

Do you have
memories of the dinner on 12/3/2015
3 are you aware of what it is for

Reservation form

Please send me

- Tickets – @ \$80 per person
- Tickets – @ \$800 for table of 10
- Tickets – @ \$2000 for VIP table
- Tickets – @ \$5000 for VIP table
- I am unable to attend but would like to make a donation

Total \$

\$ 5000

BUDGET		
Income	1	100,000
Headtable	4	20,000
VVIPs @ \$5000	4	8000
VIPs @ \$2000	45	36000
normal tables @\$800	6	3000
free tables		
raffles		
		167,000
Expenses		23400
60 tables (10 people)	45	9360
tables (12 people)	15	1000
audio		1000
contigent		

Target subject

1. Any of the donors are donating on behalf of prohibited donors namely Huang or other
2. Any entity is donating more than capped amount
3. Is labor dictating his muchbix paid into ALP or Country ALP account

Questions

1. Do you have any salaries
- 2 memories of the dinner on 12/3/2015
- 3 are you aware of what it is for

VITATION

Chinese Friends of Labor presents
W Labor Chinese Launch

Reservation form

Please send me

- Tickets – @ \$80 per person
- Tickets – @ \$800 for table of 10
- Tickets – @ \$2000 for VIP table
- Tickets – @ \$5000 for VIP table
- I am unable to attend but would like to make a donation

Name:

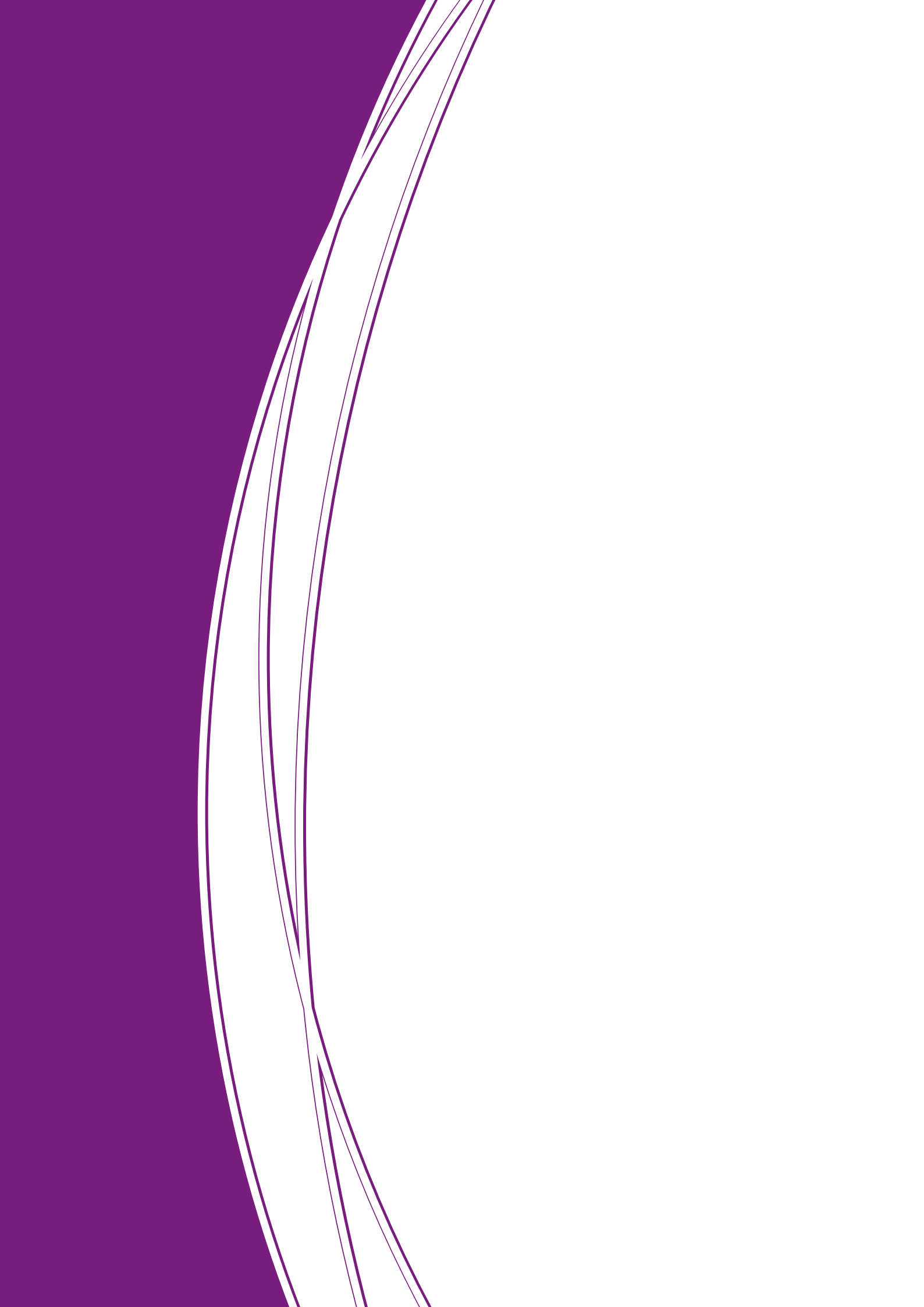
Organisation:

Total

\$ 5000

INVESTIGATION INTO POLITICAL DONATIONS FACILITATED BY CHINESE FRIENDS OF LABOR IN 2015

ICAC REPORT FEBRUARY 2022



ICAC

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

**INVESTIGATION INTO
POLITICAL DONATIONS
FACILITATED BY CHINESE
FRIENDS OF LABOR IN 2015**

**ICAC REPORT
FEBRUARY 2022**



This publication is available on the Commission's website www.icac.nsw.gov.au and is available in other formats for the vision-impaired upon request. Please advise of format needed, for example large print or as an ASCII file.

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In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into political donations facilitated by Chinese Friends of Labor in 2015.

This matter was referred to the Commission for investigation by the NSW Electoral Commission pursuant to s 13A(2) of the ICAC Act. The referred conduct concerned \$100,000 cash in political donations received by NSW Labor and Country Labor in connection with a fundraising event held in the lead up to the NSW State Election on 28 March 2015.

I presided at the public inquiry held in aid of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon Peter Hall QC
Chief Commissioner

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Summary of investigation and outcomes

This report relates to an investigation conducted by the NSW Independent Commission Against Corruption (“the Commission”) following a referral by the NSW Electoral Commission (the NSWEC) pursuant to s 13A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) on 15 January 2018.

The conduct investigated concerned the following allegation:

...whether, from January 2015, officials of the New South Wales Branch of the Australian Labor Party, members of Chinese Friends of Labor, political donors and others have entered into or carried out a scheme to circumvent prohibitions or requirements under Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 relating to political donations.

Between 26 August and 12 December 2019, the Commission conducted a public inquiry for the purpose of this investigation. This was the first public inquiry conducted by the Commission in relation to conduct referred under s 13A of the ICAC Act.

Following the close of evidence, a timetable was set for the filing of written submissions by Counsel Assisting the Commission and submissions in response on behalf of affected persons. The submissions process concluded on 28 January 2021.

There were two key parts to the investigation. First, it examined an alleged unlawful scheme to secure for the NSW branch of the Australian Labor Party (“NSW Labor”) and Country Labor a \$100,000 cash donation received in connection with a fundraising dinner held in the lead up to the 2015 NSW State Election. Secondly, the investigation examined whether individuals involved in the alleged scheme conspired to give false evidence in attempts to prevent the NSWEC and the Commission from exposing that scheme.

The statement below sets out the principal factual findings made by the Commission, with respect to the conduct referred to it by the NSWEC, as well as findings in relation to corrupt conduct.

Factual findings

The Commission has made the following key factual findings:

- in 2015, Ernest Wong and Jonathan Yee were the principal organisers of a fundraising dinner hosted by Chinese Friends of Labor (“the 2015 CFOL dinner”) on 12 March 2015 at The Eight restaurant in Haymarket for the purpose of raising money for the Labor Party’s campaign for the NSW state election to be held on 28 March 2015 (chapters 3 and 4)
- in February 2015, Mr Wong and Jonathan Yee entered into an agreement in accordance with which Jonathan Yee would procure “five to 10 people” to sign forms falsely stating that they had each donated \$5,000 in connection with the 2015 CFOL dinner so as to conceal the true source of donations that Mr Wong had arranged or was intending to arrange (chapter 11)
- in February 2015, NSW Labor community relations director Kenrick Cheah circulated a document forecasting estimated revenue of \$100,000 in connection with the 2015 CFOL dinner (chapter 5)
- Mr Wong prepared a budget contemplating income of \$100,000 from the sale of the head table at the event and, on 3 March 2015, told a person who was interested in purchasing the head table that it had “already been taken for \$100k” (chapter 5)

- Huang Xiangmo attended the 2015 CFOL dinner on 12 March 2015 and sat at the head table with four of his guests in addition to Mr Wong, James Clements and Australian Labor Party (ALP) dignitaries, including the Hon Luke Foley MP (then NSW leader) and the Hon Bill Shorten MP (then federal leader) (chapter 4)
- Mr Wong improperly diverted at least \$12,200 of the political donations raised in connection with the 2015 CFOL dinner away from the ALP and banked that money instead into an account in the name of Friends of Chinese Community, of which he and Jonathan Yee were signatories (chapter 6)
- on 30 March 2015, Mr Wong:
 - used the scanner in his Parliament House office to create a pre-filled version of the invitation/reservation form for the 2015 CFOL dinner which featured a handwritten figure of “\$5,000” and a strikethrough of non-cash payment options
 - used his parliamentary email account to email the pre-filled invitation/reservation form to Quanbao Liao, asking him to “Please fill two of these in”, and to Jonathan Yee, without instructions (chapter 4)
- having received Mr Wong’s email with the pre-filled invitation/reservation form, and in accordance with their agreement, Jonathan Yee arranged for his mother, May Ho Yee, his brother, Valentine Yee, and his employees, Lei Mo, Patricia Siu, Teresa Tam, Wei Shi and Johnnie Lin, and To Yip of Harbour City Group Pty Ltd, to each sign copies of that form falsely stating that they had made a \$5,000 donation in connection with the 2015 CFOL dinner (chapter 11)
- on 31 March 2015, Mr Liao replied to Mr Wong’s email attaching two pre-filled invitation/reservation forms, one completed by himself and the other by Steve Tong, both forms having been backdated and falsely stating that they had made a \$5,000 donation in connection with the 2015 CFOL dinner (chapter 4)
- on Good Friday, 3 April 2015, Mr Huang’s employee, Wun Chi Wong, withdrew \$100,000 of Mr Huang’s money in cash (“the \$100k cash”) from a casino junket account belonging to Mr Huang at The Star Sydney (“the Star”) (chapter 12)
- on 7 April 2015, the next business day after the Easter long weekend, Mr Huang delivered the \$100k cash to Mr Clements, general secretary of NSW Labor, at the Sussex Street, Sydney, head office of NSW Labor (chapter 8)
- on 7 April 2015, having received the \$100k cash from Mr Huang, Mr Clements handed that money to Mr Cheah (chapter 8)
- on 8 or 9 April 2015, after receiving the \$100k cash from Mr Clements, but before passing those funds to the NSW Labor finance department, Mr Cheah received from Jonathan Yee the 10 original donor declaration forms completed by each of the fake donors whom Jonathan Yee had procured (chapter 9)
- on 9 April 2015, Mr Cheah handed the \$100k cash, together with the 10 original donor declaration forms and a black-and-white photocopy of each of those forms, to NSW Labor finance personnel and gave instructions that half of the \$100k cash be deposited into the accounts of each of NSW Labor (\$50,000) and Country Labor (\$50,000). The \$100k cash was banked that day in accordance with those instructions (chapter 9)

- on 17 April 2015, Mr Wong instructed Mr Cheah to utilise the donor declaration forms of Mr Tong and Mr Liao, which Mr Wong had procured, in place of forms already reconciled in NSW Labor accounting systems in relation to two of the \$5,000 donations in connection with the 2015 CFOL dinner (“the switcheroo”). In carrying out those instructions, Mr Cheah caused NSW Labor finance personnel to alter MYOB (accounting software) records on 22 April 2015 (chapter 10)
- the \$100k cash was not donated by Jonathan Yee, May Ho Yee, Valentine Yee, Mr Mo, Ms Siu, Ms Tam, Mr Shi, Mr Lin, Emperor’s Garden Pty Ltd, Harbour City Group Pty Ltd, Mr Liao and Mr Tong (“the 12 putative donors”) (chapter 11)
- Mr Huang was the true source of the \$100k cash (chapter 12)
- it was unlawful for NSW Labor and Country Labor to accept the \$100k cash from Mr Huang because, first, the donation exceeded the applicable \$5,000 cap on political donations and, secondly, Mr Huang was not a person from whom political donations could be accepted at the relevant time (chapter 13)
- Mr Wong knew, at the time that he procured donor declaration forms from each of the 12 putative donors, that Mr Huang, whom Mr Wong believed to be a “prohibited donor”, was the true source of the \$100k cash (chapter 14)
- Mr Wong and Jonathan Yee entered an agreement, and engaged in ongoing courses of conduct, for the purpose of circumventing requirements of Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* (“the EFED Act”)¹ to the effect that the true source of a reportable political donation must be disclosed to the NSWEC (chapter 14)
- in doing so, Mr Wong and Jonathan Yee each took numerous steps between April 2015 and the public inquiry in 2019 to monitor and influence investigations into this matter by the NSWEC and the Commission with a view to concealing the falsity of the donor declarations made by each of the putative donors. Many meetings were conducted with, and significant pressure was applied to, the putative donors over an extended period of time (chapters 15 to 24)
- Mr Huang engaged in a course of conduct for the purpose of circumventing the requirements of Part 6 of the EFED Act that the true source of the \$100k cash donation, which was made in relation to a state election, must be disclosed to the NSWEC (chapter 14)
- Mr Cheah engaged in a course of conduct in connection with the switcheroo for the purpose of circumventing the requirement in Part 6 of the EFED Act that the name of donors of reportable political donations must be disclosed to the NSWEC (chapter 14)
- on 16 September 2016, Mr Wong disclosed to Kaila Murnain, then general secretary of NSW Labor, that there was a donor from 2015 who had not donated the money that they had declared that they had in connection with the 2015 CFOL dinner and that Mr Huang was the true source of that donation (“the Wong conversation”) (chapter 18)
- immediately following the Wong conversation, Ms Murnain sought an urgent meeting with Ian Robertson AO of Holding Redlich, legal representative for NSW Labor, to obtain advice in relation to the Wong conversation. During the meeting, Ms Murnain relayed to Mr Robertson the substance of what Mr Wong had told her (there is a substantial issue as to what, if any, advice was provided by Mr Robertson to Ms Murnain in that meeting) (chapter 18)
- in December 2016, the NSWEC issued statutory notices to NSW Labor and Country Labor requiring the production of information and documents in relation to the \$100k cash. The responses to those notices were, in important respects, false or misleading. Those responses were reviewed by Mr Robertson prior to being produced (chapter 19)
- on the eve of his scheduled compulsory examination before the Commission on 25 June 2018, Mr Liao died. The circumstances of his death suggest he took his own life in contemplation of difficulties he would face trying to explain to the Commission his purported donations in 2015 (chapter 21)
- in September 2018, Mr Wong arranged for Mr Tong to be brought to meet him in his office in Parliament House on 17 September 2018. During that meeting, Mr Wong applied pressure to Mr Tong to keep silent if he was approached by investigating authorities in relation to this matter and told Mr Tong, if he were approached, to

¹ *The Electoral Funding Act 2018* came into force upon the repeal of the EFED Act. The EFED Act was the relevant electoral funding law in force at the time of the conduct that is the subject of this investigation.

continue to say whatever Mr Tong had told the NSWEC in the past (chapter 22)

- in August 2019, following the announcement of the public inquiry, and at Mr Wong’s request, Jonathan Yee arranged for those members of his family and staff whom he had procured as fake donors to individually meet with Mr Wong in private rooms at the Emperor’s Garden restaurant. At those meetings, Mr Wong told those persons that, at the public inquiry, they should continue to tell the story they had previously told to the NSWEC and the Commission in their compulsory examinations (chapter 24).

Corrupt conduct findings

The Commission’s approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

Ernest Wong

The Commission found that Mr Wong engaged in serious corrupt conduct by using the privileges to which he was entitled as a member of the Legislative Council:

- between about February 2015 and at least September 2018, in the course of carrying out a scheme for the purpose of circumventing the requirement of the EFED Act to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC
- on 17 September 2018, at a meeting with Mr Tong in Mr Wong’s Parliament House office, during the course of which Mr Wong attempted to procure Mr Tong to give false testimony to such investigative authorities as may make enquiries of him in relation to the question of whether he had made a donation in connection with the CFOL dinner held on 12 March 2015 (chapter 22).

Section 74A(2) statements

Statements are made in this report pursuant to s 74A(2) of the ICAC Act that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons.

Ernest Wong

- for an offence of entering into or carrying out a scheme for the purpose of circumventing a

prohibition or requirement of Part 6 of the EFED Act contrary to s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) (read with s 92(2)) to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC (chapter 14)

- for an offence of hindering an investigation contrary to s 315 of the *Crimes Act 1900* (“the Crimes Act”) in respect of his meeting with Maggie Wang on 24 July 2017 (chapter 20)
- for an offence of hindering an investigation contrary to s 315 of the Crimes Act in respect of his meeting with Mr Tong at Parliament House on 17 September 2018 (chapter 22)
- for offences of aiding, abetting, counselling or procuring others to provide false or misleading answers contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notices issued by the NSWEC under s 110A(1)(c) to:
 - Johnnie Lin on 4 May 2017
 - Lei Mo on 2 June 2017
 - Wei Shi on 29 March 2017
 - Patricia Siu on 4 May 2017
 - Valentine Yee on 24 May 2017
 - May Ho Yee on 24 May 2017 (chapter 17)
- for two offences of giving false or misleading evidence in a public inquiry contrary to s 87 of the ICAC Act in respect of evidence given on 2 September and 11 December 2019 regarding the 2015 CFOL dinner (chapter 7)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 20 November 2018 regarding Mr Tong (chapter 22)
- for offences of procuring the giving of false testimony at a compulsory examination contrary to s 89 of the ICAC Act in respect of the testimony of:
 - Ming Tam at a compulsory examination on 12 June 2019
 - Jonathan Yee at a compulsory examination on 27 and 28 June 2019 (chapter 23)
- for an offence of procuring the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of Valentine Yee at the public inquiry on 12 September 2019 (chapter 24)

- for offences of attempting to procure the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of:
 - Johnnie Lin at the public inquiry commencing on 26 August 2019
 - Lei Mo at the public inquiry commencing on 26 August 2019
 - Wei Shi at the public inquiry commencing on 26 August 2019
 - Patricia Siu at the public inquiry commencing on 26 August 2019
 - Teresa Tam at the public inquiry commencing on 26 August 2019
 - Jonathan Yee at the public inquiry commencing on 26 August 2019
 - May Ho Yee at the public inquiry commencing on 26 August 2019 (chapter 24)
- for eight offences of attempting to pervert the course of justice contrary to s 319 of the Crimes Act and, or alternatively, attempting to hinder an investigation contrary to s 315 of the Crimes Act, in respect of his meetings with Jonathan Yee, May Ho Yee, Valentine Yee, Patricia Siu, Teresa Tam, Lei Mo, Wei Shi and Johnnie Lin after the public inquiry had been announced on 31 July 2019 and before each of them gave evidence at the public inquiry (chapter 24)
- for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publication to Jonathan Yee regarding Mr Wong’s participation in a compulsory examination on 16 November 2018 and 20 November 2018 (chapter 23).

Huang Xiangmo

- for an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act contrary to s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) (read with s 92(2)) to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC (chapter 14).

Jonathan Yee

- for an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act contrary to s 96HB of the Act, namely the

requirements in s 88(1) and s 88(2) (read with s 92(2)) to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC (chapter 14)

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of his disclosures received by the NSWEC on 20 November 2015 and 30 January 2016 (chapter 15)
- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act and, or alternatively, an offence of forgery contrary to s 253 of the Crimes Act, in respect of the disclosure ostensibly signed by Teresa Tam and received by the NSWEC on 21 March 2016 (chapter 15)
- for offences of aiding, abetting, counselling or procuring the making of a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of:
 - the disclosure by Emperor’s Garden Pty Ltd, received by the NSWEC on 20 November 2015
 - the disclosures by Patricia Siu, received by the NSWEC on 5 February 2016 and 8 September 2016
 - the disclosure by Lei Mo, received by the NSWEC on 8 October 2015
 - the disclosure by Wei Shi, received by the NSWEC on 29 February 2016
 - the disclosure by Johnnie Lin, received by the NSWEC on 5 February 2016
 - the disclosure by Harbour City Group Pty Ltd, received by the NSWEC on 8 September 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 22 February 2017 (chapter 16)
- for offences of aiding, abetting, counselling or procuring others to provide false or misleading documents contrary to s 110A(7) of the EFED Act in respect of the production of documents in purported compliance with notices issued by the NSWEC pursuant to s 110A(1)(b) to:
 - Johnnie Lin, on 14 September 2016
 - Lei Mo, on 14 September 2016

- Wei Shi, on 14 September 2016
- Patricia Siu, on 14 September 2016
- Teresa Tam, on 14 September 2016
- May Ho Yee, on 22 February 2017
- Valentine Yee, on 22 February 2017
- Emperor’s Garden Pty Ltd, on 22 February 2017
- Harbour City Group Pty Ltd on 22 February 2017 (chapter 16)
- for offences of aiding, abetting, counselling or procuring others to provide false or misleading answers contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notices issued by the NSWEC under s 110A(1)(c) to:
 - Johnnie Lin on 4 May 2017
 - Lei Mo on 2 June 2017
 - Wei Shi on 29 March 2017
 - Patricia Siu on 4 May 2017
 - Valentine Yee on 24 May 2017
 - May Ho Yee on 24 May 2017 (chapter 17)
- for one or more offences of hindering an investigation in contravention of s 315 of the Crimes Act in relation to answers he provided to the NSWEC in his voluntary interview conducted on 23 June 2017 (chapter 17)
- for two offences of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 27 June 2019 and 28 June 2019 (chapter 11)
- for offences of procuring the giving of false testimony at a compulsory examination contrary to s 89 of the ICAC Act in respect of the testimony of:
 - Valentine Yee at a compulsory examination on 30 January 2019
 - May Ho Yee at a compulsory examination on 11 December 2018
 - Lei Mo at a compulsory examination on 29 June 2018 and 9 July 2018
 - Patricia Siu at a compulsory examination on 13 December 2018 and 23 January 2019
 - Teresa Tam at a compulsory examination on 5 December 2018 and 21 January 2019

- Wei Shi at a compulsory examination on 25 January 2019, 22 February 2019 and 8 March 2019
- Johnnie Lin at a compulsory examination on 27 June 2018 and 10 July 2018 (chapter 23)
- for an offence of procuring the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of Mr Yip at the public inquiry on 10 September 2019 (chapter 24)
- for offences of attempting to procure the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of:
 - Wei Shi at the public inquiry commencing on 26 August 2019
 - Patricia Siu at the public inquiry commencing on 26 August 2019
 - Teresa Tam at the public inquiry commencing on 26 August 2019 (chapter 24).

Kenrick Cheah

- for an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act contrary to s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) (read with s 92(2)) to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC (chapter 14)
- for an offence of giving false or misleading evidence in a public inquiry contrary to s 87 of the ICAC Act in respect of evidence given on 26 August 2019 and 27 August 2019 (chapter 9)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 10 February 2020 (chapter 9)
- for one or more offences of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publication to Mr Wong and Julie Sibraa regarding Mr Cheah’s participation in a compulsory examination on 25 May 2018 (chapter 23).

Valentine Yee

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of his disclosures received by the NSWEC on 13 October 2015 and 28 January 2016 (chapter 15)

- for offences of aiding, abetting, counselling or procuring the making of a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of:
 - the disclosure by Emperor’s Garden Pty Ltd, received by the NSWEC on 20 November 2015
 - the disclosures by May Ho Yee, received by the NSWEC on 8 February 2016 and 26 August 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 22 February 2017 (chapter 16)
- for one or more offences of providing a false or misleading answer contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notices issued to him and to his mother, May Ho Yee, by the NSWEC under s 110A(1)(c) on 24 May 2017 (chapter 17)
- for two offences of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 30 January 2019 (chapter 11)
- for an offence of procuring the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of May Ho Yee at a compulsory examination on 11 December 2018 (chapter 23).

May Ho Yee

- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 11 December 2018 (chapter 11)
- for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Mr Wong regarding her participation in a compulsory examination on 11 December 2018 (chapter 23).

Emperor’s Garden Pty Ltd

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of its disclosures received by the NSWEC on 20 November 2015 and 26 November 2016 (chapter 15)

- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to it by the NSWEC under s 110A(1)(b) on 22 February 2017 (chapter 16).

Lei Mo

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of his disclosure received by the NSWEC on 8 October 2015 (chapter 15)
- for an offence of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of a document produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16)
- for one or more offences of providing a false or misleading answer contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notice issued to him by the NSWEC under s 110A(1)(c) on 2 June 2017 (chapter 17)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 29 June 2018 and 9 July 2018 (chapter 11).

Patricia Siu

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of her disclosures received by the NSWEC on 5 February 2016 and 8 September 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to her by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16)
- for one or more offences of providing a false or misleading answer contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notice issued to her by the NSWEC under s 110A(1)(c) on 4 May 2017 (chapter 17)
- for an offence of attempting to wilfully obstruct or hinder the Commission in the exercise of its functions under the ICAC Act contrary to

s 80(a)(i) of that Act in respect of her telephone call to her brother-in-law on 20 September 2019 (chapter 17)

- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 13 December 2018 and 23 January 2019 (chapter 11)
- for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Jonathan Yee regarding her participation in a compulsory examination on 13 December 2018 and 23 January 2019 (chapter 23).

Teresa Tam

- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to her by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 5 December 2018 and 21 January 2019 (chapter 11)
- for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Jonathan Yee regarding her participation in a compulsory examination on 5 December 2018 and 21 January 2019 (chapter 23).

Ming Tam

- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 12 June 2019 (chapter 11).

Wei Shi

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of his disclosure received by the NSWEC on 29 February 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16)

- for one or more offences of providing a false or misleading answer contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notice issued to him by the NSWEC under s 110A(1)(c) on 29 March 2017 (chapter 17)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 25 January 2019, 22 February 2019 and 8 March 2019 (chapter 11)
- for one or more offences of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publications to Mr Wong and Jonathan Yee regarding his participation in a compulsory examination on 25 January 2019, 22 February 2019 and 8 March 2019 (chapter 23).

Johnnie Lin

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of his disclosure received by the NSWEC on 5 February 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16)
- for one or more offences of providing a false or misleading answer contrary to s 110A(7) of the EFED Act in respect of answers provided in response to the notice issued to him by the NSWEC under s 110A(1)(c) on 4 May 2017 (chapter 17)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 27 June 2018 and 10 July 2018 (chapter 11).

To Yip

- for an offence of giving false or misleading evidence in a public inquiry contrary to s 87 of the ICAC Act in respect of evidence given on 10 September 2019 (chapter 11)
- for an offence of aiding, abetting, counselling or procuring the making of a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of the disclosure by Harbour City

Group Pty Ltd, received by the NSWEC on 8 September 2016 (chapter 15)

- for an offence of aiding, abetting, counselling or procuring Harbour City Group Pty Ltd to provide false or misleading documents contrary to s 110A(7) of the EFED Act in respect of the production of documents in purported compliance with the notice issued to it by the NSWEC pursuant to s 110A(1)(b) on 22 February 2017 (chapter 16)
- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 25 June 2018 (chapter 11).

Harbour City Group Pty Ltd

- for an offence of making a false statement in a disclosure contrary to s 96H(2) of the EFED Act in respect of its disclosure received by the NSWEC on 8 September 2016 (chapter 15)
- for one or more offences of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of documents produced in response to the notice issued to it by the NSWEC under s 110A(1)(b) on 22 February 2017 (chapter 16).

Steve Tong

- for an offence of providing a false or misleading document contrary to s 110A(7) of the EFED Act in respect of a document produced in response to the notice issued to him by the NSWEC under s 110A(1)(b) on 14 September 2016 (chapter 16).

Alex Wood

- for an offence of procuring the giving of false testimony contrary to s 89 of the ICAC Act in respect of the testimony of Mr Tong at a compulsory examination on 4 December 2018 (chapter 23).

Maggie Wang

- for an offence of giving false or misleading evidence in a compulsory examination contrary to s 87 of the ICAC Act in respect of evidence given on 9 July 2019 (chapter 20)
- for an offence of giving false or misleading evidence in a public inquiry contrary to s 87 of the ICAC Act in respect of evidence given on 26 September 2019 (chapter 20).

Policy recommendations

Chapter 25 of this report sets out the Commission's review of policy issues identified in the course of its investigation. The Commission makes the following seven recommendations.

Recommendation 1

That the NSW Government amends the Electoral Funding Regulation 2018 to provide for the NSWEC to issue penalty notices for less severe breaches of the prohibition on cash donations under s 50A of the *Electoral Funding Act 2018*.

Recommendation 2

That the NSW Government, in consultation with affected parties, initiates an amendment to the *Electoral Funding Act 2018* so that payments from the Administration Fund are contingent on the achievement of acceptable standards of party governance and internal control. A working group should be established to determine the relevant governance and control standards, which could relate to:

- accounting for, receipting and banking donations
- the organisation of fundraising events
- identifying prohibited donors and donations that exceed statutory caps
- the roles and responsibilities of staff, including volunteers
- risk management and internal audit
- whistleblowing and complaint-handling
- management of gifts and conflicts of interest
- compliance and ethical obligations of senior party officials.

Recommendation 3

That the newly established working group should seek input from the NSWEC to ensure the efficient administration and implementation of standards. That is, consideration should be given to:

- applicable minimum standards
- whether the standards should take the form of model rules, which an individual party would be free to modify only if the NSWEC agreed that the modified rule did not adversely affect the party's governance. This would prevent small, or new, parties from incurring the expense of drafting rules from scratch

- the limits on the type of standards that could be required. That is, in order to avoid topics and areas that the state has no legitimate interest in regulating (for example, the way a political party formulates its policies)
- the desirability, or extent to which, the standards take the form of specific rules, so as to meet the reasonable satisfaction of the NSWEC
- the need for a proportionate approach that does not unreasonably penalise small, new political parties or independents
- providing political parties with reasonable opportunities to address shortcomings in their governance and internal control frameworks before administration funding is withheld.

Recommendation 4

That the NSW Government amends the *Electoral Funding Act 2018* to provide the NSWEC with the necessary powers to assess, audit and enforce non-compliance with standards of party governance and internal control.

Recommendation 5

That the NSW Government amends the *Electoral Funding Act 2018* to require the NSWEC to publish findings regarding political parties' adherence to established governance and controls standards.

