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So to be clear, you do have a recollection of having discussions with Ms Berejiklian, during the course of which she indicated her support for the ACTA proposal, is that right?---I'd say yes, correct.

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Are you able to give some assistance as to where they might fit in the timeline? Is this before the ERC meeting, is it at the ERC meeting or is it after the ERC meeting?---Well, Mr Robertson, you've just asked me about the conversation that was had at the Expenditure Review Committee meeting, and I do recall conversations on this item which the Treasurer, which is Ms Berejiklian, Ms Berejiklian would have been part of that conversation.

I'm so sorry. I misunderstood. I misunderstood. So you recall there being discussions of this agenda item at the ERC meeting on 14 December, 2016, is that right?---That is correct.

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And you recall Ms Berejiklian being part of those discussions, is that right? ---That is, that is correct.

I take it that you, as Deputy Premier, would put significant weight on the view of the Treasurer or the Premier to a particular agenda item that finds its way before either Cabinet or a committee of Cabinet?---Correct.

Is it right that, as you understood it, during the meeting of 14 December, 2016, Ms Berejiklian was supportive of the agenda item that was being put forward by Minister Ayres?---Correct.

To your recollection, did Ms Berejiklian declare any conflict or potential conflict in relation to the agenda item that was put forward by Minister Ayres?---In my recollection, no.

It's at least clear in your mind that Ms Berejiklian was present in the room at the time that Minister Ayres' agenda item was being discussed by the Expenditure Review Committee, is that right?---Correct.

10 You're aware, I take it, that Ms Berejiklian gave evidence to this Commission to the effect that she was in a close personal relationship with Mr Maguire from at least about the time of the 2015 election or slightly after or thereabouts? You're aware that she gave evidence to that effect before this Commission?---I am aware, yes.

When did you first become aware that Ms Berejiklian was, according to her, in a close personal relationship with Mr Maguire?---Watching this inquiry when Ms Berejiklian was a witness.

20 Was it not at least some kind of a rumour, unspoken knowledge in the halls of either 52 Martin Place or Parliament House or both that there may, there was or at least may have been a relationship of that kind?---Mr Robertson, I can assure you, no one guessed it. It was a shock to everybody.

So that information coming to your attention through this Commission was a shock to you, is that right?---Absolutely, yes.

It's certainly something that you didn't know about or, for that matter, even expect as at the time of the ERC meeting on 14 December, 2016?---Correct.

30 I take it that you ultimately agreed with Minister Ayres' agenda item of 14 December, 2016?---Yes, I did.

Was Ms Berejiklian's support for that agenda item a matter that was relevant to you in deciding whether or not to accept that proposal or approve that proposal?---When, when the Treasurer of the day, and in this case Ms Berejiklian, are supportive of an item, yeah, we'd be supportive. I think the source of funding was the, the conversation in that committee.

40 Is it right to say that in the real world, where a particular proposal is supported by either the Premier or the Treasurer, it's highly likely to get the support of other members of either Cabinet or the Cabinet committee that might be considering an agenda item?---Highly likely, yes.

In particular if it's for an agenda item at the relatively low end in terms of funding – in this case, \$5.5 million – it would be reasonably unlikely for other ministers to not, in effect, defer to the views of the Premier or the Treasurer, is that right?---That is right, correct.

If you had known, as at 14 December, 2016, as to the existence of the close personal relationship that Ms Berejiklian said that she had with Mr Maguire from at least about the time of the 2015 election or slightly after or thereabouts, would have you done anything differently either at the meeting of 16 December, 2016 or in connection with that meeting?---Absolutely. The question of conflict of interest would definitely have been raised by myself or other members, and, and my, and would be raised by the Legal Team of Department of Premier and Cabinet. So that's the first part. The second part would be that if we had known prior to the Expenditure Review Committee about a relationship with Mr, between Ms Berejiklian and Mr Maguire, I don't believe the item most likely would have got on the ERC agenda.

Well, can you explain why that would be so?---Well, again, because of the conflict of interest and knowing now in hindsight that it was a direction by the Treasurer of the day, and that it was urgent. I think questions, Minister Ayres would have been asking questions if he was aware of a relationship as well.

20 So are you in effect saying that – well, withdraw that. We'll deal with that in parts. So if it was something known to you, for example, it was disclosed to you in advance of a meeting, are you saying that's something that you would, what, draw to the attention of the lawyers for advice as to what to do? Is that what you're saying?---It's a hard one because if, if there's a known relationship that is public or amongst ministers that we – if I knew there was a relationship with, through Ms Berejiklian and Mr Maguire, I would have expected there to be a conflict of interest declaration on that item, and that Ms Berejiklian would have excluded herself from the debate or the conversation on that item. And so it's a hard one to answer what you would do, because you would just expect. Because if we were aware there was a relationship, you would just expect a conflict of interest to have been, been put forward.

30 So is in effect what you're explaining that if it was a publicly known relationship, at least from your perspective, it would be obvious that a conflict would need to be declared, in which case you wouldn't need to do anything because what you would regard as the proper processes, declaring the conflict of interest, would have necessarily happened, is that right?---Mr Robertson, that's, you've put it perfectly.

40 In your experience, if the Treasurer is in a position of conflict in relation to a particular ERC item, does the Treasurer still have control of the agenda in relation to that item or, in your experience, is that in effect delegated to some other minister?---It would be delegated then to the Premier, who also sits on the Expenditure Review Committee.

