saying that even if it had happened between the Premier's Office and Mr Maguire, that doesn't necessarily carry with it anything necessarily inappropriate because one might be asking for advice from someone who's been a longstanding local member over some number of years?---Correct. That's, that's exactly correct.

At least from your perspective, by the sounds of it, it would be unlikely to be necessary because you've got the wish list and you've got public statements and things of that kind?---Well, I think so. I mean, as I say, I mean, obviously the circumstances around the by-election I think would have made it less likely that that kind of engagement would have occurred than it otherwise would have routinely occurred had it just been a member of parliament retiring from parliament, for instance.

And so it's quite possible that sort of communication took place but not in a manner that came to your attention. Is that right?---That, certainly not, not that I can recall.

That's the examination.

THE COMMISSIONER: Thank you, Mr Robertson. Mr Agius, do you wish to seek leave to ask Mr Harley any questions?

10

MR AGIUS: No, thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Harrowell, do you wish to - - -

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: Thank you. Ms Callan, do you wish to seek leave to ask Mr Harley any questions?

20

MS CALLAN: Yes, Commissioner.

THE COMMISSIONER: Yes. The usual terms, Ms Callan.

MS CALLAN: Yes, Commissioner. Mr Harley, over the time that you worked in Ms Berejiklian's office, you had many opportunities to observe how she engaged with colleagues within the Coalition Government?---Yes.

And to observe how she engaged with other members of parliament, including backbenchers and the like?---Yes.

30

You observed the extent to which she was receptive to ideas or proposals from other members of parliament?---Very much so.

And her receptiveness, as you put it, to the wish lists of various members of parliament?---Yes.

I take it you observed her conscientious responsiveness to members of parliament when they wrote to her or otherwise raised issues of concern within their electorate?---Yep. The concerns raised by members of parliament were always taken very, very seriously by the Premier.

40

In terms of the observations you made as to Ms Berejiklian's decision-making, did you observe the extent to which she considered advice she was given?---Yes.

And to your observation, was she receptive to advice?---Yes.

You observed the factors that she took into account in terms of the framework within which a relevant decision was being made?---Very much so.

To your observation, she made decisions in a principled fashion?---Always.

To your observation, she was alive to the political implications of decisions she was making?---Yes.

10

To your observation, was her overriding focus on seeking to advance and protect the interests of the people of New South Wales?---The community has always come first for Premier Berejiklian. I have never, ever in my time in politics known a person more committed, more fiercely committed to public service and serving the people of the state than Ms Berejiklian. Never.

20

Can I ask you, in terms of her responsiveness to members of parliament and others who wrote letters to her, is it the case that she had a protocol in terms of if letters came from a particular category of individuals, she always responded in writing and signed those letters?---The Premier would generally respond in writing to all correspondence wherever it was possible for her to do so and wherever it was appropriate for her to do so.

And from whatever source, whether it was members of parliament or - - -? ---Member of parliament, member of the public, it didn't matter. It could have been a school child, she would still seek to provide a written response.

30

And overall, in terms of your observations of the way in which Ms Berejiklian worked, to your observation was she a stickler in terms of ensuring things were done and by the book?---Very much so, yes.

Can I ask you, in relation to Mr Maguire, the difficult conversation that you had with Ms Berejiklian about the fact of that close personal relationship, did that information come as a surprise to you?---Yes.

40

Did you at any time observe Ms Berejiklian to have treated Mr Maguire any differently from any other member of parliament?---Never. And in fact, I, I think it, if I can add, I think it's telling to note that from the time that I joined the Premier's Office in or around May 2017, through to the time of the by-election in August/September 2018, I cannot recall a single occasion when Ms Berejiklian raised with me either Mr Maguire or the Wagga Wagga electorate. Not a single occasion.

That being the case, was it your experience or observation that she in no way conducted herself in a matter which was partial towards Mr Maguire? ---Absolutely not.

And in no way preferential in any sense of the word?---No, absolutely not.

Those are the questions, thank you, Commissioner.

THE COMMISSIONER: Thank you, Ms Callan. Mr Patterson, do you wish to seek leave to ask Mr Harley any questions?