Recommendation 6

That the NSW Government, in consultation with the NSWEC, gives consideration to:

- a) amending s 100(1) of the *Electoral Funding Act 2018* to require senior office holders of political parties to report reasonably suspected contraventions of the Act
- b) increasing penalties associated with the offence under s 100(1) of the *Electoral Funding Act 2018* to bring it into line with the penalties set out in sections 141 to 146 of the Act.

Recommendation 7

That the NSW Government amends the *Electoral Funding Act 2018* to give the NSWEC power to publish the results of its compliance audits, investigations and regulatory actions.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and as required by s 111E of the ICAC Act, will be furnished to the responsible minister or officer. The Commission will seek advice in relation to whether the recommendations will be

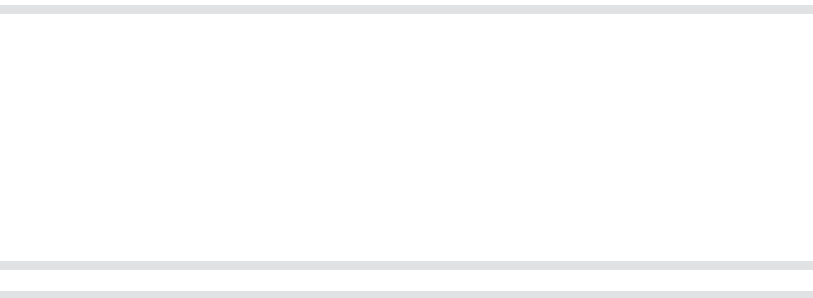
implemented and, if so, details of the proposed plan of action and progress reports. The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at www.icac.nsw.gov.au.

Recommendation that this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.



PART 1 – INTRODUCTION



Chapter 1: Background

This chapter sets out some background information on how the investigation came to the NSW Independent Commission Against Corruption (“the Commission”), the conduct of the Commission’s investigation and the public inquiry. It also identifies a number of individuals and organisations relevant to the investigation.

How the matter came to the Commission

Section 13A of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) gives the Commission the function of investigating certain matters referred to it by the NSW Electoral Commission (“the NSWEC”), including conduct which may involve possible criminal offences under electoral funding legislation. Conduct may be referred to the Commission by the NSWEC under s 13A of the ICAC Act whether or not it involves corrupt conduct.

Pursuant to s 13A(2) of the ICAC Act, on 15 January 2018, the Hon Keith Mason AC QC, Chairperson of the NSWEC, referred to the Commission for investigation certain conduct of the NSW branch of the Australian Labor Party (“NSW Labor”), Country Labor and individuals acting on their behalf (“the referred conduct”). See tables of individuals relevant to the investigation towards the end of this chapter.

The referred conduct concerned \$100,000 cash in political donations (“the \$100k cash”) received by NSW Labor and Country Labor in connection with a fundraising event held in the lead up to the NSW state election on 28 March 2015. The fundraising event was a dinner hosted by a group called Chinese Friends of Labor (CFOL) at The Eight Modern Chinese Restaurant (“The Eight”) in Haymarket on 12 March 2015 (“the 2015 CFOL dinner”).

The \$100k cash was deposited into the respective bank accounts of NSW Labor (\$50,000) and Country Labor (\$50,000) on 9 April 2015, about two weeks after the state election and almost a month after the 2015 CFOL dinner.

During the course of compliance audits conducted on NSW Labor and Country Labor’s declarations of disclosure of political donations for 2014/2015, the NSWEC identified a series of political donors who gave \$5,000 (the cap at the relevant time) to either or both NSW Labor and Country Labor in connection with the 2015 CFOL dinner. Twelve presumed/alleged donors (“the putative donors”) were identified from disclosures as the source of the \$100k cash.

Each of the putative donors had disclosed their donation(s) to the NSWEC as required by s 91 of the EFED Act. Ten of those 12 disclosures were made late or in response to NSWEC compliance action. Each of the individuals among the putative donors was confirmed to be enrolled on the NSW Electoral Roll and therefore entitled to make political donations.

A review of the putative donors revealed that five of them had nominated their current or former occupation as a waiter or waitress: Johnnie Lin (\$10,000), Lei Mo (\$10,000), Patricia Siu (\$10,000), Teresa Tam (\$10,000) and Wei Shi (\$10,000). The modest income of hospitality staff raised suspicions at the NSWEC as to how those individuals might afford to give \$10,000 in political donations.

Evidence obtained by the NSWEC suggested that the five putative donors who were hospitality staff each had links to Emperor’s Garden Pty Ltd, a business operating Chinese food enterprises in Sydney’s Haymarket including a yum cha restaurant on the corner of Dixon and Hay Streets and a barbecue and noodle shop nearby in Thomas Street. Emperor’s Garden Pty Ltd is owned by the family of Jonathan Yee.

Table 1: The 12 putative donors

Listed below are the 12 putative donors, the amounts they were claimed to have donated, and to which entity.

Donor's name	NSW Labor donation	Country Labor donation
Emperor's Garden Pty Ltd	\$5,000	\$5,000
Harbour City Group Pty Ltd	\$5,000	–
Liao, Quanbao	–	\$5,000
Lin, Johnnie	\$5,000	\$5,000
Mo, Lei	\$5,000	\$5,000
Shi, Wei	\$5,000	\$5,000
Siu, Patricia	\$5,000	\$5,000
Tam, Teresa	\$5,000	\$5,000
Tong, Steve	–	\$5,000
Yee, Jonathan	\$5,000	\$5,000
Yee, May Ho	\$5,000	\$5,000
Yee, Valentine	\$5,000	–
TOTAL:	\$50,000	\$50,000

The NSWEC compliance audit identified that another four of the putative donors also had links to Emperor's Garden Pty Ltd: Jonathan Yee (\$10,000), his mother May Ho Yee (\$10,000), his brother Valentine Yee (\$5,000 to NSW Labor) and Emperor's Garden Pty Ltd itself (\$10,000).

The matter was referred to the NSWEC investigation team, who exercised statutory powers to request documents and information from each of the putative donors. Information obtained confirmed the remaining three putative donors as Harbour City Group Pty Ltd (\$5,000 to NSW Labor), which operated a souvenir shop next door to the Emperor's Garden restaurant in Dixon Street, and Quanbao Liao (\$5,000 to Country Labor) and Steve Tong (\$5,000 to Country Labor), both employees of Wu International Investments Pty Ltd ("Wu International"), a company involved in the business of real estate development.

Each of the putative donors provided documents, including donation receipts, and information to the NSWEC which tended to support the proposition that they had in fact donated the money the subject of the investigation. Several of the putative donors offered detailed explanations to the NSWEC as to how and why they had donated that money.

The information obtained by the NSWEC from the putative donors revealed that many of them lacked the financial means to make such substantial political donations, were not members of the Labor Party, did not attend the 2015 CFOL dinner, explained the source of their cash donations in similar terms (as savings from Chinese "lucky money" or "red packets") and stated that they had handed their cash donations to Jonathan Yee.

NSWEC investigators conducted an electronically recorded interview with Jonathan Yee who said he collected cash donations from his mother, brother, employees and his neighbour To Yip, a director of Harbour City Group Pty Ltd. Jonathan Yee told the NSWEC that he did not make any record of having collected that money.

Jonathan Yee told the NSWEC that he had personally donated \$5,000 in addition to paying \$500 for a seat at a table at the 2015 CFOL dinner. He told the NSWEC that he wrongly disclosed two donations of \$5,000 to the NSWEC because the Labor Party had issued two receipts to him on the basis that the table at which he sat had been booked in his name.

Jonathan Yee offered a similar explanation in relation to his mother, his brother and his neighbour Mr Yip. In contrast with Jonathan Yee's evidence, Mr Yip told NSWEC investigators that he donated only \$500, which he handed

to Jonathan Yee, and denied that he gave \$5,500 as suggested by Jonathan Yee to the NSWEC.

In December 2016, the NSWEC investigation team issued statutory notices to NSW Labor and Country Labor requesting documents and information. The parties' responses to those notices included information that NSW Labor employee, Kenrick Cheah, was the person who handed the \$100k cash to the Labor Party on 9 April 2015, the day that it was banked. The parties' responses to the NSWEC notices are considered in part 3 of this report.

NSWEC investigators conducted interviews with, and took statements from, a number of NSW Labor employees. Those interviews and statements are also considered in part 3 of this report.

NSWEC investigators conducted an interview with Mr Cheah, who told them that he had attended the 2015 CFOL dinner in his capacity as NSW Labor's community relations director. He named Jonathan Yee and NSW member of Parliament Ernest Wong MLC as among the main organisers of the event.

Mr Cheah told NSWEC investigators that some time, possibly weeks, after the 2015 CFOL dinner, prominent Chinese businessman Huang Xiangmo collected the \$100k cash and donor declaration forms from individual donors of that money. Mr Cheah stated that he saw Mr Huang come in to NSW Labor head office in Sussex Street, Sydney, and meet with the then-general secretary of NSW Labor, James Clements. Mr Cheah stated that shortly after that meeting with Mr Huang, Mr Clements approached Mr Cheah and gave him a bag containing the \$100k cash and declaration forms and asked Mr Cheah to count the money and check the forms.

The NSWEC offered Mr Cheah and Jonathan Yee inducements to provide further information in relation to the subject donations. They were each offered a letter of comfort protecting them from prosecution for offences under the *Election Funding, Expenditure and Disclosures Act 1981* ("the EFED Act") should their evidence disclose such offences. Mr Cheah and Jonathan Yee both declined to provide the NSWEC with any further information.

The NSWEC referral to the Commission was made under s 13A(2) of the ICAC Act on the basis of reasonable grounds to suspect that the conduct referred may involve a possible criminal offence to which s 13A applies. The NSWEC identified possible relevant offences against the EFED Act, including false statements in disclosures (s 96H(2)), donations exceeding applicable caps (s 95B(1) and s 96HA(2)), donations by prohibited donors (s 96GA and s 96I) and schemes to circumvent donation prohibitions or restrictions (s 96HB(1)). See chapter 2 for an overview of relevant electoral funding laws.

In accordance with s 13A(6) of the ICAC Act, the NSWEC provided the Commission with a statement of reasons as to why it referred the matter to the Commission for investigation. The statement noted the complexity of the matter, the serious nature of the possible offences involved and the public interest in uncovering possible foreign influence in NSW electoral processes.

The statement of reasons noted that the NSWEC investigation had led to a suspicion that the source and/or methods of the \$100k cash political donations breached the EFED Act but that insufficient evidence had been obtained to prove electoral offences. The NSWEC noted that further evidence might be obtained using the investigative powers of the Commission.

Conduct of the preliminary investigation

On 24 January 2018, the Commission determined to conduct a preliminary investigation into the referred conduct.

In the period up to 3 May 2018, the Commission issued 11 notices under s 22 of the ICAC Act. Most of those notices were issued to financial institutions in order to build financial profiles of the putative donors and to obtain records touching on the banking of the \$100k cash into accounts of NSW Labor and Country Labor.

Records obtained established that the \$100k cash was banked into the State Campaign Accounts of NSW Labor and Country Labor on 9 April 2015. Bank records also confirmed that the \$100k cash was entirely comprised of \$100 notes.

On 25 May 2018, the Commission conducted compulsory examinations with Mr Cheah and Mr Clements. Mr Cheah told the Commission a version of events consistent with what he had told the NSWEC: namely, that Mr Huang had collected the \$100k cash from individual donors and delivered it to Mr Clements at NSW Labor head office in early April 2015. According to Mr Cheah, Mr Clements then handed Mr Cheah a bag containing the \$100k cash with some declaration forms and asked Mr Cheah to count the cash and check the forms.

In sharp contrast, in his compulsory examination, Mr Clements denied receiving the \$100k cash from Mr Huang or giving it to Mr Cheah. On this key point, the evidence of Mr Cheah and Mr Clements was irreconcilable.

Reasons for determining to conduct a further investigation

On 7 June 2018, having completed the preliminary investigation, the Commission determined that it should carry out a full investigation.

In accordance with s 13A(7) of the ICAC Act, the Commission provided the NSWEC a statement of the reasons it determined to investigate the referred conduct. Those reasons included:

- (1) *there is evidence or reliable information to suggest the occurrence of the conduct referred, requiring a more complete investigation;*
- (2) *the subject matter of the conduct referred is:*
 - a. *serious, involving two registered political parties, being the ALP and the Country Labor Party (CLP), both eligible for public funding;*
 - b. *complex, involving a large number of witnesses, including non-English speaking witnesses; and*
 - c. *of significant public interest, given its context in connection with possible foreign influence in NSW electoral processes;*
- (3) *the effective investigation of the conduct referred is likely to require the use of the Commission's coercive powers...*

The Commission's statement of reasons noted that there was no ongoing investigation being conducted by the NSWEC into the referred conduct, that there was no limitation period for prosecution of "scheme" offences under s 96HB of the EFED Act and that the limitation periods for most other possible offences would not expire until 2025.

Conduct of the further investigation

During the course of the investigation, the Commission:

- obtained many thousands of pages of documents from various sources by issuing a further 72 notices under s 22 of the ICAC Act requiring production of records
- obtained documents by issuing a number of summonses under s 35 of the ICAC Act for witnesses to attend and produce documents to the Commission
- interviewed and obtained statements from numerous witnesses
- obtained oral evidence from 35 witnesses in compulsory examinations, some on multiple occasions, many with the help of interpreters
- executed a search warrant at the head office of NSW Labor.

The public inquiry

The Commission reviewed a large body of documentary and witness evidence obtained in the course of its investigation. Taking into account that material, and each of the matters provided for in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry to further its investigation.

That decision to hold a public inquiry was not taken lightly. Reputations can be harmed by a public inquiry and substantial public funds must be spent to conduct one. In making that determination, the Commission had regard to the strong public interest in ensuring the integrity of the electoral system which underpins the democratic process. The Commission weighed evidence of attempts to undermine the integrity of the electoral system by circumventing statutory restrictions and prohibitions with respect to political donations.

In determining to conduct a public inquiry, the Commission also had regard to the seriousness of the alleged conduct, including the organised nature of the enterprise apparently designed to evade the disclosure requirements, restrictions and prohibitions of the EFED Act. The seriousness of the matter was elevated by evidence suggesting the recruitment of persons to make false declarations and misleading statements to the NSWEC and, later, to the Commission.

The Commission considered the corresponding public interest in preserving the privacy of persons who were concerned in the course of events, but concluded that the public interest in identifying the facts, and revealing precisely what had occurred, outweighed that consideration.

The public inquiry was conducted over 37 hearing days from 26 August to 12 December 2019. Chief Commissioner the Hon Peter Hall QC presided at the public inquiry. Scott Robertson of Counsel appeared as Counsel Assisting the Commission. Evidence was taken from 27 witnesses.

Counsel Assisting made written submissions setting out, among other things, the adverse findings it was contended were open to the Commission to make against various parties. These were provided to relevant parties on 4 September 2020. Written submissions in response were received by 25 November 2020. Leave to make cross-party submissions was applied for and granted to

five parties. Cross-party submissions were received by 28 January 2021.

The absence of evidence from Mr Huang

In his opening address, Counsel Assisting announced a number of key questions arising from the Commission's investigation which were to be pursued further in the public inquiry. First among those questions was whether Mr Huang was the true source of the \$100k cash banked by NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

During the public inquiry, Mr Cheah gave evidence that Mr Huang had delivered the \$100k cash to Mr Clements at NSW head office. That evidence was consistent with versions that Mr Cheah had previously given to the NSWEC in an interview and to the Commission in a compulsory examination.

Despite the importance of Mr Huang's conduct to matters at the heart of the Commission's investigation, the Commission has not heard any evidence from Mr Huang. The absence of evidence from Mr Huang warrants some explanation.

On 5 February 2019, in the midst of its investigation, the Commission learned from media reports that Mr Huang had been "stranded offshore" following decisions by the Australian Government's Department of Home Affairs refusing Mr Huang's application for Australian citizenship and cancelling his permanent Australian residency.

At that time, Mr Huang was understood to be residing in Hong Kong. With Mr Huang located overseas and beyond the Commission's jurisdiction, he could not be compelled to give evidence to the Commission in this investigation.

On 7 February 2019, the Commission invited Mr Huang, via his legal representative, to voluntarily participate in a formal interview, by way of audio-video link, "in relation to a matter involving donations to the Australian Labor Party and Country Labor Party". Mr Huang declined the invitation.

On 31 July 2019, Mr Huang, by way of a letter to his legal representative, was informed of the Commission's decision to conduct a public inquiry in this matter. The allegation and scope and purpose of the public inquiry were set out in the letter. Mr Huang was informed that he may have a substantial and direct interest in the subject matter of the public inquiry and was invited to seek leave to appear and be legally represented at the inquiry.

Mr Huang did seek leave to appear and be legally represented at the public inquiry. The Commission granted leave for Mr Huang to appear and to be represented by Unsworth Legal. Unsworth Legal was provided a copy of the Commission's "Standard Directions for Public Inquiries". The Commission referred Unsworth Legal in particular to paragraph 13 of these directions, which sets out information relating to applications to cross examine a witness in a public inquiry.

The letter of 31 July 2019 included a further invitation to Mr Huang to participate in the inquiry by way of providing a voluntary statement to be obtained by telephone interview with Commission investigators. On 19 August 2019, Mr Huang declined the further invitation to make a statement on the grounds that he had "not been informed about the detail of the matters which are the subject of the inquiry". As noted above, the allegation and scope and purpose of the public inquiry were set out in the letter of 31 July 2019.

In his opening address on 26 August 2019, Counsel Assisting noted Mr Huang's decision to decline to participate in an interview with Commission investigators. Counsel Assisting added that it was a matter for Mr Huang as to whether he wished to leave the evidence anticipated from Mr Cheah of Mr Huang delivering the \$100k cash to NSW Labor head office unexplained by him. Counsel Assisting made it clear that the Commission's invitation to Mr Huang to participate in an interview remained open.

Mr Huang was legally represented throughout the public inquiry by solicitors from Unsworth Legal, who were present in the hearing room on each sitting day. During the public inquiry, on 8 October 2019, the Chief Commissioner expressly gave Mr Huang a further opportunity "to present his side of the story", by audio-visual link if necessary. That further opportunity was not taken up.

At no stage did Mr Huang, through his legal representatives, seek to cross-examine any witness in the public inquiry. Notably, no application was made by Mr Huang to cross-examine Mr Cheah. At no stage in the public inquiry did Mr Huang seek to have any documents placed before the Commission.

It is in these circumstances that the Commission has been left to weigh evidence from other sources as to Mr Huang's alleged conduct with respect to the \$100k cash.

Assessments of witness evidence

During the course of this investigation, the Commission has heard evidence from many witnesses, a number of whom have given evidence on more than one occasion.

Some of those witnesses changed their evidence on subsequent occasions. Assessments regarding the credibility of such witnesses, and the reliability of their evidence, are set out in the body of this report.

There are a number of significant factual questions in relation to which the Commission has heard opposing, even irreconcilable, evidence from different witnesses. These factual contests include:

- the dispute between Mr Wong and Jonathan Yee as to whether the latter brought tens of thousands of dollars in cash to the 2015 CFOL dinner on 12 March 2015 (chapter 7)
- the dispute between Mr Cheah and Mr Clements about the delivery of the \$100k cash to NSW Labor head office on 7 April 2015 (chapter 8)
- the dispute between Kaila Murnain and Ian Robertson about the subject matter of their meeting at the offices of Holding Redlich on 16 September 2016 (chapter 18).

Assessments as to witness credibility and reliability are important factors for the Commission to consider in properly weighing the evidence relevant to these contests and making findings of fact that are available on that evidence. Witness assessments are included in relevant chapters of this report.

The relationship between NSW Labor and Country Labor

This investigation concerns a series of political donations made to NSW Labor and to Country Labor. In order to understand the conduct that is the subject of the investigation, it is necessary to examine the nature of the relationship between the two parties.

As this investigation report was being finalised, the NSWEC published a notice stating that Country Labor's registration as a political party had been cancelled on 29 October 2021 pursuant to s 68(1) of the *Electoral Act 2017*. That provision states: "the Electoral Commissioner may cancel the registration of a party at the written request of the registered officer of the party".

However, at the time of the conduct the subject of this investigation, NSW Labor and Country Labor were separately registered as political parties in NSW. While they were not in coalition, they were otherwise associated.

Under NSW Labor Rules 2018, Country Labor was defined as a "Party Unit" and was under the control and direction of the Administrative Committee. The objectives of Country Labor included to advocate policies within the Labor movement which were of concern to Labor's

country constituencies and to endorse candidates for election to public office at a national, state and local level. A person who was a member of NSW Labor and lived in a designated country area, as defined by the Administrative Committee, was also a member of Country Labor.

Notwithstanding the association between NSW Labor and Country Labor, they were at the time of the 2015 NSW State Election separately registered with the NSWEC as political parties and were each entitled to receive public funding and political donations in accordance with the applicable electoral legislation in NSW. An overview of relevant electoral laws is set out in chapter 2.

Prior to the cancellation of Country Labor's registration as a political party on 29 October 2021, it operated no separate staff or office as distinct from NSW Labor. The officers and employees of NSW Labor were responsible for the operations of both NSW Labor and Country Labor. For convenience throughout this report, those officers and employees are described as officers or employees of NSW Labor.

Findings on conduct of a kind that may amount to criminal offences

Section 74(1) of the ICAC Act gives the Commission the power to prepare reports to Parliament in relation to any matter that has been the subject of an investigation. Section 74(3) requires the Commission to prepare such reports in relation to any matter that has been the subject of a public inquiry. The application of s 74 to matters referred to the Commission by the NSWEC under s 13A is expressly contemplated by s 13A(8) of the ICAC Act.

In relation to the content of reports to Parliament, s 74A(1) of the ICAC Act provides that:

The Commission is authorised to include in a report under section 74:

- statements as to any of its findings, opinions and recommendations, and*
- statements as to the Commission's reasons for any of its findings, opinions and recommendations.*

The Commission carried out this investigation for the purpose of examining the referred conduct with a view to obtaining the true facts in relation to that conduct and making findings and forming opinions in relation to those facts.

The Commission is an investigatory body, not a criminal court. It is not part of the Commission's functions to make findings or express opinions that specified persons

have committed criminal or disciplinary offences. Section 74B(1) states that the Commission is not authorised to include statements as to such findings or opinions in a report under s 74 of the ICAC Act.

The Commission is not precluded, however, from making findings or expressing opinions as to whether or not a person has engaged in specified conduct, even if that conduct is of a kind that a criminal court may find constitutes a criminal offence.

Indeed, the Commission is required to make such findings and express such opinions in circumstances where the Commission's functions under s 13A of the ICAC Act

are to investigate conduct "which may involve a possible criminal offence" (see s 13A(2)(a) of the ICAC Act). This investigation is a case in point.

Factual findings, made on the balance of probabilities in accordance with the well-known Briginshaw standard (which is discussed in Appendix 2) are expressed in this report as to whether or not certain persons have engaged in specified conduct of a kind that a court may find constitutes a criminal offence. However, the Commission cannot and does not make any findings, and expresses no opinions, as to the guilt or innocence of those persons at criminal law.

Table 2: Other significant persons in this report

Cheah, Kenrick	Community Relations Director, NSW Labor
Clements, James	General Secretary, NSW Labor (2013–2016)
Dastyari, Sam	General Secretary, NSW Labor (2010–2013)
Huang, Jiayi (Winnie)	Personal Assistant to Mr Wong
Huang, Xiangmo	Chairman and Director, Yuhu Group (Australia) Pty Ltd
Murnain, Kaila	General Secretary, NSW Labor (2016–2019)
Robertson, Ian	National Managing Partner, Holding Redlich
Sibraa, Julie	Governance Director, NSW Labor (2016–2018)
Tam, Ming	Husband of Teresa Tam
Teh, Leon	Accountant and Director, Teh & Ng Pty Ltd
Wang, Maggie	Financial Controller, NSW Labor (2009–2017)
Wong, Ernest	Member of NSW Legislative Council (2013–2019)
Wong, Wun Chi (Gary)	Junket operator and Executive Assistant to Mr Huang
Wood (formerly Wu), Alex	Director, Wu International Investments Pty Ltd
Xu, Tian (Tim)	Interpreter and Executive Assistant to Mr Huang
Yip, To (Stanley)	Director, Harbour City Group Pty Ltd
Zhan, Yueran (Kenny)	Employee, Wu International Investments Pty Ltd
Zhao, Yi Jing (Jenny)	Financial Officer, NSW Labor

Affected persons

An “affected person” is relevantly defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, the investigation concerned. The Commission is satisfied that the following 21 persons are affected persons in connection with this investigation:

- Mr Wong
- Mr Huang
- Jonathan Yee
- Mr Cheah
- Emperor’s Garden Pty Ltd
- Valentine Yee
- May Ho Yee
- Mr Mo
- Ms Siu
- Ms Tam
- Mr Shi
- Ms Lin
- Harbour City Group Pty Ltd
- Mr Yip
- Mr Tong
- Mr Tam
- Mr Clements
- Ms Wang
- Ms Murnain
- Mr Robertson
- Mr Wood (formerly Alex Wu)

Chapter 2: Relevant electoral funding laws

The EFED Act

The legislation in NSW that currently regulates political donations, electoral funding and expenditure is the *Electoral Funding Act 2018*, which came into force on 30 June 2018 upon the repeal of the EFED Act. The EFED Act was the relevant electoral funding law in force at the time of the conduct that is the subject of this investigation.

As noted in the previous chapter, the NSWEC referred this matter to the Commission on 15 January 2018. The list of criminal offences in s 13A(9) of the ICAC Act as at 15 January 2018 included offences under the EFED Act. The ICAC Act has since been amended so that the list of offences in s 13A(9) now refers to offences under the *Electoral Funding Act 2018*.

The objects of the EFED Act were set out in s 4A of that Act.

The objects of this Act are as follows:

- (a) to establish a fair and transparent election funding, expenditure and disclosure scheme,
- (b) to facilitate public awareness of political donations,
- (c) to help prevent corruption and undue influence in the government of the State,
- (d) to provide for the effective administration of public funding of elections, recognising the importance of the appropriate use of public revenue for that purpose,
- (e) to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme.

The election funding, expenditure and disclosure scheme established by the EFED Act included requirements and prohibitions in relation to such things as:

- registration of candidates, third-party campaigners, party agents and official agents (Part 4)
- public funding of state election campaigns, including electoral communication expenditure (Part 5)
- political donations and electoral expenditure (Part 6)
- administrative and policy development funding (Part 6A).

Disclosure rules – political parties and donors

Division 1 of Part 6 of the EFED Act defined a “political donation” as a gift made to or for the benefit of a party, an elected member or a candidate (see s 85 of the EFED Act). It included an amount paid to participate in a fundraising venture. It follows that amounts paid to purchase seats and tables at the 2015 CFOL dinner were political donations.

A gift made to another person to enable that other person to make a political donation also fell within the definition of “political donation” (see s 85(1)(d) of the EFED Act). Under s 86 of the EFED Act, a donation of more than \$1,000 was defined as a “reportable political donation”. The donations purported to have been made by the putative donors in this investigation were in amounts of \$5,000 or \$10,000 and therefore were reportable political donations.

Division 2 of Part 6 of the EFED Act established a disclosure regime with respect to political donations and electoral expenditure. The relevant disclosure period was each 12 month period ending on 30 June (see s 89 of the EFED Act). Under s 88 of the EFED Act, parties,

members, groups and candidates were required to disclose all political donations received, whether large or small, during the relevant disclosure period. Disclosures were to be made within eight weeks after the end of the relevant disclosure period (see s 91 of the EFED Act).

NSW Labor and Country Labor were each required to disclose to the NSWEC all political donations received in the 12-month period up to 30 June 2015, including those in connection with the 2015 CFOL dinner. It was the NSWEC audit of information NSW Labor and Country Labor provided in their disclosures for that period which raised questions about the \$100k cash. That audit was the genesis of this investigation.

A person who had made a reportable political donation (that is, one exceeding \$1,000) was defined as a “major political donor” and was separately required to disclose that donation to the NSWEC, in accordance with s 88(2) of the EFED Act. Each of the putative donors in this investigation was purported to be major political donors required to disclose reportable political donation(s) to the NSWEC. Findings about the circumstances in which the putative donors came to sign those disclosures are set out in chapter 15.

When disclosing reportable political donations, parties and major political donors were separately required to provide to the NSWEC certain details including: the party to whom the donation was made, the date on which it was made, the name and address of the donor, the amount of the donation and, if the donor was not an individual, the business number of the donor entity (see s 92(2) of the EFED Act). To facilitate transparency and public awareness of political donations, under s 95 of the EFED Act, the NSWEC was required to publish disclosures of reportable political donations on its website.

Caps on political donations

Division 2A of Part 6 of the EFED Act set caps on political donations for state elections. The 2015 CFOL dinner the subject of this investigation was billed as a “NSW Labor Chinese Launch” and was held 16 days before the NSW state election on 28 March 2015. The provisions of Division 2A of Part 6 applied to donations made in connection with the 2015 CFOL dinner.

Section 95A(1)(a) of the EFED Act imposed a cap of \$5,000 on political donations made to a registered party. Under s 95A(1)(e) political donations made to a candidate were capped at \$2,000. Section 95 allowed those caps to be adjusted for inflation. However, political donations made in connection with the 2015 NSW State Election were not subject to adjustment for inflation and remained as those set out in s 95A(1)(see s 103G of the EFED Act).

The caps applicable to donations made in connection with the 2015 CFOL dinner were, therefore, \$5,000 to a registered party and \$2,000 to a candidate.

Donations made within the same financial year, up to June 30, were aggregated for the purpose of caps under s 95A(2) of the EFED Act. So, if a person donated \$4,000 to a party in a particular financial year, and later donated a further \$2,000 to the same party in the same period, that further donation of \$2,000 would take the aggregated total donations to that party in that period above the applicable \$5,000 cap and would therefore be treated as a donation that exceeded the applicable cap.

Section 95B of the EFED Act made it unlawful to accept a political donation which exceeded the applicable cap. An exception under s 95B(2) of the EFED Act means that it was not unlawful to accept a political donation exceeding the cap if that donation was paid into an account kept exclusively for the purpose of federal or local government election campaigns.

Therefore, it would not be unlawful to accept further donations from a person who had already donated up to the \$5,000 cap to a registered party for the purpose of the 2015 NSW State Election, so long as those further donations were paid into an account kept exclusively for the purpose of federal or local government election campaigns.

A note to section 95A of the EFED Act stated that:

Note. Political donations in relation to separately registered parties that are in coalition or otherwise associated are not aggregated and, accordingly, the applicable cap applies separately in relation to each such registered party.

NSW Labor and Country Labor were, at the time of the 2015 NSW State Election, separately registered parties. Under the EFED Act, NSW Labor and Country Labor could each lawfully accept political donations up to the applicable cap from the same donor in any given financial year.

A Labor Party supporter wishing to contribute more than \$5,000 to the Labor movement in connection with the 2015 NSW State Election could have done so by lawfully giving \$5,000 to NSW Labor and another \$5,000 to Country Labor.