And so when you were explaining before that, at least in your assessment now, with the benefit of hindsight, this item would never have got on the

agenda, in effect what you're saying is that it would no longer be in the gift of the Treasurer to put it on the agenda or not because there would be a conflict of interest declared and a disqualification in relation to that item, and it would then revert to the Premier to decide whether or not the item gets on the agenda with a degree of urgency. Is that I think what you're explaining?---That would be a likely arrangement, yes.

10 And so at least at the level of theory it could still get on the agenda urgently, but only then if the Premier was of the view that it should be dealt with urgently rather than not urgently, is that right?---The Premier or the proposing minister could also have the ability still to bring it, to put it on the agenda.

Is it right that it's not within the gift of the proponent minister, if they're not the Treasurer, to actually get something on the agenda but in their gift to attempt to get it on the agenda, is that right?---Correct.

20 And so the proponent minister would need the support of either the Treasurer or, if the Treasurer disqualifies herself or himself, would need the support of the Premier to get it on the agenda, is that right?---Would be correct or another process that's been set up internally within Treasury.

30 And I take it that the existence or not of the close personal relationship that you and I have been discussing between Mr Maguire and Ms Berejiklian would at least be a factor. Even if Ms Berejiklian was to disqualify herself, it would at least be a factor that you would want to take into account in deciding whether to support a particular project that might have the support of Mr Maguire?---Mr Robertson, understanding how the item came on the agenda, and if, if I was aware of a relationship between Ms Berejiklian and Mr Maguire, I would not have supported the agenda item, I believe my colleagues would not have supported the agenda item, and, and, and therefore it would not have been supported.

40 But why, why wouldn't you? Is it because there was some separate view about the project itself? Or why are you able to be so forthright that for this particular item, if you'd known about the relationship, you wouldn't have supported it?---Because the discussions in, in ERC at the time was in relation to source of funding, which I referred to earlier. And the source of funding, in the end it was agreed to that it would be from the Regional Tourism and Environment Fund, which sits in the Regional Growth Funds, which myself, Minister Adam, Minister Marshall at the time, who was then the Tourism Minister, and might be Minister Upton, who was the Environment Minister, co-signatories, so three signatories. If I had known -- and, and an allocation was made against my, against the fund, that would be very difficult. We would have, I would have reversed the process. The, the applicant would have come directly to me, the fund, the person that ran the fund, that had governance over the fund. We would have put them through a process to see a business case, and then we would have submitted to ERC

as a lump sum, a lump, one of many other projects in the normal practice. So it's very difficult to answer. I'm just trying to go through the process. So, so if we knew there was a relationship between Mr Maguire and Ms Berejiklian, we would have, we would have questioned processes before it became a, an agenda item, I think. That's how I'll summarise it.

10 Because is this right, one of the unusual aspects of the submission that was made to the ERC, and ultimately approved by the ERC, was that an allocation was made at the meeting, subject to business cases and things like that, but the money was in effect in the bag, rather than a more usual approach of the kind that you've identified, where you do the business case and those sort of things first before there's been, there's an allocation of funding. Is that an aspect of what you're talking about?---Yes, it is, but Mr Robertson, allocations do occur. That would not be the first, and I know that probably there have been some since. But allocations do occur, but if there was a conflict of interest, again, I believe that the process would have been different.

20 THE COMMISSIONER: When you say, Mr Barilaro, that allocations do occur, do you mean sometimes they do occur actually at the ERC meeting, rather than a fund being identified prior to the submission?---Commissioner, that's actually a very good question. Possibly not. Allocations would be made against a fund prior ERC. So would they be made at ERC? The answer's probably no. So that is actually a good question.

30 MR ROBERTSON: But to put it directly, if you are aware of the existence of this personal relationship, ERC support for a project in the election of Wagga Wagga would involve what I'll describe as political risk. In other words, a concern that there may be public comment to the effect that this has been – the support for this project has been influenced by the existence of the personal relationship, if that either was public or later became public. Is that an aspect of what informs the explanation you were giving before? ---Absolutely.

40 And so then to protect against that potential risk, I think this is what you're saying, one wouldn't adopt the procedure that the ERC adopted in 2016 of approving the expenditure subject to conditions, such as a business case, but would rather want to ensure that there was some independent analysis from someone independent of the political aspects of government to confirm that this is a particular project that should be supported by the executive government, is that right?---Yes.

Because in that scenario there's then an answer to any public criticism, where you can say, well, no, this has been recommended, this has gone through a business case process, it's been recommended by independent people. Ms Berejiklian has disqualified herself from the particular agenda item and the remaining members of the ERC have made a decision that it should be supported in light of the independent advice that it had received.

Is that in effect, is that a fair summary of the kinds of things that influenced the answer that you gave about five or 10 minutes ago?---Yeah, I absolutely agree with that answer. And those conflicts of interest do arise at times with members of parliament, when we are funding projects, and that's why within a lot of my agencies we have probity officers, we seek advice from the Auditor-General. At times we even seek advice from the ICAC in relation to guidelines and criteria. And so, you know, again in hindsight, clearly what you've just put to me I agree with.

- 10 And when you say the process that you would expect if you'd known about that information or if it was otherwise public, in effect an external process involving business cases and things of that kind, do you have in mind some kind of a competitive process where this might be a proposal that competes against others? Or are you just simply saying some kind of external process that would give the committee sufficient confidence that it could support the proposal whilst minimising the risk of a suggestion that it was supported in part having regard to the personal relationship?---Mr Robertson, yes, you wouldn't have to have a competitive process. You would be assessing it on its, on its merits in a process that was independent. They had a, a number of
- 20 levels of assurance that we were making a decision based on the merit of the project.