10 MR PATTERSON: Thank you, Commissioner, just a few brief questions. Mr Harley, during the time that you were the former Premier's chief of staff or earlier when you were in the Parliamentary Liaison, Premier's Liaison Office, were you ever given the impression by Ms Berejiklian or anyone else that she wanted the electorate of Wagga Wagga to be favoured over any other?---No. Categorically no.

Did Ms Berejiklian ever leave with you the impression that she had a particular interest in the electorate of Wagga Wagga?---No, absolutely not.

20 And finally, Mr Harley, given your observation of Ms Berejiklian's character, do you believe that she would ever have participated in a decision that she believed would confer a private benefit upon herself without making the appropriate declarations?---I do not.

Thank you, Commissioner. They're my questions.

THE COMMISSIONER: Thank you, Mr Patterson. Mr Robertson, anything arising?

30 MR ROBERTSON: No, Commissioner.

THE COMMISSIONER: Very well. Can I release Mr Harley?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Mr Harley, you're released from your summons. Thank you for attending. You may step down.---Thank you, Commissioner.

40 **THE WITNESS EXCUSED** **[11.45am]**

THE COMMISSIONER: Are we going to take a short morning tea adjournment, Mr Robertson?

MR ROBERTSON: Yes. Can we suggest that? Yes, Mr Burden will be appearing via video link so there will need to be some buttons pressed.

THE COMMISSIONER: Very well. We'll take a, what, 10-minute adjournment, or 15?

MR ROBERTSON: If it pleases the Commission 15 minutes, perhaps?

THE COMMISSIONER: Very well. 15-minute adjournment.

**SHORT ADJOURNMENT**

**[11.45am]**

10

THE COMMISSIONER: Mr Robertson.

MR ROBERTSON: I call Brad Burden.

THE COMMISSIONER: Mr Burden, do you wish to take an oath or make an affirmation?

MR BURDEN: Take the oath, Commissioner.

20

THE COMMISSIONER: Very well.

THE COMMISSIONER: Mr Hempsall, have you explained to Mr Burden his rights and obligations as a witness?

MR HEMPSALL: I have, Commissioner, and we seek a direction under section 38.

10 THE COMMISSIONER: Thank you very much. Mr Burden, will you listen very carefully to the explanation I'm about to give you about the declaration to which Mr Hempsall just referred before I actually make the declaration?---(No Audible Reply)

Very well. As a witness you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be  
20 used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.  
30 I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I will now make the declaration.

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

**DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING**

**BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you understand that, Mr Burden?---I do, Commissioner.

10 Very well. Thank you, Mr Robertson.

MR ROBERTSON: Mr Burden, can you hear and see me clearly?---Yes, I can.

You were the Director of Strategy in the Office of Premier Berejiklian during calendar year 2018, is that right?---Yes.

You continued in that role I think until about April of 2019, is that right? ---Yes.

20

You first began working in Ms Berejiklian's office soon after she became Premier in January 2017, is that right?---Yes. There or thereabouts.

There or thereabouts was your role the Director of Strategy at that point or did you have a more junior role and was promoted to Director of Strategy? ---I was Director of Government and Stakeholder when I initially joined the office, and I think it was February rather than January but - - -

30

I take it when the phrase Director of Strategy is used, at least as it was used in Ms Berejiklian's office, strategy is a reference to political strategy, is that right?---Yes.

You started your work life as a journalist, is that right?---Yes.

And you had various roles as a political staffer, including in the offices of John Brogden, Peter Debnam and Barry O'Farrell, is that right?---Yes.

That was principally in communications roles, such as media adviser, director of communications and things of that kind?---Correct.

40

And I think you've also had a stint in the private sector in strategic communications, is that right?---Yes.

When you were Director of Strategy in Ms Berejiklian's office, you reported to Ms Cruickshank as chief of staff, is that right?---Yes, that's correct.

At least in calendar year 2018, Ms Cruickshank was your immediate superior within the office of Ms Berejiklian, is that right?---Yes.

And does it follow from that that everything in relation to matters of strategy would always go through Ms Cruickshank before they go through to the Premier or was there an arrangement where you would, at least on some matters, be in a position to report directly to Ms Berejiklian?---On some matters I would report directly to Premier Berejiklian.