However, evidence was heard in the public inquiry that none of the putative donors in fact donated the sums of \$5,000 or \$10,000 that had been disclosed in their names, let alone held or communicated any intention to donate separate sums of \$5,000 to both NSW Labor and Country Labor. Related findings are set out in chapter 11.

In the absence of indications from the putative donors that they wished to donate separate sums of \$5,000 to NSW

Labor and \$5,000 to Country Labor, the public inquiry examined how it came to be that staff at the head office of NSW Labor allocated half of the \$100k cash to each of NSW Labor and Country Labor. Related findings are set out in chapter 9.

If the putative donors did not contribute sums of \$5,000 or \$10,000 towards the \$100k cash, the question arises as to the true source of that money. Was Mr Huang the true source? If so, did the acceptance of that money amount to conduct of a kind that could be unlawful under the EFED Act? Findings related to the true source of the \$100k cash are set out in chapter 12. Findings as to the lawfulness of accepting the \$100k cash are set out in chapter 13.

Prohibited donors

Under Division 4A of Part 6 of the EFED Act, certain classes of persons were defined as “prohibited donors” and prohibited from making a political donation (see s 96GA(1)). Prohibited donors were defined in s 96GAA of the EFED Act to include property developers, tobacco industry business entities and liquor or gambling industry business entities. Under s 96GA(3), it was unlawful to accept a political donation made by a prohibited donor.

At the time of the 2015 NSW State Election, Mr Huang was a director and chairman of Yuhu Group (Australia) Pty Ltd (“Yuhu Group”) and Yuhu Investment Holding Pty Ltd, companies that were engaged in property development. If the true source of the \$100k cash were Mr Huang, questions arise as to whether the gift of that money was unlawful on the basis that Mr Huang may have been a prohibited donor under the EFED Act and thereby prohibited from making political donations for the benefit of state political parties in NSW.

During the public inquiry, a number of witnesses gave evidence that they understood Mr Huang to be a property developer and/or a prohibited donor for the purposes of NSW electoral law. For example:

- Mr Clements gave evidence that he found out that Mr Huang’s Yuhu Group was a property developer sometime in 2014
- Ms Murnain gave evidence that she came to know sometime in 2016 that Mr Huang was a property developer and prohibited donor
- Mr Wong gave evidence that he knew, as at 2015, that Mr Huang was associated with property development company Yuhu Group and was a prohibited donor for the purpose of state electoral law.

At no stage in the public inquiry did Mr Huang’s legal representative seek leave to cross-examine any of those witnesses on that evidence.

There is little doubt that Mr Huang was a property developer in the ordinary sense of the term at the relevant time. However, the EFED Act established a statutory definition of “property developer”. Section 96GB of the EFED Act provided that:

- (1) *Each of the following persons is a property developer for the purposes of this Division:*
 - (a) *a corporation engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation in connection with the residential or commercial development of land, with the ultimate purpose of the sale or lease of the land for profit,*
 - (b) *a person who is a close associate of a corporation referred to in paragraph (a).*

A “close associate” of a corporation was defined to include a director or officer of the corporation under s 96GB(3)(a) of the EFED Act. If Yuhu Group and/or Yuhu Investment Holding Pty Ltd were corporations falling within the definition referred to in s 96GB(1)(a) above, Mr Huang’s directorship of those corporations would make him a property developer and a prohibited donor for the purposes of the EFED Act.

Counsel Assisting submitted that the effect of s 96GB(1)(a) of the EFED Act is that:

... a corporation will only be regarded as a “property developer” for the purposes of the EFED Act if it is engaged in a business that regularly involves the making of relevant planning applications by or on behalf of the corporation (that is, by or on behalf of the putative property developer). A consequence of this is that where, for example, a corporate group whose sole business is property development is constituted by a holding company and special purpose subsidiaries incorporated for each property development, none of the members of the corporate group will be “property developer[s]” within the meaning of the EFED Act (unless a particular property development engaged in by one of the special purpose subsidiaries regularly involves the making of relevant planning applications rather than, for example, a single relevant planning application).

The Commission agrees that the definition of “property developer” in the EFED Act is narrow and does not encompass all corporations or close associates who, in general usage, might be regarded as “property developers”. The Commission accepts the submission of Counsel Assisting that the available evidence does not demonstrate that Mr Huang was a “close associate” of a corporation falling within the narrow definition in s 96GB(1)(a) of the EFED Act.

Relevant offences

The Commission's investigation concerned the following allegation:

...whether, from January 2015, officials of the New South Wales Branch of the Australian Labor Party, members of Chinese Friends of Labor, political donors and others have entered into or carried out a scheme to circumvent prohibitions or requirements under Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 relating to political donations.

The allegation reflects the language of s 96HB of the EFED Act ("the scheme offence"), which provides that:

(1) *A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of this Part with respect to political donations or electoral expenditure is guilty of an offence.*

*Maximum penalty (on conviction on indictment):
Imprisonment for 10 years*

(2) *It does not matter that the person also enters into or carries out the scheme for other purposes.*

(3) *In this section:*

Scheme *includes an arrangement, an understanding or a course of conduct.*

Relevant prohibitions and requirements under Part 6 of the EFED Act include those set out above in relation to disclosure obligations, applicable caps on political donations and prohibited donors. The Commission's findings as to whether certain persons engaged in conduct of a kind that could constitute an offence under s 96HB of the EFED Act are set out in chapter 14.

Section 74A(2) of the ICAC Act requires the Commission to include in this report, in respect of each affected person, a statement as to whether the

Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence.

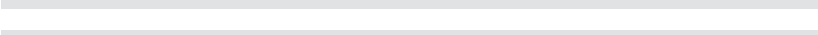
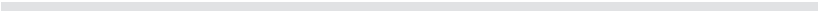
Statements in accordance with s 74A(2) of the ICAC Act are made throughout this report. Some of those statements refer to the scheme offence while others refer to a number of other criminal offences in Division 5 of Part 6 of the EFED Act, including:

- a person who makes a statement in a declaration or disclosure under Part 6 that the person knows is false, or does not reasonably believe is true, commits an offence (s 96H(2))
- a person who unlawfully accepts a political donation in contravention of (the applicable caps set out in) Division 2A of Part 6 commits an offence (s 96HA(1))
- a person who makes a political donation with the intention of causing the donation to be unlawfully accepted in contravention of (the applicable caps set out in) Division 2A commits an offence (s 96HA(2))
- a person who does any act that is unlawful (in relation to political donations by prohibited donors) under Division 4A of Part 6 commits an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful s 96I(1)).

Each of the above four criminal offences carries a maximum penalty of 400 penalty units or imprisonment of up to two years, or both. Section 111(4) of the EFED Act provides that prosecution of offences under that Act may only be commenced within 10 years of the offence. There is no limitation period for the scheme offence against s 96HB (see s 111(6)).



**PART 2 – The donation of
\$100,000 cash**



Chapter 3: Chinese Friends of Labor

At the time of the 2015 NSW State Election, Chinese Friends of Labor (CFOL) was a Labor Action Committee (LAC). LACs are committees falling within the auspices of NSW Labor, whose objectives include to discuss and develop policy and to organise events for, or affecting, a defined demographic or on a defined subject.

LACs include groups based on cultural background such as Vietnamese Friends of Labor, Arabic Friends of Labor, Filipino Friends of Labor and so on. Other types of LACs include issue-based groups such as the Labor Environment Action Network, Labor for the Arts, Labor Science Network and so on. It is not necessary for a person to be a member of NSW Labor in order to be involved in a LAC.

Although not expressly stated in the NSW Labor rules, an important objective of LACs is to conduct fundraising for NSW Labor. The public inquiry heard evidence to that effect from officers of NSW Labor, including former general secretary Ms Murnain, former general secretary Mr Clements, and community relations director Mr Cheah.

As community relations director from 2013, it was Mr Cheah's responsibility to coordinate LACs. Mr Cheah gave evidence that he worked closely with all LACs and acted as a conduit between them and the NSW Labor finance department to ensure that political donations received in connection with fundraising events hosted by LACs were recorded and receipted.

As a LAC falling under the auspices of NSW Labor, the objectives of CFOL included to develop policy and to organise events for or affecting the Chinese community. Mr Cheah told the Commission that another of CFOL's aims was to raise money for NSW Labor and associated political parties. He said that CFOL sought to do so by hosting one or two fundraising events each year.

CFOL had no separate constitution or governing document. Nor did CFOL operate any bank account.

The Commission heard, however, that some of the funds raised in connection with the fundraising dinner hosted by CFOL on 12 March 2015 ("the 2015 CFOL dinner"), which was the subject of this investigation, were deposited into the bank account of an organisation called Friends of Chinese Community Incorporated. The Commission's findings with respect to those deposits are set out in chapter 6 of this report.

Mr Clements, who was general secretary of NSW Labor from 2013 to 2016, told the Commission that it was fair to describe CFOL as "Ernest Wong's group". Mr Cheah said that CFOL was "not really" known as, or referred to as, "Ernest Wong's group" but agreed that Mr Wong was a "driving force" behind it.

Mr Wong was a member of the NSW Legislative Council from May 2013 until his endorsement was withdrawn by NSW Labor and he left politics in March 2019. He served as a councillor on Burwood Council from 2000 to 2015, including at times as deputy mayor. Mr Wong was the patron of CFOL during the period he was a member of the Legislative Council.

Prior to becoming a member of the Legislative Council, Mr Wong had been employed by NSW Labor at its Sussex Street, Sydney, head office as community relations director. In that role, Mr Wong was responsible for coordinating LACs, including CFOL. Mr Wong described CFOL, at the time that he was community relations director, as "a pretty loose organisation where they didn't have a [sic] particular rules or regulations...". In 2013, after Mr Wong entered Parliament, Mr Cheah was appointed community relations director at NSW Labor head office.

Mr Clements told the Commission that during his time as general secretary of NSW Labor, Mr Wong was known as a very prodigious and successful fundraiser.

Mr Wong gave evidence that one of the significant activities of CFOL was to organise fundraising events

such as dinners. He said CFOL usually hosted an annual fundraising dinner. Mr Clements and Ms Wang, the financial controller of NSW Labor from 2009 to 2017, confirmed that CFOL fundraising dinners were generally annual events.

Mr Clements said that CFOL dinners were bigger events than those hosted by other LACs. Pinkie Leung, a CFOL volunteer, who provided a statement to the Commission, said that CFOL fundraising dinners were usually held at The Eight restaurant in Market City, Haymarket, which could seat up to 600 people at 60 tables of 10 persons.

Ms Murnain, who was an assistant general secretary of NSW Labor from 2013 and succeeded Mr Clements as general secretary in 2016, gave evidence that Mr Wong and Jonathan Yee were the principal CFOL organisers at the time of the 2015 CFOL dinner. Mr Wong agreed that he and Jonathan Yee were the principal CFOL organisers.

Jonathan Yee was the chairman of CFOL in 2015. Jonathan Yee is, and was at the relevant time, a director of Emperor's Garden Pty Ltd, a family business that operates several food enterprises in Sydney's Chinatown area.

Jonathan Yee stood for Labor preselection for the City of Sydney in 2012 and then, in 2016, stood for election as number two on the Labor ticket for the City of Sydney. He was not elected. Jonathan Yee told the Commission that, as at 2015, he was politically ambitious and was seeking to ingratiate himself with Mr Wong whom he understood to be a successful fundraiser and a person of some power within NSW Labor.

Jonathan Yee said that he was very close friends with Mr Wong in 2015 and told the Commission that Mr Wong dined at the Emperor's Garden yum cha restaurant in Dixon Street once or twice a week. That evidence was corroborated by other witnesses including Valentine Yee, who is Jonathan Yee's brother and the chief financial officer of Emperor's Garden Pty Ltd, and Mr Shi, a shift manager at the Emperor's Garden restaurant.

Mr Wong agreed that he maintained a pre-paid account, or tab, at the Emperor's Garden restaurant. Mr Wong said that he had known Jonathan Yee's father, Stanley Yee, for a long time and had known Jonathan Yee since he was a young boy and that he knew him quite well.

There is a dispute between Mr Wong and Jonathan Yee as to which of them was the convenor of CFOL at the relevant time. While Mr Wong admitted being the patron of CFOL during the period that he was a member of Parliament, he named Jonathan Yee as the convenor of CFOL for "two or three years", including in 2015 and 2016.

On cross-examination by senior counsel for Mr Wong, Jonathan Yee denied that he was ever the convenor of CFOL. While Jonathan Yee admitted to being the chairman of CFOL, he said Mr Wong was the convenor, a position he described as "having a lot more power".

It is clear on the evidence that, at the relevant time, Mr Wong was the patron of CFOL and Jonathan Yee was the chairman. It is also clear that Mr Wong and Jonathan Yee were together the principal organisers of CFOL at the relevant time. The Commission's findings in relation to Mr Wong and Jonathan Yee turn on an assessment of the evidence as to their respective roles as demonstrated by conduct and not by reference to which of them, if either, held the position of convenor of CFOL. It is therefore not necessary for the Commission to make a positive finding as to who, if anyone, was the convenor of CFOL at the time of the 2015 CFOL dinner.

Mr Wong and Jonathan Yee were assisted in organising CFOL events from time-to-time by various CFOL volunteers, including members of an organising committee. The activities of the organising committee and CFOL volunteers in connection with the planning and execution of the 2015 CFOL dinner are set out in chapter 4 of this report.



As a Chinese Australian who was also a member of NSW Labor, Mr Cheah regarded himself “broadly speaking” to be a member of CFOL both before and during the period that he was the NSW Labor community relations director. Mr Cheah attended events organised by CFOL in his capacity as community relations director, and had close friendships with people involved in CFOL, but was not himself a member of the CFOL organising committee.

Chapter 4: Organisation of the fundraising dinner on 12 March 2015

This chapter sets out the Commission's findings in relation to the organisation of the 2015 CFOL dinner. Key persons who were involved in organising the event are identified and their roles stated. Relevant attendees at the event are identified. The various invitation/reservation forms used in connection with the event are explained, with a particular focus on the sale of "VIP" and "VVIP" tables.

Who organised the dinner?

On the evening of 16 February 2015, about six weeks before the 28 March 2015 NSW State Election, a group of people involved with CFOL held a meeting to plan a fundraising dinner billed as a "NSW Labor Chinese Launch". The fundraiser was scheduled to be held on 12 March 2015 at The Eight restaurant.

At 11:48 pm on 16 February 2015, Jonathan Yee sent an email titled "Chinese Friends of Labor Annual Charity Dinner" to Mr Wong, Simon Zhou, Ernest Chan, Pinkie Leung, Khanh Van Mach and Floris Lam. The email was copied to Claude Wan, at a parliamentary email address, and to Filip Shu. Winnie Huang, Mr Wong's personal assistant, was using Mr Wan's parliamentary email address at the time. This group of people comprised the team of CFOL committee members and volunteers ("the CFOL organisers") that organised the 2015 CFOL dinner.

Jonathan Yee's email began, "Hi Team, our meeting tonight went something like this...". He set out details of the "Target" for the event, including the sale of 47 tables at \$800 each, four tables at \$2,000 each, four tables at \$5,000 each and a "Head Table at \$10,000 per person". Jonathan Yee indicated that he and Mr Chan had each taken one of the \$5,000 tables. Mr Wong was nominated as the person responsible for the head table.

Jonathan Yee's email detailed a further four tables without any indication of pricing, being one each for union heads, media heads, media and volunteers. In total, the email contemplated 60 tables for the event. That number of

tables is consistent with the 600-person capacity of The Eight restaurant. The floorplan for the dinner, which was finalised at a later stage, indicates there were a total of 58 tables at the event, each with seating for 10 persons.

According to Jonathan Yee's email, Ms Leung and Ms Lam were to lead groups of volunteers on the night to collect "Labor forms" and raffle money. The reference to "Labor forms" meant invitation/reservation forms for the event which featured a donor declaration that was required to be completed by donors and which would enable NSW Labor to comply with its statutory disclosure obligations under Division 2 of Part 6 of the EFED Act. Mr Zhou was to provide entertainment on the night and to share the role of master of ceremonies with Mr Chan.

Jonathan Yee attached a number of documents to his 16 February 2015 email, including a table of job allocations and a draft program for the event. Among Mr Wong's responsibilities were selling and allocating tables, bringing banners and organising raffles. Mr Wong was programmed to address the dinner after Jonathan Yee's welcome address and to introduce the NSW Labor leader, the Hon Luke Foley MLC, as the keynote speaker. Federal Labor leader, the Hon Bill Shorten MP, was programmed to deliver an address after the entertainment but before the raffle draw.

Mr Cheah gave evidence to the Commission that in his capacity as NSW Labor community relations director, he organised the production of the invitation/reservation forms for the 2015 CFOL dinner. He agreed that he may also have made arrangements for the attendance of Mr Shorten and Mr Foley at the event. Mr Cheah would not agree with the proposition that he booked the venue for the event in 2015, stating that he did not think he did so for that event but that booking venues for such events was a task that he did sometimes perform.

Evidence obtained by the NSWEC from The Eight restaurant and provided to the Commission shows that

Mr Cheah was involved at an early stage in booking the venue for the 2015 CFOL dinner. Email communications with The Eight restaurant thereafter appear to have been directed primarily to Mr Wong to settle arrangements such as the menu and proposed floor plan for the event.

Who attended the dinner?

The Commission heard evidence that the 2015 CFOL dinner was a large, successful event and that The Eight restaurant was full to capacity. Mr Cheah said there was somewhere in the vicinity of 600 people in attendance. Mr Wong said that there was a range of tables at the event, including \$800 tables, VIP tables for \$2,000 with a state shadow minister and VVIP tables for \$5,000 with a federal shadow minister. Mr Wong confirmed that all of those tables were ultimately sold. There was also a head table in the centre of the restaurant. Issues relating to the sale of premium tables, and questions as to the sale of the head table, are considered later in this chapter.

A number of persons relevant to this investigation were in attendance at the 2015 CFOL dinner. Mr Cheah attended in his capacity as NSW Labor community relations director. Mr Wong attended as a featured guest and patron of CFOL. He sat at the head table together with Mr Clements, Mr Huang and others.

Mr Wong's personal assistant, Ms Huang, attended and worked at the reception table throughout the night. The Commission notes that Ms Huang bears no family relationship with Mr Huang, the chairman and director of Yuhu Group. Ms Huang worked for Mr Wong in his parliamentary office from about August 2014. Up until August 2016, her wages were paid in full by Mr Wong personally. Thereafter, part of her wages were paid by the Parliament.

Jonathan Yee attended as chairman of CFOL. He did not sit at the head table. Members of Jonathan Yee's family, including his brother Valentine Yee, mother May Ho Yee and father Stanley Yee, also attended the dinner. Valentine Yee and May Ho Yee are among the putative donors.

A number of other persons relevant to the investigation were not in attendance at the 2015 CFOL dinner. Ms Murnain did not attend the event as she was working at NSW Labor head office until late that night coordinating "how to vote" material for the upcoming state election.

Notably, other than members of the Yee family, none of the putative donors attended the 2015 CFOL dinner. Putative donors Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam, Mr Tong and Mr Yip (proprietor of Harbour City Group Pty Ltd) all gave evidence that they did not attend. The Commission accepts their evidence on this issue.

Putative donor Mr Liao died in late June 2019 and, accordingly, the opportunity to obtain evidence from him was lost to the Commission. He told NSWEC investigators that he attended the 2015 CFOL dinner briefly to deliver his cash donation and his donor declaration form. Mr Liao said he did not stay for long as he was feeling unwell. He said that he definitely had the form with the money in an envelope. Mr Liao told the NSWEC that he gave the envelope to a young person, but could not remember whether that person was male or female. Mr Liao said he told that person, "This is my form" in response to which they replied, "Yes, that's fine, just leave this with us." For the reasons set out below, the Commission does not accept Mr Liao's evidence to the NSWEC on this issue.

The pre-filled invitation/reservation form

The invitation/reservation forms associated with the Emperor's Garden putative donors and Harbour City Group Pty Ltd are original forms. The forms associated with Mr Liao and Mr Tong are copies.

The invitation/reservation form that was filled out by Mr Liao ("the pre-filled invitation/reservation form" at figure 1) featured a handwritten "\$5,000" figure and a handwritten strikethrough of cheque and credit card (that is, non-cash) payment options.

Mr Wong initially told the Commission that he provided Mr Liao with an invitation/reservation form "a long time before the event" following a conversation in which Mr Liao told Mr Wong that he would like to buy a table at the event. Mr Wong said that Mr Liao later told him that he "wouldn't be able to get people to come along" but would still like to make a donation. Mr Wong told the Commission that he told Mr Liao that he "might as well just fill in the form" for the donation. For reasons set out below, the Commission does not accept Mr Wong's evidence on this issue.

There was evidence that on 30 March 2015 at 2:40 pm, about three weeks after the 2015 CFOL dinner, someone scanned the pre-filled invitation/reservation form (featuring the handwritten \$5,000 figure) using a Xerox machine in Mr Wong's office at Parliament House and emailed it to Mr Wong's parliamentary email address. That email was then forwarded from Mr Wong's parliamentary email address to Mr Liao with a request that Mr Liao "please fill two of these in".

On being shown that evidence, Mr Wong admitted that he wrote the \$5,000 figure and applied the strikethrough of non-cash payment options on the pre-filled invitation/reservation form. Mr Wong agreed that he prepared that document and forwarded it to Mr Liao via email on

Figure 1: The pre-filled invitation/reservation form created by Mr Wong on 30 March 2015

INVITATION

Chinese Friends of Labor presents
NSW Labor Chinese Launch

With guests:
Bill Shorten MP
Federal Labor Leader
Luke Foley MLC
NSW Labor Leader
Ernest Wong MLC

WHEN:
Thursday
12 March 2015
6.30pm for 7:00pm

WHERE:
The Eight Restaurant,
Market City, 9-13
Haymarket St,
Haymarket

TICKETS:
\$80 per person
\$800 per table
\$2000 for VIP table
\$5000 for VVIP table

RSVP:
winniehuang1989

PARKING:
\$5 at Market City (Levels B2 and B3) with validation after 5pm.

Please complete the reservation form and return WITH PAYMENT by 25 February 2015.
Mail: Attn: Kenrick Cheah, PO Box K408, Haymarket NSW 1240.
For more information please phone (02) 9207 2000 or email winniehuang1989

Reservation form

Please send me
 Tickets – @ \$80 per person
 Tickets – @ \$800 for table of 10
 Tickets – @ \$2000 for VIP table
 Tickets – @ \$5000 for VVIP table

Total \$

 \$5000

I am unable to attend but would like to make a donation

Name: _____
 Organisation: _____
 ABN (if applicable): _____
 Address: _____
 Postcode: _____
 Mobile: _____

PAYMENT: You can pay by cheque or credit card

RECEIPT: Please receipt Name above Organisation

Enclosed is my cheque for \$ _____ payable to Prospect Campaign Account
 OR please debit my credit card
 Visa Mastercard Amex Diners

 Name on Card _____ Expiry Date ____/____/____
 Signature _____ Date ____/____/____
 Signature _____ Date ____/____/____

I confirm that this donation is not made by or on behalf of a "prohibited donor" (being a "property developer", "tobacco industry business entity" or "liquor or gambling industry business entity"), or a "close associate" of a "prohibited donor", as defined in Division 4A of Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 (NSW). I also disclose I have not exceeded the \$5000 cap which I can donate to this Candidate.

Signature _____ Date ____/____/____

This document will be a tax invoice for GST purposes when you make full payment. Please retain a copy for your records. ALP NSW Branch
 ABN 36 192 855 036

30 March 2015 with the request to “please fill two of these in”.

The following day, 31 March 2015, Mr Liao sent a reply email to Mr Wong attaching two scanned documents, being pre-filled invitation/reservation forms filled out in the names of Mr Liao and Mr Tong. Both forms were signed and backdated: Mr Liao’s backdated to 20 February 2015 and Mr Tong’s backdated to 23 February 2015. Mr Wong said he did not recall telling Mr Liao or Mr Tong to put a February date on those forms but did not deny doing so.

More than two weeks later, on 17 April 2015, Mr Wong forwarded Mr Liao’s email, attaching the signed and backdated forms of Mr Liao and Mr Tong, to Mr Cheah. Those forms appear identical (but for markings applied by NSW ALP office staff) to the copies obtained by the Commission from NSW Labor files.

How Mr Tong came to fill out his backdated form is considered in chapter 11 of this report. The circumstances surrounding Mr Wong forwarding the backdated forms of Mr Liao and Mr Tong to Mr Cheah on 17 April 2015 are considered in chapter 10.

On 30 March 2015 at 6:27 pm, about four hours after Mr Wong had sent the pre-filled invitation/reservation form to Mr Liao, Mr Wong sent an email to Jonathan Yee, also attaching the pre-filled invitation/reservation form. That email was titled “Fwd: Scan Data from FX-AF807E” and contained no text or instructions to Jonathan Yee. Over the next two days, all of the Emperor’s Garden putative donors, and Mr Yip on behalf of Harbour City Group Pty Ltd, filled in copies of the pre-filled invitation/reservation form. Each of the Emperor’s Garden putative donors and Mr Yip has given evidence to that effect.

During the public inquiry, Counsel Assisting put to Mr Wong that none of the signed pre-filled invitation/reservation forms relating to the 12 putative donors existed until 30 March 2015. Mr Wong rejected that proposition. Mr Wong suggested that he initially prepared the pre-filled invitation/reservation form prior to the 2015 CFOL dinner, at the request of Jonathan Yee, and that he left copies of it at the reception table at the event for Jonathan Yee to collect.

Mr Wong’s evidence is not supported by Ms Huang, who was in charge of the reception table on the night

of the 2015 CFOL dinner. Her duties included greeting guests on arrival, finding their names on the guest list and showing them to their tables. Ms Huang told the Commission that there may have been some spare blank invitation/reservation forms at the reception desk for guests wishing to pay on the night but she did not recall there being any pre-filled invitation/reservation forms.

Mr Wong's evidence is also inconsistent with that of Jonathan Yee and the other Emperor's Garden putative donors, and Mr Yip, who told the Commission that they filled in their invitation/reservation forms between 30 and 31 March 2015.

The Commission rejects Mr Wong's evidence and is satisfied that none of the signed pre-filled invitation/reservation forms relating to the 12 putative donors existed until 30 March 2015.

The Commission finds that Mr Liao and Mr Tong completed their pre-filled invitation/reservation forms after Mr Liao received Mr Wong's email on 30 March 2015 and that Mr Liao did not deliver his completed form to The Eight restaurant on 12 March 2015 as he had stated to the NSWEC.

The fact that Mr Liao misled the NSWEC in relation to his completed pre-filled invitation/reservation form is relevant to the Commission's assessment as to whether or not Mr Liao attended the 2015 CFOL dinner. Mr Wong told the Commission that Mr Liao "definitely [did] not" attend the event. The Commission rejects Mr Liao's evidence to the NSWEC that he attended the 2015 CFOL dinner. That conclusion is consistent with other findings in relation to whether Mr Liao donated any money in connection with the 2015 CFOL dinner. That question is addressed in chapter 11.

Mr Wong's involvement

As noted above, Jonathan Yee's email to the CFOL organisers on 16 February 2015 contemplated Mr Wong selling and allocating tables, taking responsibility for the head table, bringing banners and raffles, and addressing the dinner to introduce Mr Foley. Emails obtained from The Eight restaurant show that Mr Wong was responsible for settling the floorplan and deciding the menu for the event.

On the first day of the public inquiry, Mr Cheah told the Commission that Mr Wong was the principal organiser of the 2015 CFOL dinner. Mr Cheah rejected the proposition that he, or someone else from NSW Labor head office, was responsible for maintaining a list of persons who had responded to invitations to attend the event. Mr Cheah said that LACs, and not head office, were ordinarily responsible for that exercise and he

assumed Mr Wong's office maintained a register recording persons who confirmed they would attend the 2015 CFOL dinner.

Mr Cheah's evidence as to Mr Wong's role is corroborated by other witnesses. Jonathan Yee gave evidence that Mr Wong was responsible for keeping track of bookings and payments in relation to the 2015 CFOL dinner. Jonathan Yee said that when he found a purchaser for a table at the function, he reported that information to Mr Wong's office, either directly to Mr Wong himself or to his personal assistant, Ms Huang.

Ms Huang's personal email address was included on the invitation/reservation forms as the RSVP contact for the event. Ms Huang told the Commission that it was mainly Mr Wong who maintained the guest list for the 2015 CFOL dinner. Ms Huang said that people "occasionally" contacted her and said they wanted to attend the event. When that occurred, Ms Huang told Mr Wong and he would update the guest list.

Ms Huang said that Mr Wong provided her with the final version of the guest list prior to the dinner to assist with her duties in taking guests to their seats. She confirmed that she emailed herself a copy of the updated guest list at 4:08 pm on 12 March 2015, two hours before the event, for that purpose. Ms Huang confirmed that the updated guest list was likely the most accurate record of persons expected to attend the dinner.

During the public inquiry, Mr Wong gave evidence that he was heavily involved in organising the 2015 CFOL dinner. He admitted that he and Jonathan Yee were the principal organisers of the event and that he kept records at his parliamentary office of the sale of tables and seats, including a payment register which kept track of who said they would attend and whether they had paid. Mr Wong said that he was principally responsible for producing the updated guest list and agreed that it represented a good indication of who he thought would be attending that night.

None of the putative donors were recorded on the updated guest list, other than Jonathan Yee, whose name appears in a list of CFOL organisers. Mr Wong gave evidence at the public inquiry that if a name was not on the updated guest list, from his perspective that person probably did not agree to buy a seat or table at the event.

The sale of VIP and VVIP tables

One of the documents attached to Jonathan Yee's email to the CFOL organisers after their meeting on 16 February 2015 was a version of the invitation/reservation form for the 2015 CFOL dinner ("the \$2,000 VIP invitation/reservation form" at figure 2). This version of

the invitation/reservation form listed three ticket options: \$80 per person; \$800 per table; and \$2,000 for a VIP table. It made no reference to the \$5,000 tables or the \$10,000 seats at the head table that were contemplated by the CFOL organisers as set out in the body of Jonathan Yee's email.

The following day, 17 February 2015, Mr Wong sent an email from his parliamentary email account to several hundred recipients with a message in Chinese characters inviting people to attend the 2015 CFOL dinner. The email attached a copy of the \$2,000 VIP invitation/reservation form.

One week later, on 25 February 2015, Ms Huang sent an email (using the parliamentary email account of Claud Wan) to a generic email address at the Australia China Economics, Trade and Culture Association (ACETCA). ACETCA's stated objective is to promote the development of economic and trade ties and cultural and philanthropic exchanges between Australian and Chinese communities.

Ms Huang's email to ACETCA was titled "Some information about the NSW Labor Chinese Launch". In the email, Ms Huang explained that "[t]here are two kinds of VIP table. One is \$5000 (10 Person), the other is \$2000 (10 person)" and that a federal shadow minister would be seated at each \$5,000 table and a state shadow minister at each \$2,000 table. That is broadly consistent with Mr Wong's evidence that the range of tables at the event included \$800 tables, VIP tables for \$2,000 and VVIP tables for \$5,000.

In her email, Ms Huang asked ACETCA to make payment at the event by way of a cheque made out to "Friends of Chinese Community". Ms Huang did not attach an invitation/reservation form. This email was copied to Mr Wong. The circumstances surrounding this email, and why payment was not requested to be made to NSW Labor, is considered further in chapter 6.

As noted above, each of the putative donors, whose \$5,000 donations are the subject of this investigation, filled in the pre-filled invitation/reservation form that Mr Wong scanned and emailed to Mr Liao and Jonathan

Figure 2: The \$2,000 VIP invitation/reservation form emailed by Jonathan Yee to CFOL organisers on 16 February 2015

INVITATION

Chinese Friends of Labor presents
NSW Labor Chinese Launch

With guests:
Bill Shorten MP
Federal Labor Leader
Luke Foley MLC
NSW Labor Leader
Ernest Wong MLC

WHEN:
Thursday
12 March 2015
6.30pm for 7:00pm

WHERE:
The Eight Restaurant,
Market City, 9-13
Haymarket St,
Haymarket

TICKETS:
\$80 per person
\$800 per table
\$2000 for VIP table

RSVP:
winniehuang1989 [redacted]

PARKING:
\$5 at Market City (Levels B2 and B3) with validation after 5pm.

Please complete the reservation form and return
WITH PAYMENT by 25 February 2015.
Mail: Attn: Kenrick Cheah, PO Box K408, Haymarket NSW 1240.
For more information please phone (02) 9207 2000
or email winniehuang1989 [redacted]

Reservation form

Please send me

Tickets – @ \$80 per person Total \$

Tickets – @ \$800 for table of 10 _____

Tickets – @ \$2000 for VIP table _____

I am unable to attend but would like to make a donation

Name: _____

Organisation: _____

ABN (if applicable): _____

Address: _____

Postcode: _____

Mobile: _____

PAYMENT: You can pay by cheque or credit card

RECEIPT: Please receipt Name above Organisation

Enclosed is my cheque for \$ _____

payable to Prospect Campaign Account

OR please debit my credit card

Visa Mastercard Amex Diners

Name on Card _____ Expiry Date _____
_____/_____/_____
Signature _____ Date _____
_____/_____/_____

I confirm that this donation is not made by or on behalf of a 'prohibited donor' (being a 'property developer', 'tobacco industry business entity' or 'liquor or gambling industry business entity'), or a 'close associate' of a 'prohibited donor', as defined in Division 4A of Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 (NSW). I also disclose I have not exceeded the \$5000 cap which I can donate to this Candidate.

Signature _____ Date _____
_____/_____/_____

This document will be a tax invoice for GST purposes when you make full payment. Please retain a copy for your records. ALP NSW Branch
ABN 36 192 855 036

Yee on 30 March 2015. Those forms differed from the \$2,000 VIP invitation/reservation form. The key difference was that the pre-filled invitation/reservation form featured an additional ticket option for the purchase of a \$5,000 VVIP table. As noted above, the pre-filled invitation/reservation form also featured the handwritten figure of “\$5,000” and a strikethrough of non-cash payment options. The \$5,000 figure was written inside the box labelled “Total \$”, adjacent to the VVIP table ticket option.

Other than the 20 purported donations of \$5,000 by the 12 putative donors, no other \$5,000 contribution was made to NSW Labor or Country Labor in connection with the 2015 CFOL dinner. The invitation/reservation form featuring the ticket option for \$5,000 VVIP tables was reserved almost exclusively for use by the 12 putative donors. The Commission notes that a small number of invitation/reservation forms featuring the ticket option for \$5,000 VVIP tables was completed by donors whose contributions were diverted into the bank account of Friends of Chinese Community. That issue is addressed in chapter 6.

Jonathan Yee did not provide the CFOL organisers with an invitation/reservation form featuring the ticket option for \$5,000 VVIP tables. In his email on 16 February 2015, Jonathan Yee instead provided the CFOL organisers with the \$2,000 VIP invitation/reservation form. In that email, Jonathan Yee said that he and Mr Chan had each taken one of the \$5,000 tables. However, according to the updated guest list, Jonathan Yee was not allocated any table at the event and Mr Chan was allocated one of the \$2,000 VIP tables.

According to the updated guest list, the five \$5,000 tables at the 2015 CFOL dinner were allocated to a number of other persons, including Alex Lin, Jin Lin, Winson Chang, Frank Wong and, sharing a table, Amen Li, Min Shen Zhu and Levyn Enterprises (together “the VVIP guests”). No contributions from the VVIP guests in connection

with the 2015 CFOL dinner were received by NSW Labor or Country Labor. The Commission’s findings relating to that issue are set out in chapter 6.

Mr Wong did not attach an invitation/reservation form featuring the ticket option for \$5,000 VVIP tables to the invitation email that he circulated to several hundred recipients on 17 February 2015. Like Jonathan Yee to the CFOL organisers, Mr Wong instead attached the \$2,000 VIP invitation/reservation form.

The Commission is satisfied that the \$5,000 VVIP table ticket option was used principally as a device directed at two objectives: to procure false donor declaration forms from the 12 putative donors, on the one hand, and to facilitate the diversion of funds away from NSW Labor and Country Labor on the other. The Commission’s findings in relation to whether or not the 12 putative donors were the source of the \$100k cash are set out in chapter 11 of this report.

Notably, no version of the invitation/reservation form for the 2015 CFOL dinner featured a ticket option in relation to purchasing seats at the head table for \$10,000, as contemplated by Jonathan Yee’s email to the CFOL organisers on 16 February 2015. Issues in relation to the head table are considered in the following chapter.

Chapter 5: Fundraising targets, budgets and the head table

The fundraising target for the dinner

On the first day of the public inquiry, Counsel Assisting asked Mr Cheah if there was a profit target set in advance of the 2015 CFOL dinner. Mr Cheah replied, “For the event itself, no”. As NSW Labor community relations director, Mr Cheah agreed that in the weeks leading up to the 2015 NSW State Election he was interested in the amount of money expected to be raised in connection with various fundraising events. Notwithstanding that interest, Mr Cheah said that he “never gave anyone a profit target for an event”. Asked if he was sure, Mr Cheah said he may have done so for other events but could not recall doing so for the 2015 CFOL dinner. Mr Cheah said that he may have “had a ballpark figure in [his] head” for that event.

There was evidence that on 2 February 2015, about six weeks prior to the 2015 CFOL dinner, Mr Cheah sent an email to Ms Murnain with the subject “Roadmap”, attaching a spreadsheet titled “Roadmap Money.xlsx” (“the roadmap to money spreadsheet”). There was no text or information in the body of Mr Cheah’s email. The attached spreadsheet featured a heading, “Roadmap to \$\$\$”, and itemised estimated revenue in connection with nine specific fundraising events described as: Chinese Launch, Arabic Dinner, Viet Dinner/Launch, Greek Launch, Italian Sponsorship, Nova Peris-Knebone [sic] Dinner, Intimate High End Lunch, Phoenix Forum, and Irish Function.

The roadmap to money spreadsheet identified Mr Wong and CFOL as the main organisers of the Chinese launch, which was scheduled to take place on 12 March 2015. Estimated revenue of \$100,000 was recorded for the Chinese launch. This was by far the largest target for any single event on the list. The combined revenue target for the other eight events was \$105,000.

On being shown the 2 February 2015 email and the roadmap to money spreadsheet, Mr Cheah admitted that

he did have a revenue target for the 2015 CFOL dinner and that the target for that event was \$100,000.

Mr Wong told the Commission that there would have been an expectation at NSW Labor head office that the 2015 CFOL dinner would raise revenue of around \$100,000. Jonathan Yee gave evidence that Mr Wong told him that the fundraising target for the event was \$100,000 and that the target had been set by NSW Labor head office. Jonathan Yee said that Mr Wong did not tell him who at head office gave Mr Wong that information.

Ms Murnain accepted receiving Mr Cheah’s email of 2 February 2015 and the roadmap to money spreadsheet, but could not specifically recall having done so. She agreed that it appeared that Mr Cheah was giving her an idea, a few weeks out from the state election, as to what money was likely to come in. Ms Murnain said she would report that information to Mr Clements.

Ms Murnain gave evidence that the roadmap to money spreadsheet was the kind of document discussed in meetings of the NSW Labor Fundraising Committee, where persons responsible for certain revenue targets would report figures for approval. Ms Murnain said that, if available, she and Mr Clements would attend meetings of the fundraising committee. When Mr Clements attended, he would chair the meeting. According to Ms Murnain, Mr Clements would meet one-on-one with LAC organisers and approve proposed revenue targets and tell them how much they could spend on particular events. She said it was not uncommon for Mr Clements to set revenue targets for particular LACs.

Mr Clements admitted that he knew that CFOL and other LACs would run fundraising events in 2015 and that he may have had “a rough idea” as to how much he was expecting those LACs to raise. He knew CFOL would raise more money than the other LACs. Mr Clements agreed that there would have been an expectation at NSW Labor head office as to approximately how

much revenue would be raised from the 2015 CFOL dinner, but could not recall what that expectation was or any discussion of \$100,000 in connection with that expectation.

On being shown the roadmap to money spreadsheet, Mr Clements said he would probably have been shown the figures recorded on it but that it was Ms Murnain who was responsible for fixing the estimated revenue numbers. On cross-examination by senior counsel for Ms Murnain, Mr Clements denied that he approved estimated fundraising figures or that he set or approved fundraising targets for LACs. Mr Clements specifically rejected the proposition that he set fundraising targets for Mr Wong or that he made it plain to Mr Wong that his political ambitions were linked to his capacity to raise money.

The Commission is satisfied that there was a fundraising target of \$100,000 set for the 2015 CFOL dinner and that Mr Cheah, Mr Clements, Mr Wong, Jonathan Yee and Ms Murnain were aware of that fundraising target. The Commission notes that the fundraising target matched precisely the amount of cash that was deposited on 9 April 2015 into the bank accounts of NSW Labor and Country Labor.

The Commission is unable to make findings as to the identity of the person or persons responsible for setting the \$100,000 revenue target for the 2015 CFOL dinner. Mr Cheah initially denied that there was any such target until confronted with evidence in the form of the roadmap to money spreadsheet. Neither Mr Wong nor Jonathan Yee identified the person(s) responsible for setting the target. The evidence of Ms Murnain and Mr Clements conflicts as to who bore responsibility for the revenue targets of LACs and that conflict cannot be resolved satisfactorily on the present state of the evidence.

Mr Wong contemplates selling the head table

Jonathan Yee told the Commission that Mr Wong attended the planning meeting of CFOL organisers on 16 February 2015. According to Jonathan Yee, it was decided at that meeting by those present that Mr Wong would be responsible for the head table, including seeking to sell seats on the head table or the table itself. Jonathan Yee's recollection is consistent with the email of 16 February 2015 that he sent to the CFOL organisers after the meeting, which included the notation "Head Table at \$10,000 per person (Ernest Wong is responsible for this table)".

Mr Wong initially told the Commission that he could not recall attending a meeting at which it was agreed that he

would be responsible for selling seats at the head table at the event. Mr Wong agreed that he attended the meeting of CFOL organisers on 16 February 2015 but that he only said that he would "take care of" the head table in the sense of arranging politicians and community leaders to sit at the head table. After being shown Jonathan Yee's email of 16 February 2015, Mr Wong conceded that it was agreed by those present at the meeting, including Mr Wong himself, that Mr Wong would be responsible for seeking to sell either seats at the head table or the whole table.

There was evidence that on 16 February 2015, the same day as the meeting of CFOL organisers, a document titled "budget.xlsx" ("the head table budget" – see figure 3) was created on Mr Wong's drive on the parliamentary server in a sub-folder named "2015 Labor Dinner". The head table budget set out details of total projected income from the 2015 CFOL dinner of \$167,000 offset by total expenses of \$56,260, resulting in expected profit of \$110,740. Significantly, the first item under projected income was the head table against which a figure of \$100,000 was recorded.

Figure 3: Budget for the 2015 CFOL dinner created by Mr Wong on 16 February 2015 showing projected income of \$100,000 from sale of the head table

BUDGET				
Income				
Headtable	1	100,000		
VVIPs @ \$5000	4	20,000		
VIPs @ \$2000	4	8000		
normal tables @\$800	45	36000		
free tables	6			
raffles		3000		
		167,000		
Expenses				
60 tables (10 people)	45		23400	
tables (12 people)	15		9360	
audio			1000	
contigent			1000	
Volunteers Dinner			1000	
printing			500	
others			20000	
			56260	110,740

On multiple occasions, Counsel Assisting put to Mr Wong that he had prepared a budget which contemplated that \$100,000 would be earned from the sale of the head table at the 2015 CFOL dinner. Initially, Mr Wong denied that was the case and sought to explain that he “would be expecting \$100,000 earned [sic] from the whole event”. Asked by way of clarification if he denied that he prepared a budget that contemplated income from the head table alone of \$100,000, Mr Wong said that he did not deny it but sought to explain that “it doesn’t necessarily be translated as proceeding from the head table”.

Ultimately, Mr Wong accepted that he did prepare a budget in connection with the 2015 CFOL dinner that contemplated income of \$100,000 from the head table alone. Mr Wong was shown a copy of the head table budget and agreed it was an example of such a document.

On seven occasions, Counsel Assisting asked Mr Wong whether he denied ever saying to anyone orally or in writing that the head table at the 2015 CFOL dinner had been taken for \$100,000. Six times, Mr Wong avoided giving a direct answer, saying he could not recall doing so while agreeing that if he had done so it would be a significant matter that he would remember. Ultimately, in response to the seventh time the question was put, Mr Wong directly denied the proposition.

There was evidence that on 17 February 2015, the day after Mr Wong created the head table budget, he emailed multiple recipients seeking contributions in relation to the 2015 CFOL dinner and received an email in reply from one of those persons, Joseph Law, asking how much it would cost to purchase “[t]he table with Bill Shorten and Chris Bowen” at the event. Mr Wong did not reply to Mr Law’s query until two weeks later when, on 3 March 2015, he wrote, “Dear Joseph, thanks for your response. Sorry that the head table has already been taken for \$100k.” Mr Wong went on to invite Mr Law to consider purchasing a VVIP table for \$5,000, or a VIP table for \$2,000 instead.

The email exchange with Mr Law was put to Mr Wong. Mr Wong conceded that he told Mr Law that the head table had been taken for \$100,000. Mr Wong accepted that the answer he had previously given to the question put seven times by Counsel Assisting was wrong.

Mr Wong attempted to explain the email exchange with Mr Law by saying it was difficult to explain to some people that the head table was only reserved for Chinese community leaders and VIPs, like the Opposition leader, so he had lied to Mr Law about the head table being sold in order to stop people from “[trying] to squeeze their position into the head table”. Mr Wong could offer no satisfactory explanation as to why he did not inform Mr Law that the head table was not for sale if that were the truth.

Asked why he chose to tell Mr Law that the head table had been taken for the particular figure of \$100,000, Mr Wong said “It’s very much like if you want to sit on the head table there must be a huge amount of money that you would sit on the head table. I mean that’s what the usual people would be expecting”. Mr Wong said he came to choose the figure of \$100,000 off “the top of [his] head” as an amount too large for Mr Law to contemplate paying.

In circumstances where the figure of \$100,000 matches precisely the fundraising target for the 2015 CFOL dinner, the amount that Mr Wong himself budgeted for the sale of the head table, and the amount of cash that was ultimately deposited into the NSW Labor and Country Labor bank accounts on 9 April 2015 in connection with the event, the Commission rejects Mr Wong’s evidence that he chose the \$100,000 figure “off the top of his head”. The Commission also rejects Mr Wong’s explanation for the email to Mr Law and finds that Mr Wong was telling Mr Law the true state of affairs as at 3 March 2015, namely, that the head table had already been taken for \$100,000.

Who sat at the head table?

The updated guest list records that Mr Huang was allocated five of the 10 seats at the head table at the 2015 CFOL dinner. The remaining five seats were allocated to Mr Shorten, Mr Foley, Mr Wong, Ms Murnain and Hatton Kwok, who was a mentor to Mr Wong. As has been noted, Ms Murnain did not ultimately attend the function as she was working late that night on “how to vote” material for the upcoming state election.

There is no doubt that Mr Huang did in fact attend the 2015 CFOL dinner and that he sat at the head table. Mr Cheah said that Mr Huang sat at the head table. Mr Clements gave evidence that he attended the function and sat with Mr Huang at the head table. Mr Wong gave evidence that Mr Huang was invited to sit at the head table and that he attended the function with Holly Huang, the general manager of Yuhu Group, who assisted Mr Huang as an interpreter. The evidence includes a photograph of Mr Huang, Holly Huang and others seated at the head table at the event (see figure 4).

Mr Wong agreed that he prepared a guest list which contemplated that Mr Huang and four guests would sit at the head table. He said that it was his idea to invite Mr Huang and to place him at the head table. Mr Wong said that the reason Mr Huang was invited to sit on the head table was because he was a community leader and “[knew] the Labor Party very well”.

There was evidence that Mr Wong and Mr Huang were good friends. Mr Huang attended Mr Wong’s inaugural speech in the NSW Parliament in 2013.

Figure 4: Photograph of Huang Xiangmo and Holly Huang seated between Luke Foley and Bill Shorten with Ernest Wong at the head table at the 2015 CFOL dinner



Tim Xu, interpreter and executive assistant to Mr Huang, said that he observed Mr Huang and Mr Wong to be good friends; they spoke on the telephone and met each other from time-to-time including for meals at Mr Huang's home in Mosman and at restaurants such as Century at The Star Sydney ("The Star") and Master Ken's Seafood Restaurant in Chinatown. Mr Xu said that Mr Wong spoke Mandarin so Mr Xu was not required to interpret for Mr Huang during their meetings.

Mr Wong said that, as at 2015, he knew Mr Huang to be one of the most prolific political donors at the federal level to both the Labor Party and the Liberal National Party coalition. Mr Wong said he understood, as at 2015, that Mr Huang was associated with the Yuhu Group, a property development company, and on that basis believed him to be a prohibited donor for the purposes of NSW law.

Mr Wong agreed that in 2015, part of his relationship with Mr Huang involved encouraging Mr Huang to continue to support the Labor Party by making donations. Mr Wong said that in 2015 he facilitated meetings between Mr Huang and senior Australian Labor Party (ALP) officials in part because he wanted to promote and continue the beneficial relationship that Mr Huang had established with the ALP.

Mr Wong's evidence was that he allocated half of the seats on the head table at the 2015 CFOL dinner to Mr Huang, whom he knew to be a prolific political donor, without receiving any payment from Mr Huang in return.

Was the head table sold for \$100,000?

Mr Wong told the Commission that the head table at the 2015 CFOL dinner was a free table. He gave evidence that neither CFOL or the ALP accepted any payment in relation to the head table. This is clearly at odds with the weight of evidence set out above. There are, however, two documents that appear to be consistent to some extent with Mr Wong on this issue:

- the updated guest list document created by Mr Wong which indicates the head table to be a free table
- a revised budget document ("the revised budget") that Mr Wong emailed to himself four days after the event on 16 March 2015.

The revised budget was in a similar form to the head table budget, but removed any reference to the head table

and showed a much reduced income of \$69,400 offset by expenses of \$49,000 resulting in a modest profit of \$20,400, being \$90,340 less than the profit figure in the head table budget.

Mr Wong created both the above documents. The Commission is not satisfied that either of those documents satisfactorily corroborate Mr Wong's evidence that the head table at the 2015 CFOL dinner was a free table.

Jonathan Yee gave evidence that Mr Wong made it clear to him in advance of the dinner that the head table had been sold, at a higher premium. Jonathan Yee said that Mr Wong did not tell him what price the head table had been sold for. That is clearly inconsistent with the head table being a free table as indicated in the updated guest list.

The profit figure of \$20,400 in the revised budget sits in stark contrast with NSW Labor head office expectation that the event would raise \$100,000 and that \$100,000 in cash was, in fact, received by NSW Labor and Country Labor on 9 April 2015 in connection with the event.

The head table budget, which showed income of \$100,000 from the head table, was last printed from Mr Wong's drive on the parliamentary server on 12 March 2015, the same day as the 2015 CFOL dinner. This is consistent with the head table budget being accurate as at the date of the event. It is also consistent with Ms Huang's evidence that Mr Wong prepared updated versions of documents relating to the event, such as the updated guest list, just prior to the dinner. The Commission is satisfied that the head table budget, showing \$100,000 income from the head table, was accurate at the time that it was printed on 12 March 2015.

Mr Wong emailed himself a copy of the revised budget on 16 March 2015. Data extracted from Mr Clements' mobile telephone shows that Mr Wong made arrangements to meet with Mr Clements and Mr Huang at Mr Huang's Mosman residence for lunch on Sunday, 15 March 2015. The Commission considers the further significance of that meeting later in this report. The fact that Mr Wong emailed the revised budget to himself the day after meeting with Mr Huang (the alleged source of the \$100k cash) and Mr Clements, (who allegedly received the \$100k cash about three weeks later), undermines the potential corroborative value of that document.

A submission has been made on behalf of Mr Huang that the Commission should find that the head table was a free table. Mr Huang submits that:

...the original idea floated on 16 February 2015 that seats at the Head Table might be sold for \$10,000 each (with 10 seats deriving a total income of \$100,000) had been abandoned by 18 February 2015.

Among other evidence, Mr Huang points to an early version of the guest list spreadsheet circulated by Mr Wong to the CFOL organisers on 18 February 2015, which shows the head table as one of several free tables. The Commission does not accept this submission.

The evidence establishes that there was a fundraising target of \$100,000 in connection with the 2015 CFOL dinner and that Mr Wong prepared a budget contemplating income of \$100,000 from the head table, a copy of which was printed on the day of the event. The evidence also establishes that \$100,000 in cash was received by NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

In these circumstances, the Commission rejects Mr Wong's evidence that the head table was a free table as well as his explanation of the email exchange with Mr Law. The Commission finds that the head table at the 2015 CFOL dinner was sold for \$100,000 and that Mr Wong knew that to be the case and was being truthful when he said as much to Mr Law on 3 March 2015.

Mr Huang was a prolific political donor at the federal level and was allocated half the seats on the head table at the 2015 CFOL dinner. Did Mr Huang pay \$100,000 for the privilege of sitting with Mr Shorten, Mr Foley and others at the head table at the event? The Commission's findings on that question are further informed by other evidence which is set out later in this report, including in chapters 8 and 12.

Chapter 6: Donations other than the \$100,000 cash

This chapter examines the evidence concerning the receipt and handling of political donations received in connection with the 2015 CFOL dinner, other than the \$100k cash. The Commission's findings as to Mr Wong's role in the handling of those other donations are relevant to its assessment (in the next chapter) of Mr Wong's evidence that the \$100k cash, which was banked by NSW Labor and Country Labor on 9 April 2015, was comprised in large part of cash payments that were collected at the 2015 CFOL dinner on 12 March 2015.

Were payments made before, during or after the event?

Each of the various iterations of the invitation/reservation form for the 2015 CFOL dinner featured the personal email address of Ms Huang as the RSVP contact. The forms also featured instructions to "Please complete the reservation form and return WITH PAYMENT by 25 February 2015" (original capitals) and mailing information naming Mr Cheah and identifying a NSW Labor post office box.

During the public inquiry, Mr Cheah was asked whether payments received in connection with events such as the 2015 CFOL dinner were usually received before the event, on the night or after the event. Mr Cheah stated it was a combination of all three, however, payments were predominantly received after such events. He explained that people who wished to attend would fill in a reservation form in advance of the event, so that organisers knew they were coming, but that it was merely "a hope" that people might pay in advance of the event. Mr Cheah said that it was "very unlikely and very uncommon" for advance payments to be received.

Mr Cheah's evidence does not sit comfortably with that of Ms Huang, who told the Commission that she helped Mr Wong organise numerous events such as the 2015 CFOL dinner and that, in her experience, most payments were received in advance by credit card.

Ms Huang said that she encouraged people who indicated they wanted to pay by credit card to send those payments directly to NSW Labor and that she forwarded any credit card payments received by Mr Wong's office to NSW Labor for processing. She said that Mr Wong did not have facilities to process credit card payments. Ms Huang said that if people contacted her and indicated that they wished to pay by other means, such as cheque or cash, she would forward those enquiries to Mr Wong who would contact the person directly. She said it was not common for people to indicate that they wanted to pay in cash.

Ms Huang was in charge of the reception table at the 2015 CFOL dinner. She gave evidence that she did not accept any payments on the night and did not see anyone at the reception table taking cash payments. In giving that evidence, Ms Huang reiterated that usually all the payments were made beforehand. She said that she was not asked by Mr Wong to make contact with any persons after the event to chase up outstanding payments.

The tension between the evidence of Mr Cheah and Ms Huang on this issue cannot be satisfactorily resolved. However, what is clear is that neither of those witnesses suggested that the majority of payments were received on the night of the event.

Responsibility for payments received at the event

Mr Clements gave evidence that Mr Cheah, as community relations director, was in charge of collecting money at the 2015 CFOL dinner. Mr Clements said that Mr Cheah was responsible for this in the sense that he was overseeing and ultimately supervising the collection of payments by Young Labor volunteers, possibly with the assistance of CFOL personnel. Mr Clements said it was his expectation that Mr Cheah would be responsible for ensuring that money collected on the night, including

cash, cheques and credit card forms, would be returned to NSW Labor head office.

Ms Murnain told the Commission that, as a matter of practice, if Mr Cheah attended a LAC fundraiser, there was an expectation that either Mr Cheah himself, or those who ran the LAC, would return any money raised to NSW Labor head office. Ms Murnain said there was also an expectation that any money received at fundraisers would be returned to head office in short order and banked in short order, although that did not always happen. There was no policy in relation to that expectation as at 2015.

Ms Huang told the Commission that it would have been Mr Wong or Mr Cheah's responsibility to "bring back" cash, cheques and credit card forms after the event. Ms Huang said that she did not do so in connection with the 2015 CFOL dinner.

Mr Wong gave evidence that responsibility for the collection of payments by way of cash, cheque or credit card that were made on the night of the 2015 CFOL dinner was shared between CFOL volunteers, individuals from NSW Labor head office and Young Labor volunteers. He agreed that ultimately, when all the cash collected on the night had been organised, it was brought to his attention. He explained that usually all the cash would be placed in one container and all the bundles of forms in another container. He stated that the reason for this practice was so that he could check the payments made on the night against his payment register and table allocation spreadsheets to identify persons who had not paid. Mr Wong said he would then chase up payments from those persons who had not paid.

Mr Wong was asked whose responsibility it was to take the money that had been collected from various sources at the event away from the venue and to take it elsewhere. Mr Wong answered, "Initially it will be the staff from head office or myself".

Mr Cheah denied that he was responsible for, or involved in, the collection of payments and reservation/disclosure forms at the 2015 CFOL dinner. He gave evidence that the money collected on the night was collected by CFOL and Young Labor volunteers as distinct from employees of NSW Labor. Mr Cheah denied that it was his role to gather up moneys collected on the night and return them to NSW Labor head office. He said the CFOL organisers were responsible for that. Mr Cheah said it was his expectation that soon after the dinner, Mr Wong would deliver the money raised at the dinner and the corresponding disclosure forms to Mr Cheah at NSW Labor head office. He said that did in fact occur.

Mr Clements accepted that NSW Labor procedures might have been sufficiently lax that Mr Cheah might have thought it appropriate to leave it for Mr Wong to coordinate returning money from the 2015 CFOL dinner to NSW Labor head office.

Mr Wong delivers \$19,620 to Mr Cheah

Mr Cheah gave evidence that, about one week after the 2015 CFOL dinner, Mr Wong attended NSW Labor head office and delivered to him about \$19,000 that had been raised in connection with that event, comprising a mix of cash, cheque and credit card payments. Mr Cheah said that those funds were accompanied by corresponding donor disclosure forms. For the reasons set out below, the Commission accepts Mr Cheah's evidence on this issue.

There was evidence that Mr Cheah sent an email at 10.04 am on 16 March 2015 to four recipients, including Mr Wong, titled "Well done and banking" ("the well done and banking email"). The email thanked the Irish, Vietnamese and Chinese LACs for organising successful fundraising events and asked:

Could I ask you to bank the money with Head Office at your earliest opportunity, with not long left in this campaign, the faster we receive this money, the faster we can spend it on target seats. This election is getting super close and your groups contribution's [sic] could make a huge difference.

Mr Wong was the only CFOL recipient of this email. The email is consistent with Mr Cheah's evidence that he did not personally assume responsibility for delivering the funds raised at the 2015 CFOL dinner to NSW Labor head office. It is also consistent with Ms Murnain's expectation that funds raised by LACs should be delivered to head office promptly.

Mr Wong told the Commission that towards the end of the 2015 CFOL dinner he took possession of a bag containing donor disclosure forms, credit card payments, cheques and cash from raffle ticket sales so that he could check disclosure forms against his payment register. Mr Wong said this bag was a different bag from the "big bag of cash" which he gave to Mr Huang (see chapter 7). Initially, Mr Wong said he gave the bag with the forms, cheques and cash to Mr Cheah at NSW Labor head office and that he probably did so by delivering it physically.

Mr Wong later sought to qualify his evidence in relation to the bag containing forms, cheques and cash. He said that he could not recall meeting with Mr Cheah to hand him that bag. Mr Wong sought to explain his lack of recollection by reference to his consumption of alcohol on the night of the event. Asked to clarify that evidence, Mr Wong said that his memory of the "big bag of cash" was clear and unaffected by alcohol consumption. However, he said he had no recollection of meeting Mr Cheah and handing him the second bag or forms or money.

It is not clear to the Commission how Mr Wong's consumption of alcohol on the night of the 2015 CFOL dinner, which did not cloud his recollection of giving Mr Huang the big bag of cash on the night, came to affect his recollection of events days later when he is said to have delivered the bag with the forms, cheques and cash to Mr Cheah at NSW Labor head office. In any case, Mr Wong's evidence is not inconsistent with Mr Cheah's evidence that Mr Wong delivered about \$19,000 to Mr Cheah at NSW Labor head office about a week after the 2015 CFOL dinner.

There was evidence that 44 small donations totalling \$19,620 were received by NSW Labor in connection with the 2015 CFOL dinner. Those donations were the subject of a NSWEC statutory notice to NSW Labor on 10 August 2017. The Commission is satisfied that Mr Cheah's reference to a sum of "about \$19,000" corresponds to the 44 small donations totalling \$19,620.

The Commission finds that Mr Wong did deliver \$19,620 to Mr Cheah one week after the 2015 CFOL dinner. That sum of \$19,620 is separate from the \$100k cash that was banked on 9 April 2015 and which is the primary focus of this investigation.

The amount of \$19,620, which was delivered by Mr Wong to Mr Cheah, is close to the reduced profit figure of \$20,400 set out in the revised budget that Mr Wong emailed to himself on 16 March 2015, the day after he met Mr Clements and Mr Huang for lunch at the latter's Mosman home. The Commission finds that the sum of \$19,620, which Mr Wong delivered to Mr Cheah at NSW Labor head office a week after the 2015 CFOL dinner, comprised that part of the funds raised in connection with the event which Mr Wong was prepared to pass on to the ALP. Evidence as to what Mr Wong did with the balance of the funds is considered below.