- 10 So is this right, there was at least a practice within the office of Premier Berejiklian at the time that you worked in it, and that Ms Cruickshank was the chief of staff, that permitted briefing of Ms Berejiklian directly, provided that that was done by someone at the director level rather than more junior staff?---That's correct, yes.

So I take it that Ms Cruickshank as chief of staff would at least have a general knowledge of the kinds of matters in respect of which the Premier was being given advice through her office, is that right?---Yes.

- 20 But in terms the day-to-day detail, that would sometimes go through Ms Cruickshank for approval but would sometimes go directly from the director level straight through to Ms Berejiklian, is that right?---Yes, that's correct. Yes.

Ms Cruickshank was on secondment from the Department of Premier and Cabinet when she was chief of staff, is that right?---Yes, I believe that to be the case.

- 30 So her permanent position was in a departmental role and she was seconded to in effect a political role, is that right?---Yes.

Is it right, in the face of that, that Ms Cruickshank, at least as you recall it in the office, principally left matter of things like political strategy to either advisers within the office such as you, as opposed to getting involved in the detail of matters of that kind? Is that right as a general proposition?---No, I don't think that's fair. She would be involved in, you know, key decisions, key discussions.

- 40 So at least she would be involved in - - -?---As, as I, as I imagine most chiefs of staff would be.

She would be involved in key decisions and key discussions and would have a general idea at least of what was being reported from a director level to the Premier level, is that right?---Yes.

But subject to matters of that kind, on the day-to-day matters of political strategy, were the details of that ordinarily dealt with by Ms Cruickshank or

were they ordinarily dealt with by others in the office such, for example, as you?---That's probably fair, yes.

Are you aware that this Commission is investigating allegations concerning grant funding promised and/or awarded to the Riverina Conservatorium of Music?---Yes, I am.

10 During your time in Premier Berejiklian's office did you become aware of a proposal to establish the Riverina Conservatorium of Music on a site at 1 Simmons Street, Wagga Wagga and/or to construct any buildings or building works on that site?---I only know generally, I couldn't tell you specifically in relation to addresses or anything like that.

But you at least were aware in your capacity as Director of Strategy in the Office of Premier Berejiklian of a proposal to provide funding or to construct building works for the benefit of the Riverina Conservatorium of Music. Is that right?---Yes.

20 And how did that matter come to your knowledge insofar as you can recall it?---Well, I think it came from my knowledge in the context of the Wagga Wagga by-election.

So that was the by-election that became necessary upon the resignation of Mr Daryl Maguire. Is that right?---Yes.

30 And what's your recollection as to how that matter came to your knowledge in connection with that by-election?---I think it, it appeared on a list of potential announcements to be made in the electorate during the by-election period.

How did that list come about so far as you can recall it?---The general process I can't recall specifically in relation to this one but the general process was when a by-election was occurring, the Premier's Office would compile a list of potential announcements for consideration. Certainly not all of them would be made but a list was compiled of, of, you know, potential media opportunities or, or announcements that could be made in the electorate.

40 Who was responsible for compiling that list?---Generally, that task would have been done by the Parliamentary Liaison Office.

Do you recall whether Mr Maguire was asked for any input in relation to the preparation of that list?---No, I don't.

So are you saying that a list was prepared most likely through the Parliamentary Liaison Office that included the Riverina Conservatorium of Music as a possible by-election announcement. Is that right?---Yes.

And that's how the Riverina Conservatorium proposal first came to your knowledge. Is that right?---I think that would be correct, yes.

Did you within the office of Ms Berejiklian have a particular view as to whether that particular project should be the subject of an election commitment or announcement during the course of the Wagga Wagga by-election campaign?---I don't remember my view strongly.

10 So does that mean you recall not having a view strongly one way or another or does that mean you don't whether you had a view?---I don't really recall whether I had a view, I'm afraid.

Let's see if I can help you this way. Can we go to Exhibit 478, volume 31.0, page 237. I'm going to show you an email chain to which you're a party. Can we start at the bottom of the page, first. Do you see there an email from Mr Bolton to Mr Okosdinossian, Mr Walker and Mr Hanger, 20 August, 2018?---I do.