Mr Wong diverts funds to Friends of Chinese Community

When Mr Wong emailed himself the revised budget on 16 March 2015, he also attached a copy of his payment register spreadsheet. The payment register was Mr Wong's record of who attended the 2015 CFOL dinner and whether they had paid. It featured a column titled "FCC". Mr Wong gave evidence that "FCC" was a reference to Friends of Chinese Community Incorporated (FCC). FCC was incorporated as an association in September 2013. Mr Wong opened a bank account for FCC in October 2013. He and Jonathan Yee were co-signatories of that account.

Mr Wong's payment register recorded figures in the FCC column that Mr Wong admitted represented amounts received in connection with the 2015 CFOL dinner, but which he decided should be deposited into the FCC bank account rather than be received by the ALP. The payment register records a total of \$12,200 in the FCC column. Mr Wong gave evidence that a separate sum of about \$3,000 in cash from raffle ticket sales, which he took away from the 2015 CFOL dinner, was also deposited into the FCC account. The payment register records a figure of \$3,910 in connection with raffle tickets.

Among the funds that Mr Wong allocated to the FCC account on his payment register was a payment of \$5,000 from Sydney Today Pty Ltd, a Chinese language media business. There was evidence that the Sydney Today invitation/reservation form was with the 20 invitation/reservation forms of the putative donors when NSW Labor finance staff were attempting to reconcile the \$100k cash prior to banking it on 9 April 2015. The Sydney Today form was treated by finance staff as an "extra" form in relation to which payment was yet to

be received and an invoice seeking payment was raised. The evidence in relation to those matters is set out in chapter 9.

There was further evidence that Mr Wong asked Mr Cheah to arrange to have the Sydney Today invoice written off. Mr Cheah did so. Mr Wong admitted that he told Mr Cheah to do so. Mr Wong said that he did that because he had decided that the Sydney Today money was to be deposited into the FCC account.

There was also evidence that some credit card payments made in connection with the 2015 CFOL dinner, including a \$5,000 payment by Frank Wong, were processed by the Emperor's Garden Pty Ltd merchant facility and that corresponding amounts were transferred to the FCC account. Mr Wong's payment register records Frank Wong's \$5,000 credit card payment but does not allocate that payment to the FCC account.

In chapter 4, reference is made to an email from Ms Huang to the Australia China Economics, Trade and Culture Association (ACETCA) on 25 February 2015 in which Ms Huang invited that organisation to purchase a \$2,000 or \$5,000 table at the "NSW Labor Chinese Launch". Ms Huang gave instructions in that email that payment should be made by cheque to "Friends of Chinese Community". Ms Huang gave evidence that Mr Wong instructed her to tell ACETCA that they should make the cheque payable to FCC. Ms Huang said she would ordinarily expect cheque payments in connection with CFOL events to be made out to either NSW Labor or Country Labor.

There is evidence that Alex Wood, director of Wu International and employer of putative donors Mr Liao and Mr Tong, was vice-chairman of ACETCA in 2018 at the time of Mr Liao's death. That evidence is set out in chapter 21.

Mr Wong gave evidence that FCC was an organisation directed towards helping the Chinese community to run forums and events, including media conferences and Chinese New Year entertainment. He agreed that FCC was a private organisation for the benefit of the Chinese community generally, rather than the ALP specifically.

On Mr Wong's account, he asked Mr Cheah whether NSW Labor would fund activities for the Chinese community such as media conferences and Chinese New Year entertainment. Mr Wong's evidence is that Mr Cheah said that NSW Labor would not do so. Mr Wong said that he and Mr Cheah then reached an unofficial agreement to the effect that some of the profits from the 2015 CFOL dinner could be deposited, not into an ALP bank account, but into some other account, to pay for community activities of that kind. Mr Wong ultimately accepted, however, that it was not within

Mr Cheah's power as community relations director to authorise such an agreement.

Mr Cheah rejected Mr Wong's evidence that he was party to any unofficial agreement that funds raised at the 2015 CFOL dinner could be diverted away from the ALP. He denied that Mr Wong ever proposed such an arrangement. Mr Cheah's evidence is that CFOL was not authorised to keep any of the funds raised and that all proceeds should go the ALP. Mr Cheah said he did not know that funds from the 2015 CFOL dinner were diverted into the FCC account.

Mr Clements gave evidence that he never approved any LAC raising money for any purpose other than for the ALP. He said he never agreed with Mr Wong, or anyone else, that a particular amount of money from an event could be sent to an organisation other than the ALP. He said if he had found out that Mr Wong had done so, he would have made it clear that it was unacceptable.

Ms Murnain gave evidence that it was possible that, in 2015, some LACs may have directed some of the funds raised at events to bank accounts held by organisations unrelated to the ALP, but that such activity was not permitted. Ms Murnain initially said that NSW Labor head office may have tolerated such activity, then qualified that evidence by saying that head office may not have known about such activity until some later time.

It is Mr Wong's evidence that, in respect of every amount in the FCC column of the payment register, he had a discussion with the donor to confirm that they were happy for their payments to go not to the ALP, but instead to FCC, an organisation not associated with the ALP, to help support Chinese community events. The Commission does not accept Mr Wong's uncorroborated evidence on this issue.

Mr Wong admitted that he made no record of his conversations with, or the consent he says he obtained from, the donors whose money was diverted to FCC. Mr Wong said that he did not believe at the time that he needed to make such a record.

The Commission is satisfied that Mr Wong improperly diverted at least \$12,200 of the political donations raised in connection with the 2015 CFOL dinner away from the ALP and banked that money instead into the FCC account.

Section 74A(2) statement

Section 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") requires the Commission to include in a public report, in respect of each "affected person", a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

-
- a) obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence
 - b) the taking of action against the person for a specified disciplinary offence
 - c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected person” is relevantly defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

The Commission is satisfied that Mr Wong is an “affected person” with respect to the matters dealt with in this chapter.

Section 96(1) of the EFED Act provides that:

It is unlawful for political donations to a party to be used otherwise than for the objects and activities of the party, including the administration of the party and community activities.

Section 96(1) of the EFED Act provides that a person who does an act that is unlawful under Division 3, 4 or 4A (of Part 6) is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful. Section 96(1) falls within Division 3 of Part 6.

Mr Wong’s evidence at the public inquiry was given on objection pursuant to a declaration under s 38 of the ICAC Act. This means that Mr Wong’s evidence, including his admissions in relation to the diversion of funds to FCC, cannot be used against him in any criminal proceedings for offences under the EFED Act.

In the absence of Mr Wong’s admissions, the Commission considers that there is insufficient admissible evidence to warrant his referral to the DPP for advice in relation to any offence arising from the diversion of funds to the FCC account.

Chapter 7: Mr Wong's big bag of cash

Mr Wong's account

Mr Wong gave evidence that Jonathon Yee had “organised for tables and donations” in connection with the 2015 CFOL dinner and had mentioned to Mr Wong “that he probably would have at least \$80,000, \$70,000 total amount of money to be, to be taken in” on the night of the event. Mr Wong later revised that figure down to between \$50,000 and \$60,000. On his account, Mr Wong himself was the true source of \$20,000 of that money, which he asserts he gave to Jonathan Yee in February 2015 for Jonathan Yee to use to purchase tables at the 2015 CFOL dinner as part of what Mr Wong admitted was an attempt to “get around” NSW electoral laws.

Mr Wong gave further evidence that he was presented with a “big bag of cash” towards the end of the 2015 CFOL dinner containing tens of thousands of dollars which represented revenue raised on the night, including the money brought in by Jonathan Yee. Mr Wong asserted that he gave that big bag of cash to Mr Huang who had offered to deliver it to Mr Clements at NSW Labor head office. This chapter considers and sets out the Commission's findings in connection with Mr Wong's account.

Assessment of Mr Wong as a witness

Counsel Assisting submitted that Mr Wong was an unsatisfactory witness who was “evasive and gave much evidence that was demonstrably false, internally inconsistent, inherently implausible and/or inconsistent”. Evidence in support of this assessment is set out throughout this report.

That Mr Wong was evasive in giving evidence is illustrated, for example, in his seeking to repeatedly avoid directly answering the question, without qualification, of whether

he had ever said to anyone that the head table at the 2015 CFOL dinner had been taken for a fee. The evidence set out in chapter 5 shows that Mr Wong did in fact tell Mr Law that the head table had been taken for \$100,000.

That Mr Wong's evidence was at times demonstrably false is illustrated by those chapters of this report in which the Commission has found he gave false evidence.

That Mr Wong's evidence was internally inconsistent is illustrated later in this chapter, in relation to the question of whether Jonathan Yee brought tens of thousands of dollars in cash to the 2015 CFOL dinner.

That aspects of Mr Wong's evidence were inherently implausible is illustrated by his evidence that he told Mr Law that the head table had been sold for \$100,000, which Mr Wong says was a lie that he told Mr Law in order to politely reject Mr Law's interest in purchasing the head table, which Mr Wong maintains was a free table. No satisfactory explanation was offered by Mr Wong as to why he could not have told Mr Law that the head table was a free table if indeed that was the truth. Further, Mr Wong's stated reason for choosing the sum of \$100,000, when responding to Mr Law's enquiry, was that he came up with it off the top of his head. In circumstances where Mr Wong had budgeted \$100,000 for the sale of the head table, the Commission considers that Mr Wong's evidence on that question is inherently implausible.

Senior counsel for Mr Wong disputed the basis for Counsel Assisting's submissions as to Mr Wong's credit and submitted in response that Mr Wong's lack of clarity in his recollection of certain events can be explained by reference to the passage of time and should not be interpreted as a lack of honesty.

Counsel Assisting, however, further submitted that, during the public inquiry, Mr Wong admitted to having engaged in several acts of dishonesty in relation to political donations. These include:

- involvement in an admittedly “highly improper” arrangement through which at least \$12,200 of the money raised from the 2015 CFOL dinner was diverted to FCC, an organisation unrelated to NSW Labor in any of its manifestations. Evidence in relation to that conduct is set out in chapter 6
- asking someone in September 2014 to sign a donation disclosure form even when that person had not donated the money the subject of that form (in an email to Dominic Sin on 25 September 2014 regarding raffle money)
- involvement in two arrangements in early 2015 that had the effect of concealing the identity of the true donor of certain funds to a political party or candidate, being:
 - the asserted arrangement with Jonathan Yee involving the gift of \$20,000 cash towards the purchase of seats at the 2015 CFOL dinner (the truth of which is considered in this chapter)
 - a similar arrangement through which Mr Wong says he gave Jonathan Yee \$3,000 cash to be spent on purchasing seats at an event in support of a fundraising campaign for NSW Labor member of Parliament, Chris Minns.

Senior counsel for Mr Wong submitted that Mr Wong gave frank evidence in relation to each of the above matters and, as such, these admissions were not relevant to an assessment of Mr Wong's credibility as a witness. However, the Commission is satisfied that Mr Wong's willingness to engage in acts of dishonesty is relevant to the assessment of Mr Wong as a witness of truth.

Counsel Assisting submitted that Mr Wong was not a witness of credit and that the Commission would not accept any of Mr Wong's evidence absent it being corroborated by other, reliable, evidence. The Commission accepts this submission. Accordingly, the Commission takes a cautious approach to the evidence of Mr Wong in the absence of reliable supporting evidence from other witnesses or documentation.

Did Jonathan Yee bring tens of thousands of dollars in cash to the event?

Mr Wong gave evidence that Jonathan Yee organised family members and friends to give donations in connection with, and to purchase tables at, the 2015 CFOL dinner. Mr Wong initially said that Jonathan Yee had cash of “at least \$80,000, \$70,000 total amount ... to be taken in”

on the night of the event. Mr Wong later revised that evidence to say that he expected Jonathan Yee to come to the dinner with about \$50,000 or \$60,000 in cash.

Mr Wong gave further evidence that he personally gave \$20,000 in cash to Jonathan Yee in early 2015 towards Mr Wong's tab at the Emperor's Garden restaurant and that he made it clear that the \$20,000 could be used by Jonathan Yee to buy tables or make other contributions in connection with the 2015 CFOL dinner. Mr Wong said his conduct in providing the \$20,000 cash to Jonathan Yee was apt to conceal himself as the true source of that money and was designed to get around donation caps in the EFED Act. Mr Wong said he understood his \$20,000 cash formed part of the tens of thousands of dollars that he expected Jonathan Yee to bring to the event “to be taken in”.

Mr Wong's evidence is uncorroborated and peppered with inconsistencies. For example, he told the Commission that he had “assigned at least four tables” at the event to Jonathan Yee. Yet Jonathan Yee was not recorded on the payment register that Mr Wong said identified who was supposed to pay for a seat or table at the 2015 CFOL dinner. Mr Wong further suggested that the tables he had assigned to Jonathan Yee were unnumbered tables. Yet Mr Wong had previously accepted that the seating plan, with no unnumbered tables marked on it, accurately represented the set-up of The Eight restaurant. There is also evidence that two numbered tables had been removed from the floorplan to make way for banners and gifts, indicating that there could have been no space for four or more unnumbered tables.

Jonathan Yee firmly rejected Mr Wong's evidence on these issues. Jonathan Yee's evidence is that he did not attend the 2015 CFOL dinner with tens of thousands of dollars in cash. On cross-examination by senior counsel for Mr Wong, Jonathan Yee described as “ludicrous” the proposition that Mr Wong gave him \$20,000 in cash that was to go into Mr Wong's Emperor's Garden account but that Jonathan Yee could use it for the 2015 CFOL dinner.

Jonathan Yee told the Commission that he personally purchased only a few seats at the 2015 CFOL dinner. He denied donating any other money in connection with the event. Jonathan Yee said that he did not ask any of the Emperor's Garden putative donors or Mr Yip to donate any money in connection with the event. On cross-examination, he rejected as “absolutely incorrect” the proposition that he brought in cash on the night of the dinner representing money he had obtained for donations and the sale of tables. He said he only brought the cash to pay for the seats he purchased.

During the public inquiry, Jonathan Yee admitted that he persuaded members of his family and employees of the

Emperor's Garden restaurant and his neighbour, Mr Yip, to sign false declarations to the effect that they had donated sums of \$5,000 to NSW Labor and Country Labor when in fact they had not done so. He admitted making such false declarations himself. Jonathan Yee said that he did those things because Mr Wong had asked him to do so. Jonathan Yee said that, in February 2015, Mr Wong said he needed Jonathan Yee to find five-to-10 people to falsely sign as donors for amounts of \$5,000 and that Mr Wong would find from other sources the money that was required to be raised.

Jonathan Yee's evidence that he did not ask any of the Emperor's Garden putative donors or Mr Yip for donations is corroborated by each of them, all of whom admitted during the public inquiry to having falsely declared that they had donated sums of \$5,000 to NSW Labor and/or Country Labor in connection with the 2015 CFOL dinner and to having previously given false evidence to that effect in compulsory examinations before the Commission. Their evidence is considered further in chapter 11.

Jonathan Yee admitted that in 2015 he was politically ambitious. Senior counsel for Mr Wong put to Jonathan Yee that he had an incentive to raise as much money as possible in connection with the 2015 CFOL dinner. In reply, Jonathan Yee said that it was not his responsibility to "get those big funds in". He said, "My job in the end of the day for this whole thing is to assist with the scheme that was designed to evade the Electoral Commission from knowing who donated the money".

Senior counsel for Mr Wong submitted that the Commission would not uncritically accept the changed evidence of Jonathan Yee and each of the Emperor's Garden putative donors and Mr Yip, whom he refers to collectively as "the Yee interests". It was not submitted, on behalf of Mr Wong, that the Emperor's Garden putative donors and Mr Yip did in fact donate sums of \$5,000 to NSW Labor and/or Country Labor. Rather, the submission highlighted Jonathan Yee's ability to procure individuals to give false evidence to the effect that they had made such donations, and asks whether "the changed story that Mr Wong was the ringleader, minimising Jonathan Yee's involvement, [is] another example of this". For convenience, the Commission will refer to this as Mr Wong's "Yee Interests" submission.

The Commission considers Mr Wong's "Yee Interests" submission again in chapter 24, which examines attempts to influence the Commission's public inquiry. For present purposes, it is sufficient to note that no interested party has submitted that the Emperor's Garden putative donors or Mr Yip did in fact donate sums of \$5,000 to NSW Labor and/or Country Labor. The Commission is satisfied that their admissions that they did not do so corroborate Jonathan Yee's evidence that he did not bring tens of

thousands of dollars in cash with him to the 2015 CFOL dinner. The Commission finds that he did not do so.

Was there a big bag of cash?

Mr Wong gave evidence that towards the end of the 2015 CFOL dinner he was presented with two bags. According to Mr Wong, the first bag was a "big bag of cash" which represented revenue raised on the night and included the tens of thousands of dollars that Mr Wong said Jonathan Yee had brought to the event. The second bag contained disclosure forms, credit card payment forms, cheques and cash.

Mr Wong's evidence is that he was presented with the two bags late in the evening. He said that he looked for Mr Cheah to help take the cash away from the venue but that Mr Cheah had left the event by that stage and no other NSW Labor staff could be found. Mr Wong explained:

So what I did is actually, when I was trying to get someone to take it out of there, because I myself would never handle a big, sort of like, you know, bag of cash. I never, sort of like, you know, put my hands on those cashes, those cash. And then apparently Mr Huang was there and he said that he was going to see Jamie Clements at the head office, you know, probably the next day or so and then he said that he probably would be able to deliver the money. So that's why I, I give him that bag of money to take it to head office.

An initial difficulty with Mr Wong's evidence on this issue is that it is uncorroborated. None of the other witnesses who gave evidence at the public inquiry, and who were present at the 2015 CFOL dinner, have any recollection of seeing tens of thousands of dollars in cash on the night. Ms Huang was in charge of the reception table and gave evidence that to the best of her knowledge she did not see any cash payments being made at the reception table on the night. That is so notwithstanding Mr Wong's evidence that it was the responsibility of persons at the reception table to receive sums of money like the tens of thousands of dollars from Jonathan Yee. Mr Cheah and Mr Clements gave evidence consistent with Ms Huang, to the effect that they could not recall seeing large amounts of cash being received at the event.

Mr Wong's evidence that he would never himself handle cash is sharply at odds with Mr Wong's other evidence that he did in fact take possession of at least the \$3,910 cash comprising raffle ticket proceeds collected during the event. It is also at odds with Mr Wong's evidence that he, or staff from head office, were at least initially responsible for taking the money that had been collected from various sources at the event away from the venue and to take it elsewhere.

The fact that Mr Wong delivered to Mr Cheah \$19,620 in payments, partly in cash, confirms that Mr Wong did in fact handle cash contributions. Any cash that was delivered by Mr Wong to Mr Cheah as part of that \$19,620 must have been additional cash to the \$3,910 in raffle proceeds, which Mr Wong admitted were diverted to the FCC bank account.

The Commission does not accept Mr Wong's evidence that he would never handle cash. Accordingly, the Commission rejects Mr Wong's stated rationale for asking Mr Huang to deliver the "big bag of cash" to NSW Labor head office.

Mr Wong gave evidence that the conversation with Mr Huang about the "big bag of cash" took place at the head table at the event. He said that he was never told, and did not know, how much money was in the bag that Mr Huang took, but thought it probably contained table money and donations, including the cash Mr Wong said was passed on by Jonathan Yee. That Mr Wong did not know how much cash was in the bag that he says Mr Huang took from the event is inconsistent with Mr Wong's own evidence that it was his role to check payments that had been made against his payment register so as to identify persons who had not yet paid.

A further difficulty with Mr Wong's evidence about the "big bag of cash" is the Commission's finding that Jonathan Yee did not bring tens of thousands of dollars in cash to the 2015 CFOL dinner. In the absence of the \$50,000 to \$80,000 that Mr Wong said that Jonathan Yee brought to the event, there is no evidence of receipt of substantial amounts of cash on the night that might have been in that "big bag of cash". It is clear Mr Wong himself took possession of at least some cash received at the event, part of which he delivered a week later to Mr Cheah and part of which he diverted to the FCC bank account.

The amount of cash said by Mr Wong to be in the "big bag of cash" is problematic for other reasons. Mr Wong's revised evidence was that he expected Jonathan Yee to come to the dinner with about \$50,000 or \$60,000 in cash. Even if that sum of money was in the "big bag of cash" that Mr Huang is said to have agreed to deliver to Mr Clements at NSW Labor head office, how did it come to pass that precisely \$100,000 in cash was received and banked by NSW Labor and Country Labor in the days after Mr Huang visited Mr Clements at that head office on 7 April 2015? That series of events is considered further in chapter 9. The Commission notes the lack of evidence to explain the difference between the amount of cash that Jonathan Yee is said by Mr Wong to have brought to the dinner and the amount of cash received and banked by NSW Labor and Country Labor.

A further difficulty in relation to Mr Wong's evidence about the "big bag of cash" arises from the fact that the \$100k cash that was banked by NSW Labor and Country Labor on 9 April 2015 was all in \$100 denominations. It is inherently unlikely that all of the several donors who, on Mr Wong's account were the source of the cash in the "big bag of cash", would make their donations in \$100 notes rather than a mix of denominations or payment types.

Issues of timing further undermine Mr Wong's evidence about the "big bag of cash". Mr Wong told the Commission that:

[Mr Huang] was going to see Jamie Clements at the head office, you know, probably the next day or so and then he said that he probably would be able to deliver the money.

Mr Wong later said that he did not say anything to Mr Huang about when the money should be delivered to head office, but expected that it would happen promptly. This conflicts sharply with the fact that the \$100k cash was not received by NSW Labor and Country Labor until 7 April 2015 and was not banked until 9 April 2015.

The significance of the delay between the event on 12 March 2015 and the banking of the \$100k cash on 9 April 2015 is underscored by the fact that the NSW state election was held on 28 March 2015. Mr Wong was shown the "well done and banking email" that Mr Cheah sent to Mr Wong and others on 16 March 2015 asking for money raised by LACs at fundraisers to be returned to NSW Labor head office at the earliest opportunity so that it could be spent on target seats for the upcoming election. Mr Wong gave evidence that he did not reply to Mr Cheah's email as he had already alerted Mr Clements that he had given Mr Huang a "big bag of cash" on the night and that Mr Huang had agreed to deliver it to head office.

On cross-examination by senior counsel for Mr Wong, Mr Clements rejected Mr Wong's evidence on this issue and denied that Mr Wong told him after the 2015 CFOL dinner that Mr Huang was going to bring in money related to the event.

As noted in chapter 5, data extracted from Mr Clements' mobile telephone shows that Mr Wong made arrangements to meet with Mr Clements and Mr Huang at Mr Huang's Mosman residence for lunch on Sunday, 15 March 2015. This creates further difficulties for Mr Wong's evidence about the "big bag of cash". The data from Mr Clements' mobile telephone was put to Mr Wong, who accepted that on 8-9 March 2015 he had made arrangements for Mr Clements and himself to visit Mr Huang at his home for a "light lunch" on 15 March 2015. Mr Wong said that those arrangements slipped

his mind on the evening of 12 March 2015 when he was making arrangements for Mr Huang to deliver the “big bag of cash” to Mr Clements at NSW Labor head office. Mr Wong said he had no recollection of the lunch meeting at Mr Huang’s home on 15 March 2015.

Mr Clements said that he did recall having lunch with Mr Wong and Mr Huang at the latter’s Mosman home on 15 March 2015. Mr Clements recalled that they drank wine and ate seafood and that Mr Wong interpreted for Mr Huang. On cross-examination by senior counsel for Mr Wong, Mr Clements rejected the proposition that Mr Wong had contacted him the day after the 2015 CFOL dinner and said that “Mr Huang is going to deliver the money from the dinner to you”. In rejecting that proposition, Mr Clements said that he and Mr Wong together visited Mr Huang’s Mosman home on 15 March 2015 and that Mr Clements was not given any money on that occasion. Mr Clements said he could not recall any discussion at that lunch about political donations or the 2015 CFOL dinner.

Mr Clements gave other evidence that, at a meeting with Mr Wong at a Starbucks café on 19 July 2017 (considered in chapter 20), Mr Wong said words to the effect of, “I left the dinner early. I don’t know who took the money home from the dinner”.

Mr Wong was asked why Mr Huang, a man of wealth and power, would agree to be the deliveryman of a bag of cash collected from other donors at the 2015 CFOL dinner, noting the inherent unlikelihood of that occurring. Mr Wong replied that he was not surprised by Mr Huang’s offer to deliver the bag of money, explaining that he understood Mr Huang to be “someone that would like face” and would like to give the impression that he had helped with the event even though Mr Huang had not contributed by way of a donation.

Mr Wong was asked if he knew whether Mr Huang had ever previously delivered money or packages to people. Mr Wong replied, “I have no knowledge at all”. On a later occasion, however, Mr Wong changed that evidence and said:

Now throughout all these years, it’s not the first time I’ve asked Mr Huang to pass on things to head office whenever it’s been handy. So I just, I just, I just throw a bit of doubt on myself. I’m not saying that I am denying the recollection that I had passed the money on to Mr Huang to take it back to head office, but I just wanted to let you know, Mr Commissioner, that I have a bit of doubt or, or confusion myself throughout the whole process, yeah.

Mr Wong sought to explain that sometimes Mr Huang told him that he had a meeting at NSW Labor head office and that Mr Wong would ask Mr Huang to deliver

messages or certain other things. When pressed, however, Mr Wong could not recall any examples. The Commission is not satisfied that Mr Wong’s answers to these questions satisfactorily explain the otherwise inherent unlikelihood that Mr Huang would offer to deliver the “big bag of cash” to NSW Labor.

A further difficulty with Mr Wong’s account arises from the lack of corroboration by Mr Huang. As noted in chapter 1 of this report, Mr Huang declined to give evidence or put any version of events before the inquiry. Mr Huang was, however, granted leave to appear and be legally represented at the public inquiry.

The Commission has received submissions on behalf of Mr Huang. Those submissions are conspicuously silent as to Mr Wong’s assertion that he gave Mr Huang a “big bag of cash” towards the end of the 2015 CFOL dinner to deliver to Mr Clements. Mr Huang does, however, advance a position by way of submissions to the effect that he did not deliver any cash to Mr Clements on 7 April 2015. Mr Huang’s submissions are considered further in chapter 8. For present purposes, the Commission notes that Mr Huang does not corroborate Mr Wong’s evidence regarding the “big bag of cash”.


The Commission rejects Mr Wong’s evidence that he handed to Mr Huang a “big bag of cash” containing tens of thousands of dollars towards the end of the 2015 CFOL dinner. The Commission is satisfied that no such bag of cash existed.

For the reasons set out in chapter 12, which examines who was the true source of the \$100k cash, the Commission is satisfied that the money collected at the 2015 CFOL dinner formed no part of the \$100k cash that was banked by NSW Labor and Country Labor on 9 April 2015.

Section 74A(2) statement

The Commission is satisfied that Mr Wong is an “affected person” with respect to the matters dealt with in this chapter. The Commission does not accept the truth of Mr Wong’s account.

Mr Wong gave evidence on objection pursuant to a declaration under s 38 of the ICAC Act. This means that Mr Wong’s evidence cannot be used against him in criminal proceedings other than proceedings for an offence under the ICAC Act. Mr Wong’s evidence can be used against him in criminal proceedings for an offence of giving false or misleading evidence in contravention of s 87 of the ICAC Act. The evidence of Jonathan Yee, Mr Clements and Ms Huang would also be admissible in any prosecution of Mr Wong for such an offence.



There is also relevant documentary evidence, including parliamentary emails, in particular Mr Wong's correspondence with Jonathan Yee and The Eight restaurant, Mr Cheah's well done and banking email, Mr Wong's guest list and payment register, the seating plan for the 2015 CFOL dinner, and the download of Mr Clements' mobile telephone data.

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong for two offences of giving false or misleading evidence in contravention of s 87 of the ICAC Act in relation to evidence that he gave at the public inquiry:

- on 11 December 2019, to the effect that Jonathan Yee purchased unnumbered tables at the 2015 CFOL dinner which do not appear on the seating plan or the payment register for the event
- on 2 September 2019 and 11 December 2019, to the effect that towards the end of the 2015 CFOL dinner he was handed a big bag of cash containing tens of thousands of dollars which he gave to Mr Huang to deliver to Mr Clements at NSW Labor head office.

Chapter 8: Did Mr Huang deliver \$100,000 cash to Mr Clements on 7 April 2015?

There is clear evidence that Mr Cheah gave the \$100k cash to NSW Labor finance staff on the morning of 9 April 2015, and that the \$100k cash, comprised entirely of \$100 notes, was then banked into the State Campaign Accounts of NSW Labor (\$50,000) and Country Labor (\$50,000) later that day. Factual findings concerning the reconciliation of the \$100k cash are set out in the following chapter of this report.

The state of the evidence as to how Mr Cheah came to be in possession of \$100k cash is more complex. Indeed, the evidence of Mr Cheah and Mr Clements is diametrically opposed on the key question of whether, on 7 April 2015, Mr Huang delivered the \$100k cash to Mr Clements, who in turn gave it to Mr Cheah.

This chapter sets out the evidence and submissions relevant to the Commission's assessment of, and its findings in relation to, this key factual question. The relevant evidence derives from multiple sources. It comprises a substantial body of circumstantial evidence in addition to direct witness accounts, including those of Mr Clements and Mr Cheah. The chapter begins by setting out and assessing the direct evidence of various witnesses. The circumstantial evidence is then surveyed, and its probative strength considered. The evidence as a whole, both direct and circumstantial, is then weighed in light of submissions received on behalf of affected persons before conclusions are reached and factual findings made.

The Commission's approach to this fact-finding exercise takes account of the principles stated by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336, in particular at 362 that:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences...

As observed by Dixon J in *Briginshaw* at 361, and apposite to consideration of the evidence in this chapter, a tribunal cannot be reasonably satisfied of the truth of a serious allegation:

...without the exercise of caution and unless the proofs survive a careful scrutiny and appear precise and not loose and inexact. Further, circumstantial evidence cannot satisfy a sound judgment of a state of facts if it is susceptible of some other not improbable explanation. But if the proofs adduced, when subject to these tests, satisfy the tribunal of fact that [the allegation] was committed, it should so find.

Witness evidence

Mr Cheah's evidence

On 22 June 2017, Mr Cheah attended the NSWEC in response to a notice issued to him under s 110A(1)(d) of the EFED Act for the purpose of participating in an electronically recorded interview about the \$100k cash banked on 9 April 2015. During the interview, Mr Cheah told the NSWEC that:

- after the 2015 CFOL dinner, Mr Huang collected the \$100k cash and donor declaration forms from the individual donors of that money
- some weeks after the 2015 CFOL dinner, Mr Cheah saw Mr Huang arrive at NSW Labor head office and meet with Mr Clements
- shortly after that meeting, Mr Clements approached Mr Cheah and gave him a bag containing the \$100k cash, and donor declaration forms, and asked Mr Cheah to count the money and check the forms.

The NSWEC asked Mr Cheah to specify the denominations of the notes comprising the \$100k cash. He said he could not remember.

On 25 May 2018, the Commission conducted a compulsory examination with Mr Cheah. In that compulsory examination, an excerpt of which was tendered in evidence in the public inquiry, Mr Cheah told the Commission a version of events consistent with what he had told the NSWEC. Mr Cheah added that:

- Mr Huang “more than likely” attended NSW Labor head office that day with his interpreter, as Mr Huang’s English was poor
- the bag that Mr Clements gave Mr Cheah containing the \$100k cash was an Aldi shopping bag
- he thought Mr Huang was carrying the Aldi shopping bag when he arrived to meet Mr Clements
- by the time he had finished counting, the banks had closed and the accounting staff had left the office for the day, so he took the \$100k cash home with him that night
- the \$100k cash was banked “a day or two after we received it”.

During the public inquiry, Mr Cheah volunteered a statement that was tendered in evidence, which stated:

I recall that some weeks after the Event (and possibly after the State election on 28 March 2015), Mr Xiangmo Huang came to the ALP offices. I had never seen him come to the ALP offices before this occasion.

I do not have any personal relationship Mr Xiangmo Huang. I presume he knows who I am, but we don’t talk. My relationship with him has been limited to simply nodding my head in acknowledgement whenever he passes me at a function or the like.

On this occasion, Mr Huang walked past my workspace and through a door which led to the office of the Secretary of the ALP. After some time (approximately 20 minutes or so), Mr Huang left the ALP offices. I did not speak to him.

The then ALP Secretary, Mr Jamie Clements, then walked up to my workspace with an Aldi plastic bag. He said words to the effect of:

“Here is some donation money and forms. Check the forms. If it is all ok, then give it to finance”.

He then walked away. The time this occurred was after lunch (approximately 2.30-3pm).

I recall that the money in the Aldi plastic bag was mainly in \$100 denominations and tied together with rubber bands. I proceeded to commence to count the money by hand. I did this at my workspace. The area of the office where I work is open plan and I counted the money at my work area in full view of other staff.

In oral evidence at the public inquiry, Mr Cheah adhered to his statement. He did, however, retreat from his previous evidence that Mr Huang was carrying the Aldi shopping bag when he arrived to meet Mr Clements. On this issue, Mr Cheah conceded that he could not recall seeing Mr Huang carrying anything into the meeting with Mr Clements.

The Commission’s assessment of Mr Cheah’s evidence – that he was handed donor declaration forms by Mr Clements on 7 April 2015 – is set out in the following chapter of this report.

The Commission has received submissions on behalf of Mr Clements and Mr Huang contending that Mr Cheah’s evidence is unreliable and his credibility questionable. The substance of those submissions is considered later in this chapter.

Mr Clements’ evidence

Evidence including call charge records and data from Mr Clements’ mobile telephone establishes that, on the morning of 7 April 2015, arrangements were made between Mr Clements and Mr Huang’s executive assistant and interpreter, Tim Xu, for Mr Huang to attend NSW Labor head office at 2 pm that day for the purpose of meeting with Mr Clements. The timing of that meeting is consistent with Mr Cheah’s recollection that Mr Clements handed him the \$100k cash between 2.30 pm and 3 pm a day or two before it was banked (on 9 April 2015).

At the public inquiry, Mr Clements agreed that he did meet with Mr Huang at NSW Labor head office on 7 April 2015, and that arrangements for the meeting were made via text message with Mr Xu. However, Mr Clements firmly denied that he was handed a bag containing cash during his meeting with Mr Huang on 7 April 2015. He directly rejected Mr Cheah’s account that he handed Mr Cheah a bag containing cash and reservation forms after his meeting with Mr Huang.

Mr Clements told the Commission that the meeting on 7 April 2015 was requested by Mr Huang, who sought Mr Clements’ help to set up a lunch or dinner meeting for Mr Huang with Mr Shorten, then federal Opposition leader. Mr Clements said he recalled making a telephone call to Mr Shorten during the course of his meeting with Mr Huang on 7 April 2015. Call charge records confirm

telephone contact between the telephone services of Mr Clements and Mr Shorten at 2.08 pm and 2.10 pm that day.

Data obtained from Mr Clements' mobile telephone shows that Mr Clements subsequently made arrangements on 21 April 2015 with staff from Mr Shorten's office for Mr Huang's meeting with Mr Shorten on or around that date. Mr Xu confirmed that the meeting between Mr Huang and Mr Shorten took place (see Mr Xu's evidence below).

During the public inquiry, Counsel Assisting put to Mr Clements that, at the meeting on 7 April 2015, Mr Huang gave Mr Clements \$100,000 and then asked him to arrange a meeting with Mr Shorten. Mr Clements rejected that proposition and repeated his denial that he was given a bag of cash during that meeting. Mr Clements also rejected the proposition that he was given any donation disclosure forms on 7 April 2015, by Mr Huang or anyone else. Issues relating to the delivery and handling of disclosure forms are considered in chapter 9.

On cross-examination by counsel for Mr Cheah, Mr Clements rejected the proposition that he handed Mr Cheah a bag of cash after the meeting with Mr Huang on 7 April 2015. Mr Clements rejected the proposition that the contents of any such bag were quid pro quo for Mr Clements arranging Mr Huang's meeting with Mr Shorten.

The absence of evidence from Mr Huang

As has been previously noted, Mr Huang declined a number of opportunities to give evidence or provide a version of events to the Commission. He was, however, granted leave to appear and be legally represented at the public inquiry.

Mr Huang has advanced a position to the effect that he was not the true source of the \$100k cash and did not deliver any cash to Mr Clements on 7 April 2015. His position on that issue was put by way of submissions and was not by way of evidence. Mr Huang's unsworn statement has not been tested by Counsel Assisting nor by other parties on cross-examination. These are matters of relevance to the Commission in determining the weight to be accorded to Mr Huang's stated position. The Commission must necessarily approach such submissions with caution.

Mr Xu's evidence

Mr Xu gave evidence that he accompanied Mr Huang to the meeting with Mr Clements on 7 April 2015. Mr Xu recalled the meeting, which he understood to be the first "proper ... one-to-one meeting" between Mr Huang and Mr Clements.

Mr Xu gave evidence that, at the meeting on 7 April 2015, Mr Huang asked Mr Clements to use his connections as general secretary to help establish contact with officials in the Victorian government to arrange a meeting with a delegation from Jiangxi Province, China.

Mr Xu said that, on 7 April 2015, he and Mr Huang were dropped off on Sussex Street by Mr Huang's driver. Upon arrival at NSW Labor head office, Mr Xu told reception that they had an appointment with Mr Clements. Mr Xu agreed that he may have been carrying something, but could not recall doing so. Mr Xu said the meeting occurred inside Mr Clements' office and that, following greetings, there was talk about a delegation from Jiangxi Province and a request by Mr Huang for Mr Clements to set up a meeting with Mr Shorten. According to Mr Xu, a meeting did in fact take place between Mr Huang and Mr Shorten a couple of weeks later at a restaurant in Chinatown.

Mr Xu agreed that Mr Huang is a wealthy and perhaps powerful man and that it would be a sign of respect for Mr Huang to visit a person, rather than the other way around. Mr Xu said it was not uncommon for Mr Huang to bring a gift to one-to-one meetings. On many occasions, it would be someone other than Mr Xu who prepared Mr Huang's gifts, which Mr Xu would carry in a bag and give to Mr Huang to present to the recipient at the meeting. Mr Xu said he would not necessarily know what the gift itself was on such occasions.

Mr Xu denied that he has given anyone a gift of money on behalf of Mr Huang. However, he accepted that he may have given a person a package on behalf of Mr Huang that contained money. Mr Xu accepted that one such example may be the envelope containing \$10,000 in cash which Mr Clements says Mr Xu delivered to him in late May 2015 (considered later in this chapter).

Mr Xu gave evidence that he had no recollection of a bag or other vessel being given to Mr Clements during Mr Huang's meeting with Mr Clements on 7 April 2015. However, he agreed that it would be common for Mr Huang to give a gift as a sign of respect in such circumstances. Mr Xu agreed that it is quite possible that Mr Huang gave Mr Clements a gift on 7 April 2015. He accepted that there may have been an exchange of bags between Mr Huang and Mr Clements. However, Mr Xu said he did not recall knowing the contents of any such gift or bag. Mr Xu said that he considered it unlikely that Mr Huang would have brought a gift in an Aldi plastic bag.

Counsel Assisting submitted that Mr Xu's evidence is neutral on the question of whether Mr Huang delivered the \$100k cash to Mr Clements during the course of the meeting on 7 April 2015.

There was evidence that Mr Huang made contact with Mr Xu three times in 2019, during the pendency of this investigation, directly and indirectly via Mr Xu's family in China. Two of those communications comprised WeChat voice calls from Mr Huang to Mr Xu on 28 August 2019 and 6 October 2019. Those two calls occurred during the pendency of the public inquiry. On Mr Xu's evidence, both of those calls had "something to do with this investigation".

Those two WeChat calls followed an earlier message to Mr Xu, communicated by Mr Huang through an intermediary via Mr Xu's father in China in June 2019. On Mr Xu's evidence, the substance of that message, which he heard from his father, was that Mr Huang was disgruntled about his Australian residency being cancelled and that Mr Huang believed that Mr Xu had played some role in that process.

Counsel Assisting submitted that this evidence raises a possible inference that Mr Xu felt pressured to avoid giving evidence that implicated Mr Huang. That evidence was left unanswered by Mr Huang, despite him being given a specific opportunity to respond to it.

It has been submitted on behalf of Mr Huang that Mr Xu is a "relatively independent" witness and a witness of truth. Mr Huang submits that an inference that Mr Xu was pressured to avoid giving evidence implicating Mr Huang cannot be drawn as to do so would be "nothing more than mere speculation". Mr Huang further submits that the absence of evidence from Mr Huang on this point does not supply the Commission with positive evidence necessary to make the finding sought by Counsel Assisting.

The Commission has weighed the direct evidence of Mr Xu regarding communications from Mr Huang and rejects Mr Huang's submission that drawing the relevant inference would be "mere speculation". The Commission is satisfied that Mr Xu did feel pressure to avoid giving evidence that implicated Mr Huang. Evidence in relation to pressure experienced by other persons involved in this investigation, in particular the putative donors, is considered in detail in part 3 of this report.

Mr Huang's submissions note Mr Xu's evidence that he did not recall Mr Huang giving Mr Clements a gift during the meeting on 7 April 2015. While Mr Huang acknowledges Mr Xu's acceptance of the possibility of an exchange of gifts between Mr Huang and Mr Clements during the meeting, he submits that such a concession is no sufficient basis for the Commission to make a positive finding that Mr Huang delivered the \$100k cash Mr Clements.

Counsel for Mr Clements has submitted that Mr Xu's evidence directly contradicts Mr Cheah's version of events, insofar as Mr Xu rejected the proposition that

Mr Huang would have delivered a gift in an Aldi plastic bag. Mr Clements' submission continues:

Mr. Xu's honest and realistic acceptance that it was possible there was an exchange of a gift or a bag between Mr. Huang and Mr. Clements during the course of the meeting of 7 April 2015 of which he has no memory does not diminish the force of his evidence or render it "neutral".

In contrast, submissions on behalf of Mr Cheah contend that Mr Xu's evidence is supportive of Mr Cheah's version of events. Mr Cheah's submissions refer to Mr Xu as a neutral witness whose evidence confirms that Mr Huang attended NSW Labor head office to meet with Mr Clements on 7 April 2015 and notes that there "was no concomitant denial by Mr Xu that Mr [Huang] was carrying the \$100,000 at the time".

Upon consideration of the evidence on this aspect of the matter, the Commission is satisfied to the requisite standard that Mr Xu's evidence is neutral on the question of whether Mr Huang delivered the \$100k cash to Mr Clements on 7 April 2015. The Commission's findings on that question are set out at the end of this chapter.

The Commission is satisfied that it is plausible that money may have been exchanged during the 7 April 2015 meeting without Mr Xu knowing about it. That position would be consistent with the evidence concerning the two occasions on which Mr Clements accepts that he received cash from Mr Huang (considered later in this chapter).

Assessment of Mr Cheah as a witness

Counsel Assisting submitted that the Commission should treat the evidence of Mr Cheah with a degree of caution.

Submissions were received on behalf of Mr Clements and Mr Huang questioning Mr Cheah's credibility and contending that his evidence is unreliable and inconsistent to such a degree that the Commission should not accept any aspect of Mr Cheah's account in the absence of cogent corroboration. Those submissions invite the Commission to reject Mr Cheah's account of how he came to possess the \$100k cash.

Submissions on behalf of Mr Cheah highlight that Mr Cheah's evidence to the Commission and the NSWEC has consistently stated that Mr Clements gave Mr Cheah the \$100k cash to process shortly after Mr Huang's visit to Mr Clements at NSW Labor head office on 7 April 2015.

Mr Cheah gave evidence, during both his compulsory examination before the Commission and his interview with the NSWEC, that Mr Huang brought the \$100k cash into NSW Labor head office. During his compulsory

examination, Mr Cheah said he saw Mr Huang carrying the Aldi bag. However, during the public inquiry, Mr Cheah conceded that he “didn’t see [Mr Huang] carry a bag of cash”.

On cross-examination by counsel for Mr Clements, Mr Cheah conceded that he was not certain that he was told in advance that Mr Huang would be coming into NSW Labor head office to deliver donation money. On re-examination by his counsel, Mr Cheah said he had no knowledge of how Mr Huang came to acquire the \$100k cash or how it was collected prior to it being delivered to head office.

Counsel Assisting submitted that these aspects of Mr Cheah’s evidence suggest that he may not have been limiting his evidence at the public inquiry to things that he heard, saw or otherwise perceived. The Commission accepts this submission and agrees that Mr Cheah may have included in his evidence conclusions that he had reached or assumptions he had made based on other information.

The Commission also notes inconsistencies with some of Mr Cheah’s evidence. Two examples have been flagged by Counsel Assisting and highlighted in the submissions of Mr Huang.

First, Mr Cheah has given evidence on a number of occasions about the denominations that comprised the \$100k cash. Initially, in 2017, he told the NSWEC that he could not remember the denominations. In his statement, tendered at the start of the public inquiry, he said the money in the Aldi plastic bag was mainly in \$100 notes. In oral evidence at the public inquiry, Mr Cheah said he could not recall the denominations comprising the \$100k cash.

It has been submitted on behalf of Mr Huang that it is unlikely that a person who carefully counted one thousand \$100 notes could not remember the uniformity of the denominations. The Commission accepts that submission.

Secondly, Mr Cheah has given evidence that Mr Clements gave him the \$100k cash together with 20 donor declaration forms after the meeting with Mr Huang on 7 April 2015. Mr Cheah’s evidence is that he counted the \$100k cash and checked the 20 forms and they tallied up. This is inconsistent with email evidence that the NSW Labor finance department was in fact given 21 forms with the \$100k cash. Factual findings in relation to the delivery and handling of disclosure forms are set out in chapter 9.

The Commission accepts the submission of Counsel Assisting that the evidence of Mr Cheah should be approached with an appropriate degree of caution.

Circumstantial evidence

It is, of course, well accepted that in some cases it may be open to a court or a tribunal of fact such as the Commission to accept a witness’ evidence on some parts of their evidence and not on other parts. This is the case with Mr Cheah. Notwithstanding the observations above, Counsel Assisting submitted that the Commission should accept Mr Cheah’s statement that Mr Clements gave him a bag containing cash shortly after the conclusion of Mr Clements’ meeting with Mr Huang on 7 April 2015. That statement of Mr Cheah’s is supported by a persuasive body of surrounding evidence, which establishes that:

- Mr Wong was responsible for selling seats at the head table at the 2015 CFOL dinner for \$10,000 each and prepared a budget forecasting income of \$100,000 from the sale of the head table (chapter 5)
- Mr Huang attended the 2015 CFOL dinner and sat at the head table where he and four of his guests were allocated seats with Labor Party dignitaries, including Mr Wong and Mr Clements and NSW Labor and federal Labor leaders (chapter 5)
- on 3 April 2015, \$100,000 was withdrawn from a casino account at The Star containing money sourced from Mr Huang (details of this transaction are considered in chapter 12)
- when large sums of cash are withdrawn from casino accounts at The Star, the invariable practice of the casino is to issue that cash in \$100 notes
- on the next business day (7 April 2015), Mr Clements met with Mr Huang in Mr Clements’ office (along with Mr Xu)
- on at least two occasions in 2015, Mr Huang gave Mr Clements thousands of dollars in cash in \$100 notes (details of those transactions are set out below)
- during or after his meeting with Mr Huang on 7 April 2015, Mr Clements arranged a private lunch for Mr Huang with Mr Shorten, which occurred within about two weeks of the meeting between Mr Clements and Mr Huang in Mr Clements’ office
- on 9 April 2015, Mr Cheah gave \$100,000 in \$100 notes to NSW Labor’s finance department, which was then deposited in the bank accounts of NSW Labor and Country Labor (chapter 9).

Circumstantial evidence going to the nature of the relationship between Mr Clements and Mr Huang is set

out below. That is followed by consideration of other circumstantial evidence including call charge records and evidence of communications at and around the time of certain key events.

Mr Clements' relationship with Mr Huang

During the public inquiry, Mr Clements gave evidence that he first met Mr Huang in 2014 and they became friends. He said that it was Mr Huang who initially cultivated the relationship. Mr Clements said he understood Mr Huang to be a very generous donor to both sides of politics and that he sought to build a strong relationship with Mr Huang in the expectation that Mr Huang would donate to the Labor Party's 2016 federal election campaign.

Mr Xu gave evidence that Mr Huang was trying to cultivate Mr Clements as a very senior person in the Labor Party and that Mr Clements was seeking to cultivate Mr Huang as someone who could be a very substantial donor to the Labor Party.

Mr Clements agreed that he had visited Mr Huang's home once or twice prior to the 2015 NSW State Election. As noted in previous chapters, the evidence has established that one such occasion was the "light lunch" that Mr Clements and Mr Wong had with Mr Huang at his Mosman residence on Sunday, 15 March 2015; being three days after the 2015 CFOL dinner.

Mr Clements gave evidence that the frequency of his meetings with Mr Huang increased over time and they were occurring at least monthly at their height. He said "the Jiangxi thing, and the fixing of that, that really triggered off our relationship" in April or May 2015.

Mr Clements told the public inquiry that he did not believe that he and Mr Huang had discussed political donations until sometime after March 2015. Mr Clements said he may have mentioned political donations to Mr Huang in 2014 but could not recall having done so. Asked by the Chief Commissioner if he sensed what it was that Mr Huang was looking to get out of the relationship with him, Mr Clements answered, "Friendship, proximity to power".

Leaving aside for the moment questions regarding the \$100k cash, the relationship that developed between Mr Clements and Mr Huang was an unusual one in that the provision of large amounts of cash money by Mr Huang to Mr Clements did occur on a number of other occasions. Mr Clements told the public inquiry that on two separate occasions in 2015 Mr Huang gave him sums of thousands of dollars in cash comprised of \$100 notes.

On the first occasion, in late May 2015, Mr Clements said he was asked by a union official to provide \$10,000 to pay for stamps in connection with a union election challenge. Mr Clements said he asked Mr Huang for that money and that Mr Huang agreed to provide it. Mr Clements gave evidence that Mr Xu subsequently delivered an envelope to him at NSW Labor head office containing \$10,000 in \$100 notes. Mr Clements said that Mr Xu said, "This is from Mr Huang".

Evidence from Mr Clements' mobile telephone shows arrangements being made by Mr Xu for a lunch meeting between Mr Clements and Mr Huang at a restaurant on 27 May 2015. Mr Xu agreed that he had made those arrangements and said that Mr Huang made a number of requests of Mr Clements during that meeting in relation to plans for the delegation from Jiangxi Province to meet the Victorian premier.

The evidence from Mr Clements' mobile telephone also showed Mr Clements' attempts to satisfy Mr Huang's request to see if Victorian Premier Daniel Andrews would consider signing a cooperative agreement between Jiangxi and Victoria. Mr Xu agreed with the Chief Commissioner that that request was "a big ask". Mr Xu agreed that the lunch with Mr Clements on 27 May 2015 was an example of the way that Mr Huang operated by exercising influence and using people in key positions to achieve certain objectives.

An article published on the website of the Victorian Parliament indicates that a meeting ultimately did take place between Mr Andrews and a delegation from Jiangxi on or around 23 June 2015.

Mr Xu agreed that it is possible that Mr Clements asked Mr Huang during the lunch meeting on 27 May 2015 for money to assist with a union campaign. Mr Xu said that, around the time of these discussions, Mr Huang asked Mr Xu to go and see Mr Clements at his NSW Labor office and that it is possible that Mr Xu was asked to deliver something, which might have been an envelope, and which might have contained cash.

It is clear that, by May 2015, Mr Clements had established such a relationship with Mr Huang that he, Mr Clements, was confident enough to request of Mr Huang payment of \$10,000 cash as discussed above.

On Mr Clements' evidence, the second occasion on which Mr Huang gave him a sum of cash in \$100 notes was in August 2015. Mr Clements said that, on that occasion, Mr Huang gave him \$35,000 in cash to pay legal fees arising from a police investigation of Mr Clements, who had at that time stood aside from his role as general secretary of NSW Labor. Asked to explain the circumstances in which the gift of \$35,000 occurred,

Mr Clements explained:

I got a call to come to [Mr Huang's] house, I went to his house. I, he led me upstairs to the room that I'd never been in before and he had a, he had a box, like a wine box, and he opened it and there was cash in it and he had a piece of paper, handwritten in English, it said, "For your legal fees." He closed the box, screwed the piece of paper up and we walked down and had a cup of tea.

Mr Clements told the Commission he was alone with Mr Huang upstairs when first given the wine box containing money but that Mr Xu was present downstairs in the tea room.

Mr Xu told the Commission that he recalled Mr Huang inviting Mr Clements to attend Mr Huang's Mosman home in August 2015. Mr Xu interpreted for Mr Huang that day. He said that, after having tea, Mr Huang asked Mr Clements to step out of the room and indicated that Mr Xu should stay in the tea room. Mr Xu said that Mr Clements returned to the tea room a few minutes later carrying a wine box, which Mr Xu assumed contained wine until later, when Mr Xu handed the box to Mr Clements on departure, Mr Xu noticed the box was too light and likely did not contain wine.

Mr Clements said he opened the wine box and counted the money in his car. He said the box contained cash in \$100 notes organised in seven bundles of \$5,000, each bound by a strip of green paper secured with a staple.

Kevin Houlihan, group investigations officer from The Star, told the Commission that, when cash is withdrawn from the casino in large amounts, it is invariably issued in \$100 notes and the procedure is to issue the cash in bundles of \$5,000 wrapped in a "strap". He said the straps used at The Star were white. Notwithstanding that Mr Clements' money in the wine box had green straps, rather than white, the Commission notes the similarities to casino-issued bundles of cash. Further evidence from Mr Houlihan and The Star is set out in chapter 12.

Mr Huang's gesture in August 2015 of paying Mr Clements \$35,000 in cash further reflects on the unusual relationship that Mr Huang and Mr Clements had been developing in 2015.

In January 2016, Mr Clements resigned as general secretary of NSW Labor. Mr Clements told the Commission that, following his resignation from NSW Labor, he contacted Mr Xu and requested a meeting with Mr Huang at which he sought employment as a consultant to Mr Huang. Mr Clements said that Mr Huang agreed to put him on a retainer under which Mr Clements received \$4,000 per week, paid monthly by a subsidiary company of

the Yuhu Group. The retainer commenced on 14 February 2016 and was in place until terminated in February 2019. Mr Clements also received a rent-free space in a Sydney office building owned by the Yuhu Group during much of this period. Mr Xu corroborated Mr Clements' account in relation to these arrangements.

Call charge records and other surrounding evidence

Mr Cheah's evidence, that Mr Clements handed him the \$100k cash soon after the meeting with Mr Huang on 7 April 2015, is also consistent with evidence of contacts, including call charge records, for the relevant period.

In addition to numerous contacts between Mr Clements and Mr Xu arranging the meeting with Mr Huang on 7 April 2015, and the two contacts between Mr Clements and Mr Shorten apparently during that meeting, there is evidence that, on 7 April 2015:

- Mr Huang called Mr Wong at 11.54 am, being 40 minutes after Mr Xu confirmed the 2 pm meeting with Mr Clements (the call lasted more than three minutes)
- Mr Wong called Mr Huang at 12.16 pm (the call lasted 35 seconds)
- Mr Huang called Mr Wong at 2.12 pm, being two minutes after Mr Clements' contact with Mr Shorten
- Mr Wong and Mr Huang exchanged three SMS messages at 2.40 pm
- Mr Wong called Jonathan Yee at 3.33 pm (the call lasted one minute).

Other relevant contacts surrounding the meeting on 7 April 2015 are considered in chapter 12.

The above sequence of contacts shows that Mr Huang spoke to Mr Wong before his meeting with Mr Clements and then again, during or just afterwards, at 2.12 pm. There is a sound basis to support an inference that, more probably than not, the call by Mr Huang to Mr Wong at 2.12 pm was a call reporting to him what had just occurred in the meeting with Mr Clements. Mr Huang declined to give evidence to the Commission. Submissions on behalf of Mr Huang did not address the telephone call at 2.12 pm on 7 April 2015. In these circumstances, the inference that that call to Mr Wong concerned what had just occurred in Mr Huang's meeting with Mr Clements can be more readily drawn.

Mr Wong denied that he had any involvement in the meeting that Mr Huang had with Mr Clements on 7 April 2015. Mr Wong gave evidence that he had no recollection of the telephone calls with Mr Huang on 7 April 2015.

He did not deny that Mr Huang rang him that day to say he had just delivered a sum of cash to Mr Clements, but said that he could not recall such a conversation. Asked if a discussion about a bag of \$100,000 in cash being delivered to NSW Labor head office would be “fairly extraordinary”, such that he would recall such a conversation, Mr Wong unconvincingly replied, “Not really though, no”.

The fact that Mr Wong called Jonathan Yee about one hour later, at 3.33 pm, raises the question as to whether the preceding sequence of events, including Mr Huang’s meeting with Mr Clements, was concerned with the business of CFOL. There is no evidence that Jonathan Yee had any involvement in, or knowledge of, Mr Huang’s meeting with Mr Shorten or any arrangements made by Mr Clements regarding the delegation from Jiangxi.

Evidence of contacts on the following day, 8 April 2015, shows numerous further calls and SMS messages between Mr Wong and each of Mr Huang, Jonathan Yee and Mr Cheah. The conduct of each of those four persons is central to the Commission’s investigation. There is no direct evidence as to what those calls and messages on 8 April 2015 concerned. However, the Commission notes the timing of those contacts was between when Mr Cheah says the \$100k cash was delivered to NSW Labor head office (7 April 2015) and the time that the \$100k cash was banked into the accounts of NSW Labor and Country Labor (9 April 2015).

During the public inquiry, Jonathan Yee admitted that he procured members of his family, Emperor’s Garden employees and his neighbour, Mr Yip, as “fake donors”. He said he did so because Mr Wong had asked him in February 2015 to find from five-to-10 people to falsely sign as donors for amounts of \$5,000. Jonathan Yee’s evidence is that Mr Wong said he would find from other sources the donation money that was required to be raised. The Emperor’s Garden putative donors and Mr Yip corroborated Jonathan Yee’s evidence that he procured them to falsely state that they had donated sums of \$5,000 to the Labor Party. The details of, and findings in relation to, that evidence are set out in chapters 11 and 14.

The call charge record showing Mr Wong’s telephone call to Jonathan Yee at 3.33 pm on 7 April 2015 is to be considered by the Commission in light of the above evidence. Jonathan Yee has admitted to procuring the false original donor declaration forms (the invitation/reservation forms) that were ultimately filed at NSW Labor head office in connection with the donations said to make up the \$100k cash that was banked on 9 April 2015. As the person responsible for the false declaration forms that were intended to legitimise the \$100k cash donation, Jonathan Yee had a clear interest in the timing of the delivery of the \$100k cash to head office.

Factual findings in relation to the delivery of the invitation/reservation forms completed by the putative donors to NSW Labor head office are made in chapter 9.

Submissions

Why did Mr Cheah hold the \$100,000 for two nights?

In his statement tendered at the public inquiry, Mr Cheah said that, on 7 April 2015, he counted the \$100k cash at his desk in the open plan area of the office. Mr Cheah explained that the banks had closed before he finished counting the \$100k cash and he decided to take the money home with him that night as he did not want to leave it unsecured in the office. He said he brought the money back into the office the following morning and finished the process of counting the money and checking the forms sometime that morning.

During the public inquiry, there was evidence that clearly established that the:

- meeting between Mr Clements and Mr Huang at the NSW Labor head office occurred on 7 April 2015
- \$100k cash was banked into the accounts of NSW Labor and Country Labor on 9 April 2015.

During the public inquiry, Mr Cheah was asked why it took him two days to reconcile the 20 donor declaration forms and count the \$100k cash. Mr Cheah replied that it was not a simple exercise, that it took a long time to do properly and that he had to restart counting because he dozed off as a consequence of suffering from narcolepsy.

It has been submitted on behalf of Mr Huang that Mr Cheah’s suggestion, that it took him two days to count the \$100k cash and check the forms, is inherently improbable. The Commission accepts that a person of ordinary sensibilities would seek to finish counting the cash and securely deposit that cash in the bank as soon as possible. Mr Cheah’s explanation, that he took the \$100k cash home on the evening of 7 April 2015 for security reasons (itself an inherently risky behaviour), cannot logically account for him taking the money home again on 8 April 2015.

In circumstances where Yi Jing (Jenny) Zhao, in the finance department, counted the money with little difficulty prior to banking it on 9 April 2015, the Commission rejects Mr Cheah’s explanation that he kept possession of the \$100k cash for two nights because it was a complex exercise and because he had to restart counting due to narcolepsy.

Counsel for Mr Clements submitted that Mr Cheah's inability to adequately explain why he kept the \$100k cash for two nights suggests that the money travelled by a different route than that stated by Mr Cheah. Submissions on behalf of Mr Huang contend that the inherent implausibility of Mr Cheah's evidence on this issue is enough to dispose of the suggestion that he received the \$100k cash on 7 April 2015.

The Commission finds that Mr Cheah's explanation as to why he kept possession of the \$100k cash for two nights is inherently implausible. However, the Commission does not draw the conclusions invited by the submissions of Mr Clements and Mr Huang. The more likely explanation for the delay between Mr Cheah taking possession of the \$100k cash on 7 April 2015 and passing it to the finance department on 9 April 2015 is that he was waiting for the donor declaration forms associated with that money to be delivered to him. The evidence and the Commission's findings on this issue are set out in chapter 9.

Mr Clements' scapegoat submission

Counsel for Mr Clements put to Mr Cheah on cross-examination that he was using Mr Clements as a "scapegoat". Mr Cheah rejected the proposition.