20 Now, you're not copied to that particular email but I'll show you where, in effect, you get joined in. If you just look a bit further up the chain, 20 August, 2018, 4.47pm. See that there?---I do.

Now, the email from Mr Bolton to Mr Okosdinossian and others says, "Hi, Berge. As requested, please find below information on the Riverina Conservatorium of Music." Do you see that there?---I do.

30 Now, the detail doesn't presently matter for the purposes of my questioning, but if we just scroll up the screen a little bit, you'll see that first of all Mr Okosdinossian to Mr Harley, Mr Crocker and you says, "As you see below in the section I've highlighted, we can talk in broad terms about stage 2 as the ERC approved \$10 million will cover master planning for both stages. This means we don't need to refer to any further dollars at this stage. This is a possible announcement for GB in her trip to Wagga with Harwin this Friday." Do you see that there?---I do.

40 Does that refresh your memory at all as to some discussions within Ms Berejiklian's office in or about August of 2018 regarding what announcements might be made regarding the Riverina Conservatorium of Music and, in particular, whether any announcement might be made in relation to what in this email is referred to as stage 2?---Are you asking whether that refreshes my memory as to my view?

Yes, well, as to either your view or to any involvement that you had during around August of 2018?---No, I'm afraid it doesn't.

And if you have a look at Mr Harley's email a little bit further up the page. He says, "Just a couple of points (i) Premier will now be in Wagga on

Friday. Harwin is flying solo. What's the announcement? The \$10 million has already been announced, so what's new?" Do you see that there?---I do.

And then Mr Harley says, "I personally don't want to push this project." See that there?---Yes, I do.

So is it consistent with your recollection that Mr Harley didn't want to push the Riverina Conservatorium of Music project?---Yes.

10 And then he says, "But the Premier did so, and I will need to make it clear to her that there's no need to go further than we already have at this stage. Do you see that there?---I do.

And then in parentheses, "And indeed that there is some risk if we do so, given the context of the drought." Do you see that there?---I do.

Is it consistent with your recollection that one of Mr Harley's concerns regarding any announcement concerning the Riverina Conservatorium of Music is that there may have been some criticism of making an  
20 announcement of that kind, given the context of the drought in 2018?---Yes.

Can I then just show you what appears to be your response. So just note that Mr Harley's email is one of 4.59pm. You come back two minutes later and you say, "We need the full \$20 million, team." Do you see that there? ---I do.

Now, insofar as you can recall it, was that expressing a personal view on your part, in other words saying, "I think we should have an announcement for the full \$20 million," or are you communicating the view of someone  
30 else, perhaps Ms Berejiklian?---To the best of my recollection, I would be expressing the view of either Ms Berejiklian or Mrs Cruickshank, Ms Cruickshank.

But not your own personal view, at least doing the best you can sitting there now?---Correct.

You don't have a recollection of you personally having support or supporting the idea of making any announcements regarding the Riverina Conservatorium of Music during the course of the Wagga Wagga by-  
40 election campaign?---I don't recall my personal view, no.

Do you recall anyone else within the political advisers or staffers of Ms Berejiklian's office wanting her, to use Mr Harley's phrase, push this project? I'm leaving Ms Berejiklian aside at the moment, but any of the staffers. Do you recall any of them wanting to push the project?---No, I don't.

Do you recall Ms Berejiklian wanting to push the project?---I recall that the announcement was made, so therefore she would have approved that.

So are you drawing to attention the fact that for a by-election of a seat in respect of which the Liberal Party is putting forward a candidate, the ultimate decision-maker as to what announcements should be made is a matter for the leader of the party, is that right?---Correct, yes.

10 So in this case the leader of the party is Ms Berejiklian as Premier and leader of the parliamentary Liberal Party, correct?---Yes.

And so is this right, you're inferring from the fact that there was an announcement that she must have been in favour of making an announcement, is that right?---Yes.

20 Is that the only information you can recall, sitting there, as to her support or otherwise for this particular project, the fact that an announcement was made? Or do you have a recollection of some other indication of support or otherwise?---I have no other recollection but given the announcement was made, therefore she would have approved it.

Do you recall that one of the concerns during the course of the Wagga by-election was the concern that the by-election, b-y-election, might be seen as a buy-election, b-u-y-election?---Yes, I do.