Counsel Assisting submitted that it is not clear what Mr Cheah would have to gain in attempting to use Mr Clements in that way. There is no evidence before the Commission of any pact between Mr Cheah and any other person (who may have handed the \$100k cash to Mr Cheah) to the effect that Mr Cheah would not implicate that other person.

Counsel for Mr Clements submitted in response that Mr Cheah admitted to having closer relationships with Mr Wong and Jonathan Yee than he did with Mr Clements and Mr Huang. The submission is advanced that Mr Cheah's motivation for using Mr Clements as a scapegoat was to protect Mr Wong and Jonathan Yee; being persons who are alleged to have procured and concealed the \$100k cash.

It was further submitted on behalf of Mr Clements that Mr Cheah's assertion that the money was delivered to Mr Clements and then to Mr Cheah had the effect of clothing Mr Cheah's subsequent actions in handling that money with the authority of the general secretary.

The Commission notes the evidence that Mr Huang is a person interested in cultivating strategic relationships with senior persons in the political process. Both Mr Clements and Mr Xu gave evidence to that effect. Mr Clements evidence was that Mr Huang was interested in "proximity to power".

The Commission also notes the evidence set out previously in this chapter concerning the unusual relationship between Mr Huang and Mr Clements, including in relation to the direct dealing between them involving payment of substantial cash monies by Mr Huang to Mr Clements in 2015.

In these circumstances, the Commission is satisfied that, if Mr Huang was the true source of the \$100k cash (chapter 12), he would be most unlikely to have delivered the \$100k cash directly to a relatively low-ranking employee such as Mr Cheah. The Commission finds it more likely that Mr Huang, in seeking Mr Clements' assistance on 7 April 2015, would have delivered that money to Mr Clements as general secretary of NSW Labor. Further, there is no evidence before the Commission that Mr Huang delivered the money to any other similarly senior officer of NSW Labor.

Mr Clements' scapegoat submission is also logically deficient. If Mr Cheah was close to, and protecting, the orchestrators of an unlawful scheme, it would make no sense that he would tell the NSWEC a false version of events, the falsehood of which would be easily revealed by asking Mr Clements for corroboration. If Mr Clements rejected that version (as he did in his compulsory examination), the irreconcilable versions would only serve to heighten the investigator's suspicions and lead to redoubled efforts to find the truth. The orchestrators of any unlawful scheme would be exposed, not aided, by such a turn of events.

If Mr Cheah was protecting Mr Wong and Jonathan Yee, the alleged orchestrators of an unlawful scheme, it would make more sense for him to tell the NSWEC that Mr Wong or Jonathan Yee had collected the donations from individual donors and then delivered that money to Mr Cheah. As members of CFOL, Mr Wong and Jonathan Yee might reasonably be expected to be involved in the collection of money from donors in connection with the 2015 CFOL dinner. As co-conspirators with Mr Cheah (on Mr Clements' submission), Mr Wong and Jonathan Yee might reasonably be expected to corroborate Mr Cheah and thereby stall or impede any investigation into the matter.

The Commission rejects Mr Clements' scapegoat submission, which really amounts to an unsupported assertion. The Commission is satisfied that the more likely explanation on the available evidence is that Mr Cheah was telling the truth when he said that he was given the \$100k cash by Mr Clements.

Conclusions

The most likely inference arising from careful scrutiny of the evidence set out above is that the \$100k cash

arrived at NSW Labor head office by it being given to Mr Clements by Mr Huang during their meeting on 7 April 2015. There is no other probable inference available on the evidence before the Commission.

The Commission's findings in relation to the true source of the \$100k cash are set out in chapter 12. They include a finding that the \$100k cash was withdrawn on 3 April 2015 from a casino junket account at The Star containing funds sourced from Mr Huang.

The Commission does not accept as mere chance the facts established on the evidence that:

- Mr Wong sold the head table at the 2015 CFOL dinner for \$100,000
- Mr Huang attended the 2015 CFOL dinner and sat at the head table with Labor Party dignitaries
- \$100,000 in (most likely) \$100 notes was withdrawn from money sourced by Mr Huang at The Star on 3 April 2015
- Mr Huang met Mr Clements at NSW Labor head office on 7 April 2015
- \$100,000 in \$100 notes was banked into the accounts of NSW Labor and Country Labor on 9 April 2015.

The Commission accepts the submission of Counsel Assisting that that coincidence of events is so striking as to not be dismissed as mere chance.

In light of the evidence above, the Commission finds that the \$100k cash was delivered by Mr Huang to Mr Clements at NSW Labor head office on 7 April 2015 and was then given by Mr Clements to Mr Cheah. The Commission rejects the evidence of Mr Clements on these issues.

The question of whether Mr Clements also gave Mr Cheah the donor declaration forms associated with

the \$100k cash on 7 April 2015 is considered in the next chapter.

Section 74A(2) statements

The Commission is satisfied that Mr Clements and Mr Huang are "affected persons" with respect to the matters dealt with in this chapter.

A statement in relation to whether the Commission is of the opinion that consideration be given to obtaining the advice of the DPP with respect to the prosecution of certain persons for scheme offences against s 96HB of the EFED Act can be found in chapter 14.

The Commission has rejected, on the balance of probabilities, Mr Clements' denial that he received the \$100k cash from Mr Huang on 7 April 2015 and that he then handed that cash to Mr Cheah. However, the Commission considers that there is insufficient admissible evidence to prove to the criminal standard that Mr Clements knowingly gave false evidence to the Commission in relation to those issues. In this regard, the Commission notes the circumstantial nature of much of the admissible evidence, Mr Cheah's concession that he did not see Mr Huang arrive at the head office with the \$100k cash, and issues surrounding the reliability of some aspects of Mr Cheah's evidence.

Accordingly, the Commission is satisfied that there is insufficient admissible evidence to warrant the referral of Mr Clements to the DPP for advice in relation to an offence against s 87 of ICAC Act.

Chapter 9: Reconciling the \$100,000 cash

This chapter sets out the evidence, and considers submissions, relevant to the handling, processing, and banking of the \$100k cash following the delivery of those funds to NSW Labor head office on 7 April 2015. This includes findings in relation to the circumstances in which the donor declaration forms associated with the \$100k cash were delivered to NSW Labor head office.

Mr Cheah gave evidence to the NSWEC and to the Commission to the effect that, on 7 April 2015, Mr Clements handed him an Aldi bag containing the \$100k cash, together with 20 donor declaration forms and asked him to count the money, check the forms and, if satisfied with the reconciliation, give the money and forms to the NSW Labor finance department for banking.

As noted in the previous chapter, the Commission has found that Mr Cheah received the \$100k cash from Mr Clements on 7 April 2015. However, for the reasons set out in this chapter, the Commission does not accept aspects of Mr Cheah's evidence regarding the donor declaration forms.

The donor declaration forms associated with the \$100,000 cash

Evidence obtained in December 2018 from NSW Labor head office established that the NSW Labor finance department had, at that time, possession of the following hardcopy donor declaration forms associated with the \$100k cash:

No.	Description
10	Original colour forms signed by, or on behalf of, Harbour City Group Pty Ltd and each of the Emperor's Garden putative donors, being Emperor's Garden Pty Ltd, Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam, Jonathan Yee, May Ho Yee, and Valentine Yee ("the 10 original forms")
10	Black-and-white photocopies of the 10 original forms
2	Black-and-white copies, likely being printed copies, of two forms, one signed by Mr Liao and the other by Mr Tong

There is evidence that the donor declaration forms associated with Mr Liao and Mr Tong were not included with the forms that were reconciled in connection with the \$100k cash prior to it being banked on 9 April 2015. Mr Wong emailed those two forms to Mr Cheah more than a week later, on 17 April 2015.

Mr Liao and Mr Tong's forms were subsequently used to alter NSW Labor records to substitute them as the purported donors of two sums of \$5,000 to Country Labor in relation to which Harbour City Group Pty Ltd and Valentine Yee had been previously recorded as the donors. The evidence regarding those events is set out in chapter 10.

For present purposes, it is sufficient to note that the 20 donor declaration forms which were reconciled with the \$100k cash prior to it being banked on 9 April 2015 were the 10 original forms and black-and-white photocopies of each of the 10 original forms. There is evidence that an additional donor declaration form, in the name of Sydney Today, was provided to the NSW Labor finance department with the \$100k cash. The circumstances surrounding that additional form are considered later in this chapter.

Each of the donor declaration forms associated with the \$100k cash was a signed version of the pre-filled invitation/reservation form (see figure 1 on page 37). As noted in chapter 4, the pre-filled invitation/reservation form featured a pre-filled handwritten “\$5,000” figure and a handwritten strikethrough of cheque and credit card (that is, non-cash) payment options. During the public inquiry, Mr Wong admitted that he wrote the \$5,000 figure and applied the strikethrough. He also admitted that he emailed the pre-filled invitation/reservation form to both Mr Liao and Jonathan Yee on 30 March 2015.

Each of the Emperor’s Garden putative donors and Mr Yip signed and (except for May Ho Yee) dated their copy of the pre-filled invitation/reservation form on either 30 March 2015 or 31 March 2015. May Ho Yee signed but did not date her form. The circumstances in which Mr Liao and Mr Tong signed their forms are considered in chapter 10.

There can be little doubt that, on their face, the donor declaration forms that were reconciled in connection with the \$100k cash ought to have raised suspicions at NSW Labor head office as to the possibility of fraud. This is particularly so in circumstances where those forms were presented to NSW Labor in connection with a cash sum of \$100,000, wholly in \$100 denominations, which was said to relate to 20 separate donations from 10 different persons.

Mr Clements gave evidence that it was his expectation that Mr Cheah and the NSW Labor finance department should both have ensured that there were signed forms in relation to all money received at CFOL events. Mr Clements said that Mr Cheah should have ensured that the donors were on the Electoral Roll or had an ABN and should have taken a common sense approach to identifying any obvious indications of fraud such as there being two forms that look exactly the same, being an original and a copy.

Mr Cheah’s evidence, in relation to the donor declaration forms reconciled with the \$100k cash, was:

I did not think there was anything unusual about the forms. I checked that the amounts were below the permitted amount, that the person filled out the details on the form, made the appropriate declaration, and then signed it. I was satisfied these things occurred on the 20 declaration forms. I see a lot of these declaration forms, and these looked normal to me.

Mr Cheah gave evidence that when he checked the forms, he did not notice that the handwritten \$5,000 figure was identical on all of the forms. He said he had no reason to believe that anyone would be trying to do anything untoward.

NSW Labor finance officer, Ms Zhao, gave evidence that when she generated invoices in the NSW Labor MYOB system after having banked the \$100k cash, she considered it suspicious that the two piles of forms that Mr Cheah had given her appeared to be identical. Ms Zhao did not raise her suspicions with any senior NSW Labor officers. The circumstances around Ms Zhao’s role in reconciling the \$100k cash are set out later in this chapter.

On cross-examination by counsel for Mr Cheah, Mr Clements rejected the proposition that there was no requirement for Mr Cheah to check the forms to pick up potential fraud or attempts to circumvent the electoral legislation. Mr Clements said that was the very reason that the forms had to be checked, to protect the ALP from fraud or illegality. Mr Clements said that it was Mr Cheah’s responsibility to check the forms and if there were problems with any of them, he should not have handed them to the NSW Labor finance department. Mr Clements said that it was the responsibility of the finance department to double check the forms.

Mr Clements accepted on cross-examination that he was not aware of persons, such as Mr Cheah and finance staff who were responsible for checking donor declaration forms, being given any training in respect of identifying what a fraudulent form might look like. He also accepted that there were no policies or procedures in place at NSW Labor head office at the time with respect to the receipt of copies of donor declaration forms not signed in the original.

Ms Murnain gave evidence that, from her perspective as assistant general secretary, there appeared to be a lack of procedures at NSW Labor head office in 2015 regarding matters such as the handling of money, the processing of money and declarations, and the banking of cash. She gave evidence that she made a number of changes and implemented relevant policies when she became general secretary. Policy issues arising from this investigation are considered in chapter 25.

Delivery of the donor declaration forms

Mr Cheah consistently gave evidence that 20 donor declaration forms accompanied the bag containing the \$100k cash and were provided to him by Mr Clements on 7 April 2015, soon after Mr Clements’ meeting with Mr Huang. On 10 February 2020, in evidence tendered in the public inquiry, Mr Cheah told the Commission that he was sure that the forms were inside the bag containing the \$100k cash when Mr Clements gave it to him.

As noted in the previous chapter, Mr Cheah explained the delay between receiving the \$100k cash (on 7 April 2015) and the banking of those funds (on 9 April 2015)

by reference to the difficulty of the task of reconciling the cash and the forms and, to some extent, by his suffering from narcolepsy. For the reasons set out in the previous chapter, the Commission does not accept that explanation.

The evidence clearly establishes that Jonathan Yee procured the 10 original forms that were signed by Mr Yip, on behalf of Harbour City Group Pty Ltd, and by the Emperor's Garden putative donors. He has admitted to doing so. Each of the natural person (that is, people rather than corporate entities) Emperor's Garden putative donors, and Mr Yip, have corroborated that fact.

The Emperor's Garden putative donors and Mr Yip each gave evidence to the effect that Jonathan Yee asked them to sign a single donor declaration form, on or around 30 March 2015, which falsely stated that they were the donors of a sum of \$5,000. The evidence is consistent that this request was made at the Emperor's Garden restaurant, or next door in the case of Mr Yip. Each of those witnesses has admitted that they signed the donor declaration forms as requested and returned them to Jonathan Yee. Further evidence in relation to these matters is set out in chapter 11.

There is little doubt that Jonathan Yee had possession of the 10 original forms as at 31 March 2015. As the Commission has found, the \$100k cash was not delivered to NSW Labor head office until 7 April 2015. It was not banked until 9 April 2015 (as set out later in this chapter). An email from the NSW Labor finance department to Mr Cheah on 9 April 2015 is the first documentary evidence available to the Commission which establishes that the donor declaration forms associated with the \$100k cash were present at NSW Labor head office. How and when, then, did the 10 original forms move from Jonathan Yee's possession in late March 2015 to NSW Labor head office on 9 April 2015?

It has been submitted on behalf of Mr Huang that there is evidence from Jonathan Yee that he supplied the donor declaration forms to Mr Cheah. Mr Huang contends that there is no evidence, other than Mr Cheah's account, that either Mr Huang or Mr Clements ever had possession of those forms.

Counsel for Mr Cheah submitted in reply that the evidence of Jonathan Yee was that he had no recollection of what had happened with the forms and, when pressed, ventured that he may have delivered them to Mr Cheah. The evidence of Jonathan Yee on this issue, set out below, is not to that effect.

Asked during the public inquiry what he did with the donor declaration forms, once they had been signed, Jonathan Yee initially said that he "would have sent [them] to head office" via email to the NSW Labor financial controller, Ms Wang.

When it was pointed out to Jonathan Yee that the original colour forms bearing the signatures of the Emperor's Garden putative donors and Mr Yip were recovered from NSW Labor head office, he responded that his recollection could be wrong and that he "most probably would have asked someone to deliver them to head office".

Asked for clarification, Jonathan Yee said, "I would have, from recollection, I would have delivered it myself to head office [to] Mr Cheah". Jonathan Yee said he did so because Mr Cheah was a friend and also community relations director at the time. Jonathan Yee went on to state that he delivered the forms, but no money, to Mr Cheah. Counsel Assisting asked whether Mr Cheah queried why he was getting forms from Jonathan Yee but not any money. Jonathan Yee replied, "He'll probably be – not probably – he would know what would be going on".

Jonathan Yee said that it was common for there to be a difference in timing in terms of the delivery to NSW Labor of money and forms from CFOL events. Having admitted to being party to a scheme with Mr Wong to procure fake donor declaration forms in an attempt to legitimise the donation of the \$100k cash, Jonathan Yee was asked whether, at any point in time, he had discussions with Mr Cheah about that scheme. He replied:

I didn't ... Not at all, because what we do is, we do what we, our part is, and we just follow what we need to do, and we didn't mind who, or whoever's responsible for other parts, we don't, generally don't talk about it.

Counsel Assisting sought further clarification from Jonathan Yee:

[Counsel Assisting]: Do I understand your evidence to be that if, in point of fact, these forms or some of them, the original of these forms, found their way to the Sussex Street office, it would be you that would deliver them? Is that right?

[Jonathan Yee]: That's correct.

[Q]: And if you were to make such a delivery, you would make a delivery to Mr Cheah. Is that right?

[A]: That's correct because I don't know Maggie in person.

[Q]: But what I'm trying to understand is why would one deliver forms but not cash to Mr Cheah?

[A]: Because we didn't make the donation.

[Q]: *No, but surely then Mr Cheah says, "Well, thanks very much for the forms but what's that got to do with anything?"*

[A]: *He didn't ask.*

The Commission notes that Jonathan Yee has given false evidence to both the NSWEC and the Commission in relation to matters the subject of this investigation. Examples of that false evidence are considered in part 3 of this report. While the admissions that Jonathan Yee ultimately made in the public inquiry about his involvement in the donation scheme are fundamentally against self-interest, the Commission is careful not to accept his evidence absent cogent corroboration.

The Commission is satisfied that Jonathan Yee physically delivered the 10 original forms to NSW Labor head office. Factual findings in relation to the timing of that delivery, and to whom he delivered the forms, are set out later in this chapter.

Mr Huang submitted that Jonathan Yee's evidence that he delivered the forms to Mr Cheah makes it unlikely that Mr Huang and Mr Clements had a separate transaction of money. Mr Huang submitted that there is no evidence of communication between himself and Jonathan Yee to coordinate a scheme whereby Mr Huang delivered cash and Jonathan Yee delivered forms.

The Commission accepts that there is no evidence of direct communication between Mr Huang and Jonathan Yee in the relevant period of time. However, telephone call charge records establish that on 7 April 2015:

- at 2.08 pm and 2.10 pm, during Mr Huang's meeting with Mr Clements at NSW Labor head office, Mr Clements called Mr Shorten
- immediately afterwards, at 2.12 pm, Mr Huang called Mr Wong and the call lasted 47 seconds
- at 2.40 pm, Mr Huang and Mr Wong exchanged three SMS messages
- at 3.33 pm, Mr Wong called Jonathan Yee and the call lasted 60 seconds.

During the public inquiry, Mr Wong denied that he was involved in arranging the meeting between Mr Huang and Mr Clements on 7 April 2015. He said he had no recollection of any discussions with Mr Huang that day about that meeting, before or afterwards, or about money or donations. Asked if he would recall being informed of the extraordinary occurrence of a bag containing \$100,000 cash being delivered to NSW Labor head office, Mr Wong replied, "Not really, though. Look, for me it's very much like I pass on for someone to pass on the money, he did it, he did it, he did it at his own discretion and,

and, and, and that's all. I don't need to concern in regards to how and what and, you know".

As has been noted, the Commission has found that Mr Wong did not pass on to Mr Huang a "big bag of cash" containing tens of thousands of dollars at the 2015 CFOL dinner. The Commission does not accept Mr Wong's evidence in relation to the telephone communications on 7 April 2015. On balance, the Commission is satisfied that the most likely explanation for the communications between Mr Huang and Mr Wong at 2.12 pm and 2.40 pm on 7 April 2015 is that Mr Huang was relaying to Mr Wong what had occurred during his meeting with Mr Clements including, relevantly, the delivery of the \$100k cash.

There is no direct evidence as to the content of the telephone call from Mr Wong to Jonathan Yee at 3.33 pm on 7 April 2015. Jonathan Yee was asked during the public inquiry whether he had a discussion with Mr Wong in March or April 2015 where Mr Wong said, "Yes, the Eagle had landed. Money had been received to match your forms." Jonathan Yee replied that around the time that Mr Wong emailed the pre-filled invitation/reservation form (which occurred on 30 March 2015), Mr Wong informed him that he had located the donor (or donors) of the money that the false donor declaration forms were intended to legitimise. Jonathan Yee said at that point he understood that Mr Wong "has the money".

In circumstances in which Jonathan Yee says that he delivered to NSW Labor head office the donor declaration forms intended to legitimise the \$100k cash, and understood at that time that Mr Wong had secured the cash from the true source of that donation, and where the Commission has found that Mr Huang delivered that cash to Mr Clements at or shortly after 2 pm that day, it is evident that the timely news of that delivery would be pertinent to Jonathan Yee insofar as he would need to know when to deliver the forms intended to legitimise the \$100k cash donation. On balance, the Commission is satisfied that this is the most likely explanation for Mr Wong's telephone call to Jonathan Yee at 3:33 pm on 7 April 2015.

Call charge records for the following day, 8 April 2015, further establish that:

- between 9.42 am and 2.30 pm, there were four telephone calls between Mr Huang and Mr Wong
- at 3.08 pm, Mr Wong called Mr Cheah and the call lasted 94 seconds
- between 4.06 pm and 4.31 pm, Mr Wong and Mr Cheah exchanged eight SMS messages

- between 5.35 pm and 6.07 pm, there were three calls from Mr Wong to Jonathan Yee, the first two likely aborted calls, the third call lasting 113 seconds.

The Commission is satisfied that the communications above are consistent with the likelihood that Mr Wong played a coordinating role in respect of the separate delivery of the \$100k cash by Mr Huang and the forms by Jonathan Yee to NSW Labor head office. The Commission finds that he did so.

Factual findings as to the timing of Jonathan Yee's delivery of the 10 original forms must also take into account contextual evidence regarding Mr Cheah's reconciliation of the \$100k cash between 7 April 2015 and 9 April 2015. That evidence is set out later in this chapter.

Who photocopied the donor declaration forms?

The question arises as to how and when the black-and-white photocopies of the 10 original forms, which were recovered from NSW Labor files and correspond to donations purported to have been made to Country Labor, were created and who was responsible.

Jonathan Yee gave evidence that he was quite sure that he and the other Emperor's Garden putative donors, and Mr Yip, signed only one donor declaration form, not two. That evidence is corroborated by the putative donors. Jonathan Yee denied making any photocopies of the 10 original forms.

Jonathan Yee gave evidence that he understood that the scheme which Mr Wong asked him to put into action two or three weeks after the 2015 CFOL dinner involved procuring five-to-10 fake donors to sign up to donations in the sum of \$5,000 each. To that end, he gave evidence that he delivered the 10 original forms to Mr Cheah at NSW Labor head office. Jonathan Yee said that he did not know at that time how much money Mr Wong had managed to procure from the true donor or donors, nor did he know then who the true donor was.

Jonathan Yee said that when he received his tax invoices, which indicated he had donated a total of \$10,000 – being \$5,000 each to NSW Labor and Country Labor – he was surprised. He said he was very surprised when he learned, after the fact, that many of the putative donors had been used to record \$10,000 worth of donations.

Three of the Emperor's Garden putative donors (Mr Shi, Mr Lin and Ms Siu) and Mr Yip were asked whether they made photocopies of their signed donor declaration forms. Each of those witnesses denied knowing anything about such photocopies.

Mr Cheah was asked by Counsel Assisting whether he made any photocopies of the 10 original forms. He said he was "pretty sure" that he did not do so. Mr Cheah was asked whether he was sure that there were 20 forms in the bag that Mr Clements handed to him on 7 April 2015 with the \$100k cash, and not 10 original forms that Mr Cheah then photocopied to make 20 forms. He answered, "To the best of my knowledge, to the best of my recollection, I really don't think so". He said that he could not recall doing so or being asked to do so, accepting that it would be a significant matter if those things had happened.

On re-examination the following day, Mr Cheah stated that he had no knowledge of the photocopying of any of the forms. He said:

I'd have no reason to photocopy any forms of those 20, because they came in \$5,000 per form. 20 forms is \$100,000, which is what I counted the money out to be. So I don't know about any photocopies, nor would I have any reason to make any photocopies.

The Commission is satisfied that neither the putative donors nor Jonathan Yee photocopied the 10 original forms prior to Jonathan Yee delivering them to NSW Labor head office. Without more, however, the current state of the evidence is not sufficient to permit the Commission to make any positive findings as to who it was that photocopied the 10 original forms or directed that such photocopies be made.

Mr Cheah's reconciliation of the \$100,000 cash

As noted in the previous chapter, the Commission has considered and rejected Mr Cheah's explanation as to why it took him two days to reconcile the \$100k cash with 20 donor declaration forms. Other aspects of Mr Cheah's evidence regarding his reconciliation of the \$100k cash are also problematic.

An initial difficulty arises from Mr Cheah's evidence that he counted the \$100k cash and checked the donor declaration forms and was satisfied that there were 20 forms, each in relation to a donation of \$5,000, which corresponded to his count of the \$100k cash. This sits in tension with the evidence of finance officer, Ms Zhao, that Mr Cheah gave her 21, and not 20, forms with the \$100k cash on 9 April 2015.

There is evidence that Ms Zhao notified Mr Cheah on 9 April 2015 by email that there was an additional form in the name of Sydney Today. Given that the other donor declaration forms were all in pairs (each donor appearing to give two sums of \$5,000, one each to NSW Labor and Country Labor), Ms Zhao said that she concluded that

the single Sydney Today form must have been an extra one in relation to which no money had been received. Mr Cheah could not recall the additional Sydney Today form, even after he was shown the email from Ms Zhao.

Mr Cheah would surely have had to count the number of donor declaration forms associated with the \$100k cash in order to arrive at a state of satisfaction that there were 20 forms that matched the money. It is not easy to understand how Mr Cheah could have failed to notice the extra form in the name of Sydney Today if he had reconciled the forms against the cash as he claims to have done.

Ultimately, Ms Zhao generated an unpaid invoice for \$5,000 in the NSW Labor MYOB system in connection with the Sydney Today donor declaration form. About three months later, on 2 July 2015, Mr Cheah sent an email asking the NSW Labor financial controller, Ms Wang, to “write off” the Sydney Today unpaid invoice, explaining, “Hi maggie [sic] will have to write this one off I can’t remember but Ernest explained this one to me before”.

A further difficulty concerns Mr Cheah’s evidence in relation to conducting checks of the Electoral Roll. Mr Cheah gave evidence at the start of the public inquiry in relation to the process that he undertook in reconciling donations in connection with the 2015 CFOL dinner. He said that he first counted the money received to make sure it matched the associated donor declaration forms. Asked if he then passed the money and forms on to the finance department, Mr Cheah answered:

So I would try to the best of my ability [to] check that each person on the form is on the electoral roll because that’s part of the rules of being a political donor, that you have to be on the roll. And once I ascertain that that’s, you know, that Mr Smith of whatever Avenue is on the electoral roll, then, yes, then I would pass that money through to Finance.

Mr Cheah confirmed that once he was satisfied that there were donor declaration forms in respect of people who were on the Electoral Roll with money associated with those forms, he would then pass the money and forms on to the finance department.

Mr Cheah gave evidence, specifically in relation to the \$100k cash that, after Mr Clements gave him that money on 7 April 2015, “I did as instructed, counted the money, checked the forms to make sure the donors were on the Electoral Roll or whatever it is to comply with, you know, the electoral legislation”.

During the public inquiry, Mr Cheah agreed that as a matter of procedure it would have been the case that he would have wanted to bank the \$100k cash as quickly

as possible. Mr Cheah was asked why there was a delay of up to two days in banking this \$100k cash, other than the unavailability of finance staff on 7 April 2015 and the closure of the bank that day:

[Counsel Assisting]: Were there any other reasons why there was a delay in banking the money, as you understand it?

[Mr Cheah]: The only other delay would be on my part in terms of checking the forms, having difficulty checking the names off the forms, addresses and so forth.

[Q]: When you say having difficulty checking the names off the forms, what do you mean by that?

[A]: So sometimes people’s names don’t, especially with ethnic events, they don’t correspond. So someone may put a name on the form that doesn’t correspond with the name that they have on the electoral roll, so sometimes it takes a bit of tracking down, or the correct address that they’re enrolled in on the electoral roll.

[Q]: So you’re talking about the specific exercise of checking forms against the electoral roll. Is that right?

[A]: Yes, it takes a bit of time is what I’m saying.

[Q]: And I think you told us yesterday that one of the roles that you perform when you’ve got money and forms is to make sure that the names on the forms are on the electoral roll. Correct?

[A]: Yes.

Mr Cheah went on to confirm that, in terms of donations received at events run by LACs, the task of checking the money against the forms against the Electoral Roll was one that he solely performed. Mr Cheah was then asked specifically about the \$100k cash:

[Counsel Assisting]: With respect to the \$100,000 that we’re talking about, it was you who did the electoral roll checking, and not anyone else, is that right?

[Mr Cheah]: I think so.

[Q]: Well, you don’t have any recollection of anyone else performing that role?

[A]: *I have no recollection of anyone else doing that. Usually, as I said, usually it's my job to do that.*

On re-examination, Mr Cheah was asked by his counsel whether he noticed when reconciling the forms associated with the \$100k cash that those forms were “old forms that hadn't been corrected” (the forms featuring an erroneous reference to cheques payable to the Prospect Campaign Account in the context of an unrelated fundraiser).

Mr Cheah replied:

I didn't pick it up. To be honest, I was mainly focusing on the names and the addresses and making sure that these people were on the electoral roll. It's, like I mentioned before, it's, it sounds very simple, but people spell their names differently as to how they are on the electoral roll. Chinese names, English names, or in other cases, Arabic names, and so forth. Then they don't put the right address. They might put a business address, which is not where they're enrolled at. So it does take a little bit of detective work sometimes. So that's, that was my main concern, checking the forms.

In July 2020, a statement was obtained from Jake Clarke. Mr Clarke is the chief technical officer of Magenta Linas Software, the company that provides software services to NSW Labor, including the provision of Electoral Roll data. Mr Clarke's statement sets out electronic queries made of the NSW Labor software which records staff searches of the Electoral Roll. His statement clearly establishes that Mr Cheah conducted no searches of the Electoral Roll whatsoever in the period from 7 April 2015 to 9 April 2015.

Counsel for Mr Cheah submitted that the Commission should not accept Mr Clarke's statement where it is untested and where Mr Cheah has not had an opportunity to explain it on oath. The Commission rejects that submission. First, Mr Clarke's statement sets out electronic evidence which Mr Cheah could not presumably test in any meaningful way. Secondly, Mr Cheah has been afforded an opportunity to consider Mr Clarke's statement and to respond to it by way of submissions, which he has done.

Counsel for Mr Cheah has noted in submissions that the statement volunteered by Mr Cheah at the start of the public inquiry includes no assertion that Mr Cheah checked the Electoral Roll in relation to the \$100k cash. The Commission accepts that fact. However, the submission of counsel for Mr Cheah continues, “Similarly, in his oral evidence at the start of the public hearings, Mr Cheah did not positively claim to have checked the forms against the electoral roll. His evidence was that someone else may have completed the task of reconciling

the forms”. Mr Cheah's evidence on this issue has been set out in detail above. The Commission rejects this submission.

The Commission finds that checking the Electoral Roll formed no part of the task that Mr Cheah undertook in reconciling the \$100k cash with the donor declaration forms and could not have contributed to the delay between receiving the money on 7 April 2015 and banking it on 9 April 2015.