Was that a matter that exercised your mind at all during the course of the Wagga by-election campaign?---Yes, it certainly did.

30 And can we go to page 254 of volume 31.0. Just to make clear to all that the phraseology I've used in this question is not mine, it comes from elsewhere. And do you see an email there from an Ehssan, E-h-s-s-a-n? And there's a surname - - -?---I do. Just make it a bit larger, please, Mr Robertson.

Yes. Let's just zoom in to the heading. Do you see there an email from an Ehssan, E-h-s-s-a-n?---Yes, I do.

And I'll spell the surname, V-e-i-s-z-a-d-e-h. Do you see that there?---I do.

40 And does that, is that consistent with your recollection that there was a suggestion or allegation, at least in The Herald, The Sydney Morning Herald, during the Wagga by-election campaign, an assertion that the government was running what they described as a "buy-election"?---Yes, there was certainly commentary to that effect at the time.

Was that a, do you recall whether that was a matter that affected any advice that you might have given in relation to the RCM project that you and I have

been discussing?---I don't specifically remember any discussions around the conservatorium project but it certainly would have been a factor at that time.

At least a factor exercising your mind in relation to by-election announcements more generally. Is that right?---Correct, yes.

10 Now, you said that ultimately an announcement was made in relation to the RCM project. Did you have any involvement in the mechanics of getting that announcement or being able to make that announcement, in other words, any paperwork that would be necessary, preparation of media releases or anything of that nature?---Not that I remember, no.

And if we can just go to page – I withdraw that. And so that document that I showed you on the screen a moment ago that was in effect you providing some comments in relation to what might be said back to The Herald in response to their claim. Is that right?---I can't see if that's my response or - - -

20 We'll just zoom up the page a little bit. Sorry, that's my fault, Mr Burden. We're not drawing that to attention. See how you respond and you say, "Hi, mate. See my comments below."---Yes.

And I think you made a correction there as well. See that there?---Yes, I do.

I tender - - -?---I can't see the bottom of the email. I can only see the, the first three paragraphs.

30 THE COMMISSIONER: Can you just scroll up a bit, Mr Robertson, so Mr Burden can see the document.

MR ROBERTSON: Does that help at all, Mr Burden? See how there's some blue text interspersed amongst the black text?---Yes.

So that looks like you adding some comments to a draft prepared by the individual who drafted this particular email. Is that right?---That would be correct, yes.

Was that someone who reported to you?---Yes.

40 I tender the email chain ending with an email from Mr Burden to Mr Harley and another, 29 August, 2018, 4.09pm, pages 254 to 257, volume 31.0.

THE COMMISSIONER: Exhibit 479.

**#EXH-479 – EMAIL CHAIN ENDING WITH BRADLEY BURDEN  
TO EHSSAN VEISZADEH AND NEIL HARLEY REGARDING  
WAGGA FOR SMH DATED 29 AUGUST 2019 4.09PM**

MR ROBERTSON: Just pardon me for a moment, Commissioner. Pardon me for a moment, Mr Burden. Mr Burden, I take it that you're aware that Ms Berejikian gave evidence before this Commission to the effect that she was I a close personal relationship with Mr Maguire from at least about the time of the 2015 election or slightly after or thereabouts?---Yes.

10 When did that matter, as in the existence of the personal relationship, first come to your attention?---In her answer to your questions, Mr Robertson.

So when the evidence that she gave before this Commission in the public inquiry last year came to your attention. Is that right?---Correct.

Had you known about that information at the time that you worked within Ms Berejikian's office would that have led you to take any steps or to change anything you otherwise did?---Can you be more specific in relation to your question. Are you talking about the grant or more generally?

20 I'm talking more generally.---I think we would have, advice would have been sought around any potential conflicts of interests and how to manage them.

That's the examination, Commissioner.

THE COMMISSIONER: Thank you. Mr Agius, do you wish to seek leave to ask Mr Burden any questions?

30 MR AGIUS: No, I do not. Thank you, Commissioner.

THE COMMISSIONER: Mr Harrowell?

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: Ms Callan?

MS CALLAN: Yes, Commissioner.

40 THE COMMISSIONER: Yes, leave is given on the usual terms.

MS CALLAN: Mr Burden, my name is Callan. I appear on behalf of Ms Berejikian. Over the approximately two years that you worked in the Premier's Office it's the case, isn't it, that you observed the manner in which she engaged with colleagues both within - - -

MS CLIFTON: I'm sorry to interrupt. I understand there's a technical issue and Mr Burden may not be able to hear.

THE COMMISSIONER: Can you hear, Mr Burden?---I can hear everybody, yes.

MS CLIFTON: Sorry. I was misinformed.

THE COMMISSIONER: If you can't hear, Mr Burden, can you raise your hand, please.

10 MS CALLAN: I'm okay to proceed?

MS CLIFTON: Yes. Terribly sorry.

MS CALLAN: That's all right. Mr Burden, in the time that you worked in then Premier Berejiklian's office, it's the case that you observed the manner in which she engaged with colleagues, both within the Coalition government but across the full spectrum in terms of all members of parliament?---Yes.

20 And in that respect did you observe that she was generally receptive to and conscientious about issues and concerns raised by members of parliament?  
---Yes.

In terms of the way in which she made her decisions, is it the case that as her political adviser you observed the manner in which she considered your advice as to the political implications of decisions that she was making?  
---Yes.

30 Having regard not only to the political implications but other relevant factors, to your observation were Ms Berejiklian's decisions made in a principled fashion?---Yes.

To your observation, were her decisions made with an overriding focus on seeking to advance, promote and protect the interests of the people of New South Wales?---Yes.

In the time that you worked with Ms Berejiklian, did you observe her to apply high standards of professionalism and rigour in her work?  
---Absolutely.

40 And to your observation did she expect that of her staff and to all New South Wales public servants?---Absolutely.

Would you describe her as being stickler in terms of ensuring things were done properly and by the book?---Yes.

When you first became aware of the fact of a close personal relationship between Ms Berejiklian and Mr Maguire, did that come as a surprise to you?---Absolutely.

At any time, did you observe Ms Berejiklian to treat Mr Maguire any differently from other members of parliament?---No.

At any time, did she ask you to do anything concerning Mr Maguire's electorate of Wagga that was different to how any member of parliament might be dealt with in terms of their electorates?---No.

10 Did she, to your observation, in any way give Mr Maguire preferential treatment?---No.

Those are the questions. Thank you, Commissioner.

THE COMMISSIONER: Thank you, Ms Callan. Mr Hemsall, did you wish to seek leave to ask Mr Burden any questions?

MR HEMPSALL: No, thank you, Commissioner.

20 THE COMMISSIONER: Very well. Shall we release Mr Burden or did you - - -

MR ROBERTSON: Just one quick question by way of, or perhaps two questions by way of clarification. Mr Burden, Ms Callan asked you in effect whether or not Ms Berejiklian made decisions in a, I think she used the phrase "principled fashion". Do you remember hearing that question? ---I do.

30 In relation to the RCM announcement that you and I discussed this morning, are you aware of what principles were taken into account in deciding to make an announcement in relation to that project?---I, I couldn't comment as to the Premier's decision-making process.

To your knowledge, did Ms Berejiklian have access to any advice from any government department or agency as to whether or not any announcement should be made in relation to the RCM project that we discussed today?---I don't know.

Thank you, Commissioner.

40 THE COMMISSIONER: Thank you. Shall we now release Mr Burden?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Very well. Mr Burden, you're released from your summons. Thank you for appearing today.---Thanks, Commissioner.

**THE WITNESS EXCUSED**

**[12.28pm]**

MR ROBERTSON: I'm going to suggest a slightly earlier start this afternoon but would you mind pardoning me for a moment to see whether that's going to be physically possible?

THE COMMISSIONER: Yes.

10 MR ROBERTSON: Can I suggest 1.45, Commissioner?

THE COMMISSIONER: So shall we adjourn now for lunch in other words?

MR ROBERTSON: Yes, that's my proposal.

THE COMMISSIONER: And resume at 1.45?

MR ROBERTSON: May it please the Commission.

20

THE COMMISSIONER: Very well. We are now adjourned until 1.45.

**LUNCHEON ADJOURNMENT**

**[12.29pm]**