A strong inference arises that Mr Cheah did not conduct those Electoral Roll checks because he was already satisfied that the natural person Emperor's Garden putative donors were registered to vote on the Electoral Roll. The Commission draws that inference. Such an inference is consistent with Jonathan Yee's evidence that Mr Cheah “would know what would be going on”. There is, however, no evidence before the Commission as to how Mr Cheah acquired that state of satisfaction.

The proposition was put to Mr Cheah that the delay between Mr Huang delivering the \$100k cash on 7 April 2015 and the banking of that money on 9 April 2015 was because Mr Cheah couldn't give the cash to the finance department immediately as he was still waiting for the forms to match the money. Mr Cheah rejected that proposition. The Commission does not accept Mr Cheah's evidence on that issue.

The Commission is satisfied, on the evidence analysed above, that the most likely explanation for the delay between Mr Cheah receiving the \$100k cash from Mr Clements on 7 April 2015, and giving it to the finance department for banking on 9 April 2015, is that Mr Cheah was holding onto the \$100k cash while he waited for the donor declaration forms to be delivered so that he could then pass the money and forms together on to the finance department for the purpose of banking the cash and generating invoices. The Commission finds accordingly.

The Commission's finding that Jonathan Yee physically delivered the 10 original forms to NSW Labor head office is set out earlier in this chapter. In light of the finding above that Mr Cheah was holding the \$100k cash while waiting for the forms to match the money, the Commission is satisfied that Jonathan Yee delivered the 10 original forms to Mr Cheah late on 8 or early on 9 April 2015.

Accordingly, the Commission rejects Mr Cheah's evidence that 20 donor declaration forms accompanied the \$100k cash which he received from Mr Clements on 7 April 2015. The Commission finds that Mr Clements gave Mr Cheah the \$100k cash on 7 April 2015 but no donor declaration forms.

As has been noted, Mr Cheah's evidence is that when Mr Clements gave him the \$100k cash on 7 April 2015,

Mr Clements asked him to count the money, check the forms and, if satisfied with the reconciliation, to give the money and forms to the finance department for banking. Mr Clements has denied giving such instructions. Counsel for Mr Clements submitted that Mr Cheah's evidence on this issue "had the effect of clothing Mr. Cheah's potentially illegal subsequent actions (in processing and arranging the banking of the money) with the authority of the General Secretary".

There is insufficient evidence available to the Commission to make any positive finding as to whether, when Mr Clements gave Mr Cheah the \$100k cash on 7 April 2015, he also issued particular instructions to Mr Cheah regarding the reconciliation and banking of those moneys. The Commission notes, however, that it is inherently unlikely that Mr Clements would give Mr Cheah \$100,000 in cash, in the absence of donor declaration forms, without some explanation as to the delivery of the forms to match the cash.

Banking of the \$100,000 cash on 9 April 2015

At the time that the \$100k cash was received at NSW Labor head office, finance department personnel comprised financial controller Ms Wang and finance officer Ms Zhao. During the public inquiry, Ms Wang gave evidence that it was "exceedingly unusual" to receive \$100,000 in cash and it had not happened before that point in time or since. Ms Zhao gave evidence to similar effect. Ms Murnain and Mr Clements also gave evidence that the receipt of such a large sum of cash was out of the ordinary and they were not aware of it having occurred on any other occasion.

Ms Wang sent an email to Ms Zhao and Ms Murnain at 8:04 am on 9 April 2015 titled, "I am back now and will be working from home today". There is evidence that Ms Wang had been on annual leave over the Easter period from 31 March 2015.

Ms Zhao gave evidence that, on 9 April 2015, Mr Cheah walked into her office and gave her the \$100k cash together with some donor declaration forms for the purpose of her banking the money and entering sales information, based on the forms, into the NSW Labor MYOB accounting system. Ms Zhao said that Mr Cheah gave her instructions to bank half the money into the NSW Labor account and half into the Country Labor account. The division of money between NSW Labor and Country Labor is considered in more detail below.

Email evidence corroborates Ms Zhao's account. At 10:21 am on 9 April 2015, she sent an email to Ms Wang titled "re: money" advising:

Maggie, Kenrick bring in donation \$100k from Chinese Friends of Labor, half in state and half CL, I will deposit the money today. Would you please confirm? ta.

Ms Wang replied at 11:40 am, indicating that if the money was not in cash then Ms Zhao should wait for Ms Wang to come into the office the following day. At 2:43 pm, Ms Zhao confirmed that the \$100,000 was all in cash.

Records of the Commonwealth Bank of Australia (CBA) tendered in evidence at the public inquiry establish that the \$100k cash was banked into the State Campaign Accounts of NSW Labor (\$50,000) and Country Labor (\$50,000) at 3:11 pm on 9 April 2015. CBA records also confirm that the \$100k cash was entirely comprised of \$100 notes.

Ms Zhao gave evidence that she banked the \$100k cash. She said that she banked the money before she entered any information concerning that cash into NSW Labor's MYOB accounting software. Ms Zhao explained that she did so as it was very important to bank the cash as soon as possible.

When Ms Zhao returned from the bank to the office, she recorded in MYOB a series of sales corresponding to the declaration forms. Having done that, Ms Zhao sent an email at 4:54 pm to Mr Cheah, copying in Ms Wang, confirming that she had deposited \$50,000 into each of the NSW Labor and Country Labor State Campaign Accounts "as advised" and that "twenty invoices/receipts @\$5000" had been issued according to the forms. It was in this email that Ms Zhao sought Mr Cheah's advice in relation to the additional donor declaration form in the name of Sydney Today that accompanied the \$100k cash (considered earlier in this chapter).

Ms Zhao gave evidence that normal accounting practice would have required her, once she had raised the 20 closed invoices (that is, receipts) in connection with the \$100k cash in the MYOB system, to send copies of those invoices out to the donors. On this occasion, however, Ms Zhao said she did not do that because Mr Cheah instructed her, "Don't send the invoices out yet". Ms Zhao said that she created the invoices in the system and put them aside as a temporary measure. She had no recollection of actually sending those 20 invoices out to the donors.

Jonathan Yee gave evidence that the first time he received invoices in relation to the putative donors' donations may have been in 2016 when he was preparing documents on behalf of the Emperor's Garden putative donors and Mr Yip to send to the NSWEC. There is email evidence that Jonathan Yee asked Mr Wong in September 2016 to provide him with donation invoices for Ms Tam, Ms

Siu, Mr Lin and Mr Shi; and that he asked Mr Cheah in March 2017 to provide donation invoices for himself, May Ho Yee, Valentine Yee, Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd.

The Emperor's Garden putative donors and Mr Yip have given various accounts as to whether or not they received invoices from NSW Labor and/or Country Labor. Mr Lin and Mr Mo said that they never received such invoices. May Ho Yee gave evidence that she did not receive any invoice until after the NSWEC issued her a notice to produce one. Mr Yip recalled that, a few weeks after signing his donor declaration form, Jonathan Yee gave him an invoice which he discarded. Mr Yip says he later asked Jonathan Yee to get another copy of the invoice when the NSWEC issued him a notice in February 2017. Mr Shi said he received invoices from NSW Labor and Country Labor at some later stage but could not recall if he had the invoices when the NSWEC issued him a notice to produce them. Ms Siu and Ms Tam gave evidence that they each received two invoices in the post in or around April 2015.

It is possible, based on the evidence set out above, that at least some of the donation invoices may have been sent to Jonathan Yee rather than directly to the putative donors. There is evidence in connection with the CFOL fundraising dinner the following year in 2016 that a similar practice occurred. On that occasion, Mr Cheah gave a direction to Ms Zhao that donation invoices should be sent to Mr Wong rather than directly to the individual donors. The Commission has concluded that the state of the evidence on this issue is not of sufficient cogency to make any positive findings as to whether, or when, donation invoices in connection with the \$100k cash were sent to the putative donors.

Ms Wang gave evidence to the NSWEC in August 2017 and the Commission in July 2019 to the effect that she was on leave at the time that the \$100k cash was received at NSW Labor head office and banked, and that she was not aware of the fact that the \$100k cash had been received by NSW Labor until after it had been deposited in the bank. Ms Wang's evidence is inconsistent with the emails set out above which establish that she had returned from leave, was working from home on 9 April 2015 and directed Ms Zhao to bank the \$100k cash on 9 April 2015.

During the public inquiry, Ms Wang was shown the above email correspondence. She accepted the accuracy of the email records and said that she had made an honest mistake when answering questions on this issue. Ms Wang denied that she was attempting to distance herself from conduct that properly raised considerable suspicion in connection with the \$100k cash the subject of this investigation.

Submissions were received on Ms Wang's behalf concerning this issue which led to additional evidence being obtained from the records of NSW Labor. The Commission is satisfied that Ms Wang's leave records confirm that she was, in fact, on leave on, and was paid leave loading for, the date of 9 April 2015 even though the email records show that she was working from home that day. The Commission accepts Ms Wang's submission that she referred to her leave records in an attempt to reconstruct her memory of the relevant events in 2015 when she was required to answer questions from the NSWEC and the Commission on this issue.

Ms Wang was asked during the public inquiry if she, as financial controller, was ever given any explanation as to the delay between the hosting of the 2015 CFOL dinner on 12 March 2015, two weeks before the state election, and the banking of the \$100k cash said to be associated with that event on 9 April 2015, two weeks after the state election. Ms Wang gave evidence that she was not given any particular explanation. She stated that any substantial delay between an event and the banking of money would be a matter of some concern to her as financial controller, particularly in circumstances where the money was needed to run the election. Issues relating to this delay are considered further in chapter 12.

Ms Murnain gave evidence that it was her expectation that money received in connection with fundraising events should be banked as quickly as possible. She conceded, however, that she was not aware of any policies in place in 2015 regarding that expectation. Ms Murnain said that she could not recall at what stage she became aware that \$100,000 in cash had been received at NSW Labor head office but accepted that she probably found out during the week of 6 April 2015. She could not recall if she found out before or after the money was banked.

Mr Clements gave evidence that he first found out about the banking of the \$100k cash into the accounts of NSW Labor and Country Labor when it was put to him in a compulsory examination before the Commission on 25 May 2018. The Commission regards that evidence as implausible. As the general secretary of NSW Labor, it was Mr Clements' responsibility to ensure the financial standing and welfare of the party. He has accepted that he was kept abreast of the party's income and expenditure at meetings, and in reports, of the finance committee. In circumstances where Ms Murnain became aware of the receipt of the \$100k cash during the week that it was banked, and where the Commission has found that Mr Clements received the \$100k cash from Mr Huang on 7 April 2015, the Commission rejects Mr Clements' evidence on this issue.

Why was half of the \$100,000 cash banked into the Country Labor account?

The 2015 CFOL dinner was an event billed as a “NSW Labor Chinese Launch” presented by CFOL. So much is clear on the face of the pre-filled invitation/reservation form (see figure 1 on page 37) completed by each of the putative donors. The donor declaration statement on the form also makes reference to “ALP NSW Branch”. There is no reference to Country Labor on the form. Notwithstanding that the form featured an erroneous reference to cheques being payable to “Prospect Campaign Account”, there can be little doubt that a donation made by way of that form ought to have made its way into the bank account of NSW Labor in the absence of some contrary indication of the donor’s intention.

Ms Wang was asked how finance personnel processing donations in the NSW Labor MYOB system would know to which account – NSW Labor or Country Labor – a particular donation should be allocated. She replied that there would have to be some indication on the face of the donor declaration form as to the intended recipient of the funds or, alternatively, some instructions from the staff member responsible for the fundraising event. Ms Wang said that, in the case of CFOL events, such instructions would come from Mr Cheah.

When shown the donor declaration form and invoice associated with the purported \$5,000 donation to Country Labor from Ms Siu, Ms Wang agreed that there was no reference to Country Labor on the form. She said that the banking of that money into the Country Labor campaign account would have been made on instructions from Mr Cheah.

As noted above, Ms Zhao gave evidence that when Mr Cheah gave her the \$100k cash on 9 April 2015, he instructed her to bank half the money into the NSW Labor campaign account and half into the Country Labor campaign account. She said that Mr Cheah gave her two piles of forms, one for NSW Labor and one for Country Labor. On Ms Zhao’s account, Mr Cheah did not specify which pile was for NSW Labor or Country Labor, but she understood that the piles were identical and so she picked one and processed it as donations for NSW Labor and the other for Country Labor.

While Ms Zhao said she did not notice that one pile of forms appeared to be black-and-white photocopies of the originals in the other pile, she did consider it suspicious at the time that the two piles appeared to be identical and there was no reference to Country Labor on the forms. She gave evidence that she processed half the money into the Country Labor account only on the clear instructions of Mr Cheah. Ms Zhao did not raise her suspicions with Ms Wang or any other senior NSW Labor officer.

Ms Zhao’s evidence that she acted on Mr Cheah’s instructions is corroborated by the email she sent to Mr Cheah on 9 April 2015 confirming that she had done as instructed and banked the \$100k cash, half each into the accounts of NSW Labor and Country Labor.

During the public inquiry, Mr Cheah admitted that he gave the direction to finance personnel to bank half the \$100k cash into the NSW Labor account and half into the Country Labor account. He said he did so without contacting any of the donors to check if they wanted to donate \$5,000 to each of NSW Labor and Country Labor. Mr Cheah said that the reason he gave that direction to finance personnel was that he “would have assumed” or inferred that if there were two forms and \$10,000 from each donor, then one of the forms and half of the money must have been intended for each of NSW Labor and Country Labor because otherwise the donation of \$10,000 would exceed the statutory cap of \$5,000.

Counsel Assisting submitted that Mr Cheah’s explanation should not be accepted, noting that there was nothing on the face of the reservation forms that Mr Cheah gave to Ms Zhao, or in the surrounding circumstances, that suggested that the 2015 CFOL dinner had anything to do with Country Labor or that the putative donors had intended to make a donation to Country Labor in connection with that dinner. The Commission accepts that there were no indications of any such intention.

Counsel for Mr Cheah submitted that although Mr Cheah might have been wrong in assuming an intention to donate money to Country Labor, that assumption was made in circumstances where the practice of splitting an over-the-cap donation into two smaller donations was not actively discouraged within NSW Labor head office. The Commission accepts that Mr Cheah gave evidence to that effect.

Ms Murnain and Julie Sibraa, who was NSW Labor’s governance director from September 2016 to May 2018, both gave evidence regarding the practice of splitting over-the-cap donations between NSW Labor and Country Labor. Both accepted that the practice occurred. As noted in chapter 2, there was nothing unlawful about an ALP supporter contributing up to the cap of \$5,000 to NSW Labor and another \$5,000 to Country Labor. Both NSW Labor and Country Labor were separately registered political parties.

Where the evidence of Ms Murnain and Ms Sibraa diverges significantly from that of Mr Cheah is that the former have stated that, if a donor wanted to donate more than the statutory cap in a particular period, head office could split that donation so that some of the money was directed to Country Labor but *only if* checks had been made with the donor to make sure that the donor agreed for that to occur.

Ms Sibraa said that if a donor had written a cheque for \$10,000, “there probably would have been a conversation with that person about the fact that it was not possible to donate that amount of money and would you like to do X”. Mr Cheah did not have any such conversation with the putative donors in connection with the \$100k cash.

Ms Murnain conceded that procedures at NSW Labor head office were sufficiently lax in 2015 as might permit a donation to be split up between NSW Labor and Country Labor even if the donor had not been consulted as to that matter, although she was not aware of that actually occurring.

The Commission is not satisfied that Mr Cheah’s conduct in directing that half the \$100k cash be banked into the Country Labor campaign account is adequately explained by reference to any broader practice within NSW Labor head office of splitting over-the-cap donations between NSW Labor and Country Labor. As at April 2015, Mr Cheah was sufficiently experienced in processing donations to have appreciated the importance and function of statutory caps on donations to have understood, when processing them, the need for there to have been a clear indication of the donor’s intention to donate to Country Labor.

A scheme to circumvent the EFED Act?

Counsel Assisting submitted that the Commission would find that Mr Cheah engaged in a course of conduct for the purpose of circumventing the prohibition in s 96(5) of the EFED Act against funds being paid into the state campaign account of a party unless they fall within one of the classes of funds identified in that subsection (those classes not including political donations made to another political party).

This submission is based on evidence which firmly establishes that, on 9 April 2015, Mr Cheah: (a) gave Ms Zhao \$100,000 in cash constituted by \$100 notes as well as two reservation forms for \$5,000 for each of 10 putative donors; and (b) advised Ms Zhao that \$50,000 of the \$100,000 should be banked in the NSW Labor campaign account with the remaining \$50,000 to be banked in the Country Labor campaign account.

Counsel Assisting submitted that Mr Cheah’s advice to Ms Zhao could only properly be understood as advice that was given for the purpose of causing for \$50,000 to be banked in Country Labor’s campaign account in circumstances where Mr Cheah knew that such cash did not constitute a political donation to Country Labor. It follows, on this submission, that that purpose was apt to circumvent s 96(5) of the EFED Act, which relevantly provides that (emphasis added):

The following may be paid into the State campaign account of a party:

(a) political donations made to the party after 1 January 2011 ...

*(b) payments made to **the party** under Part 5 [public funding of state election campaigns] at any time;*

(c) money borrowed by the party at any time,

(d) a bequest to the party,

(e) money belonging to the party on 1 January 2011

...

(f) any other money of a kind that is prescribed by the regulations for the purposes of this subsection [at all material times, no regulations had been made for the purposes of s 96(5)].

Counsel Assisting submitted that, notwithstanding the permissive language (“may be”) of s 96(5) of the EFED Act, that provision is to be understood in context as exhaustively specifying the classes of funds that may be paid into the state campaign account of a party. That approach avoids surplusage. If s 96(5) of the EFED Act were not read as exhaustively stating the classes of funds that may be paid into a state campaign account, the subsection would have no operation given that there is no general law prohibition on making payments into the state campaign account of a party.

The approach suggested by Counsel Assisting is also consistent with the purpose of s 96 of the EFED Act. Section 96 is directed at controlling the source of funds that political parties are permitted to draw upon for the purpose of state election campaigns. It does so by prohibiting political parties from spending any money on state election campaigns unless the funds spent have come from the state campaign account (see s 96(3) of the EFED Act).

Having controlled the account from which campaign funds may be drawn, s 96(5) then limits the source of the money that may be deposited into that account. Subsections (a) to (e) set out five particular sources of money that may be deposited into state campaign accounts. Subsection (f) provides also that “any other money of a kind that is prescribed by the regulations for the purposes of this subsection” may also be paid into the state campaign account. This suggests that, in order to qualify as a source of funds that may be deposited into the state campaign account, and then spent on state election campaigns, the source of the funds must be expressly identified, either in the EFED Act or the regulations.

The effect of s 96(6) of the EFED Act, which expressly prohibits the making of particular payments into the state

campaign account of a party, would then operate as a statutory constraint limiting the sources of other money that might be prescribed by the regulations under s 96(5)(f).

If the foregoing interpretation is correct, s 96(5) of the EFED Act must be read as a prohibition. That is, money from a source of funds that is not identified in s 96(5), or in the regulations made pursuant to s 96(5)(f), is prohibited from being deposited into the state campaign account and cannot be used by parties for the purpose of state election campaigns. It would follow that s 96(5) of the EFED Act is to be read as prohibiting payment of a political donation made to one party into the state campaign account of another.

No submission against such an interpretation was made on behalf of Mr Cheah. Counsel for Mr Cheah instead submitted in reply that the term “party” in s 96(5) of the EFED Act does not embrace Country Labor, notwithstanding that Country Labor is a registered political party. This submission was based on the definition of “party” in s 4 of the EFED Act, which reads:

...party means a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or a local council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part.

The submission for Mr Cheah was that Country Labor had the status of a “party unit” within the constituent rules of NSW Labor and was not itself a separate legal entity. On that basis the submission was made that Country Labor was not a body or organisation within the meaning of the statutory definition. Mr Cheah noted that s 4 of the EFED Act sets out a separate definition of “registered party” and uses that term where it intends that meaning to apply.

The term “registered party” is in fact defined in s 4 of the EFED Act as a subset of the wider term “party” (underlined emphasis added):

...registered party means a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912, being a party which stated in its application for registration that it wished to be registered for the purposes of this Act.

There is no dispute that Country Labor was, in 2015, a registered party for the purposes of the EFED Act. It would be perverse to construe the wider definition of “party” in such a way as to exclude an entity that falls within the narrower definition of “registered party”. To adopt such a construction would also be inconsistent with the purpose of s 96 of the EFED Act.

Mr Cheah’s submission contended that, if the reference in the definition of “party” to “a body or organisation of which it forms a part” was intended to capture things such as Country Labor, then “a political party could create any number of separate ‘parties’ within its rules, all wholly controlled by the parent organisation, yet all capable of taking the benefit of additional caps on political donations and expenditures under Divisions 2A and 2B of Part 6 of the Act”.

That submission, however, ignored s 57 of the EFED Act which restricts eligibility for public funding for electoral communication expenditure to parties that are registered parties.

The Commission rejects Mr Cheah’s submission on this issue and is satisfied that Country Labor was a party within the definition of s 4 and the ambit of s 96(5) of the EFED Act. Such a construction is consistent with the purpose of s 96 of the EFED Act as identified by Counsel Assisting above.

Chapter 14 of this report sets out the Commission’s analysis on the question of what amounts to a scheme to circumvent prohibitions or requirements of the EFED Act for the purposes of s 96HB of that Act. For present purposes, it is sufficient to note that s 96HB is properly understood as proscribing two classes of conduct (whether or not that conduct would otherwise constitute an offence):

- first, entering into an agreement, arrangement or understanding for the purpose of getting around or avoiding a prohibition of Part 6 of the EFED Act
- secondly, carrying out a plan or engaging in a course of conduct for such a purpose.

There is no evidence before the Commission that Mr Cheah entered into any agreement, arrangement or understanding for the purpose of banking half of the \$100k cash into the Country Labor Campaign Account in contravention of s 96(5) of the EFED Act.

The key question is whether Mr Cheah’s conduct on 9 April 2015 involved him engaging in a course of conduct directed towards the relevant contravention of the EFED Act. Did he engage in a pattern of conduct that evidences a continuity of purpose of a kind proscribed by s 96HB of the EFED Act?

The relevant conduct of Mr Cheah comprises two actions on 9 April 2015: first, giving the \$100k cash to Ms Zhao; and secondly, instructing Ms Zhao to bank half of that money into the Country Labor campaign account. Those two steps occurred in the context of a single interaction with Ms Zhao. Neither one of those steps,

without the other, could by itself have reasonably resulted in the banking of a portion of the \$100k cash into the Country Labor Campaign Account. The Commission is satisfied that those two steps were taken by Mr Cheah in immediate proximity and were so intertwined that it could not be said they amounted to separate acts in a course of conduct for the purpose of a scheme offence under s 96HB of the EFED Act.

evidence can be used against him in criminal proceedings for an offence of giving false or misleading evidence in contravention of s 87 of the ICAC Act. Mr Clarke's evidence that Mr Cheah conducted no searches of the Electoral Roll in the period from 7 April 2015 to 9 April 2015 would also be admissible against Mr Cheah.

Section 74A(2) statement

The Commission is satisfied that Mr Cheah is an "affected person" with respect to the matters dealt with in this chapter.

As noted above, the evidence does not establish that Mr Cheah engaged in a course of conduct for the purpose of circumventing the prohibition in s 96(5) of the EFED Act against funds being paid into the state campaign account of a party unless they fall within one of the classes of funds identified in that subsection. The Commission is not of the opinion that Mr Cheah should be referred to the DPP for advice in relation to an offence against s 96HB of the EFED Act in connection with circumvention of the prohibition in s 96(5) of the Act.

Statements in relation to whether the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of certain persons for scheme offences against s 96HB of the EFED Act, for the purpose of circumventing the requirement of the EFED Act that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC, can be found in chapter 14.

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Cheah for an offence of giving false or misleading evidence in contravention of s 87 of the ICAC Act in relation to evidence that he gave:

- at the public inquiry on 26 August 2019 and 27 August 2019, to the effect that he conducted checks of the Electoral Roll in connection with the putative donors between the time that he received the \$100k cash on 7 April 2015 and delivered it to the finance department on 9 April 2015
- at the compulsory examination on 10 February 2020, the transcript of which has been tendered in evidence in the public inquiry, to similar effect.

Mr Cheah gave evidence on objection pursuant to a declaration under s 38 of the ICAC Act on each occasion. This means that Mr Cheah's evidence cannot be used against him in criminal proceedings other than proceedings for an offence under the ICAC Act. Mr Cheah's

Chapter 10: “The switcheroo” – substitution of donors and manipulation of records

The previous chapter surveyed evidence that the donor declaration forms of two of the putative donors, Mr Liao and Mr Tong, were not among those initially reconciled in connection with the \$100k cash banked on 9 April 2015. Mr Liao and Mr Tong were not among the donors recorded in NSW Labor’s accounts in connection with those funds at the time that they were banked.

Two weeks later, however, the forms of Mr Liao and Mr Tong were present in the files at NSW Labor head office and each of those persons was recorded in the MYOB accounting system as the donor of a sum of \$5,000 to Country Labor. This chapter examines the circumstances in which that came to pass.

As noted in chapter 4, on 30 March 2015, about three weeks after the 2015 CFOL dinner, Mr Wong prepared, scanned and emailed the pre-filled invitation/reservation form to Mr Liao with a request that he “please fill two of these in”. The following day, 31 March 2015, Mr Liao sent a reply email to Mr Wong attaching pre-filled invitation/reservation forms filled out in the names of Mr Liao and Mr Tong. Mr Liao’s form was backdated to 20 February 2015. Mr Tong’s form was backdated to 23 February 2015.

More than two weeks later, on 17 April 2015, Mr Wong forwarded Mr Liao’s email, attaching the signed and backdated forms of Mr Liao and Mr Tong, to Mr Cheah. Those backdated forms were then used to alter the records of NSW Labor, so as to substitute Mr Liao and Mr Tong as the apparent donors of moneys previously associated with other putative donors. The evidence concerning those events, referred to during the public inquiry as “the switcheroo”, is set out below.

In 2015, Mr Liao and Mr Tong were colleagues at Wu International, a company involved in real estate development. Mr Wood was the director of Wu International. There is evidence that Mr Liao and Mr Wood were associates of Mr Wong. The nature of those relationships is considered later in this report.

Mr Wood gave evidence that both he and his father, Bobby Wu, had been members of the Australian Council for the Promotion of the Peaceful Reunification of China (ACPPRC). According to the ACPPRC website, Mr Huang was the president of ACPPRC between December 2014 and November 2017. Mr Wood’s evidence is that he was a youth member of ACPPRC in 2017, and his father had been a member of that organisation under its former president, William Chiu.

Mr Wood also gave evidence that he was a committee member and vice-chairman of the Australia China Economics, Trade and Culture Association (ACETCA). He said that he was still the vice-chairman of ACETCA at the time of the public inquiry. Mr Wong’s invitation to ACETCA to purchase tables at the 2015 CFOL dinner and to make payment directly to Mr Wong’s Friends of Chinese Community (FCC) account is considered in chapter 6. Events relating to the death of Mr Liao on the evening of the ACETCA annual gala dinner in 2018 are examined in chapter 21.

There is no evidence that either Mr Liao or Mr Tong were known to Jonathan Yee or had any connection with the other putative donors, all of whom were linked to the Yee family’s Emperor’s Garden restaurant.

Mr Tong gave evidence that he did not attend the 2015 CFOL dinner and did not donate \$5,000 to either NSW Labor or Country Labor in connection with that event. His evidence is set out in chapters 11 and 22.

Mr Liao participated in a recorded interview with NSWEC investigators on 28 March 2017 in which he gave a version of events relating to his involvement in this matter. The Commission found that Mr Liao lied to the NSWEC when he said that he delivered an envelope, containing \$5,000 cash and his signed donor declaration form, to staff at the 2015 CFOL dinner on 12 March 2015 (chapter 4). It is clear that Mr Liao’s signed donor declaration form did not exist at the time of the dinner.

The Commission was unable to obtain oral evidence from Mr Liao, or put to him much of the evidence surveyed in this chapter, in order to test the version that he gave to the NSWEC. Sadly, Mr Liao died on the evening before he was due to participate in a compulsory examination with the Commission in June 2018. It appears that he took his own life. The circumstances surrounding those events are set out in chapter 21.

NSW Labor records

In December 2018, the Commission obtained records from NSW Labor head office, including a lever arch folder labelled "TAX INVOICE from 40001 to 41000". Among the documents inside that folder were tax invoices and donor declaration forms signed by the putative donors in connection with the \$100k cash. In relation to each of two separate donations of \$5,000 to Country Labor, the folder contained copies of invoices issued to, and donor declarations forms signed by, two different persons.

The black-and-white photocopy of the Harbour City Group Pty Ltd donor declaration form bears a handwritten notation that reads "40920". That notation corresponds to the invoice number on a Country Labor invoice issued to Harbour City Group Pty Ltd for a \$5,000 donation in connection with the 2015 CFOL dinner. Oddly, the invoice number 40920 also appears on a second Country Labor invoice, being one issued to Mr Liao for a \$5,000 donation in connection with the same event. The donor declaration form of Mr Liao bears a handwritten notation that reads, "replace 40920 Harbour City CL 9/4".

The black-and-white photocopy of Valentine Yee's donor declaration form bears a handwritten notation reading "40924", which corresponds to the invoice number on a Country Labor invoice issued to him for a \$5,000 donation in connection with the 2015 CFOL dinner. The hardcopy of that invoice bears a strikethrough

suggesting it may have been cancelled. The invoice number 40924 also appears on a second Country Labor invoice, being one issued to Mr Tong for a \$5,000 donation in connection with the same event. The donor declaration form of Mr Tong bears a handwritten notation that reads, "replace 40924 V Yee CL 9/4".

On being shown the records relating to invoice number 40924, Ms Wang agreed that they appeared to show an intention that Valentine Yee's invoice was to be replaced by Mr Tong's invoice. Ms Wang could offer no valid reason to change an invoice from Valentine Yee to Mr Tong in circumstances where a donor declaration form had been received from each of those persons. She agreed that to replace Valentine Yee with Mr Tong, without creating a credit note to cancel the payment in respect of the former, was problematic from an accounting perspective, raising the possibility that each of those persons might make disclosures or claim tax deductions in relation to the same donation.

Ms Wang accepted that re-issuing the substitute invoice 40924 to Mr Tong was apt to conceal on the record what had actually occurred; namely, that the Valentine Yee invoice had been expunged and replaced in total with an invoice in a totally different name. Ms Wang also agreed that having two invoices in the same amount and with the same invoice number, but issued to two different people, suggested that some form of defrauding or cheating of the system may have occurred.

Ms Wang gave evidence that the finance department would only have replaced Valentine Yee with Mr Tong as the donor of the \$5,000 to Country Labor in connection with invoice 40924 if Mr Cheah had given instructions that the records of the party should not show a Valentine Yee payment but should instead show a payment from Mr Tong. However, Ms Wang could not personally recall receiving any such instructions from Mr Cheah. The evidence of Mr Cheah and Ms Zhao on this issue is considered later in this chapter.

Job activity reports relating to the 2015 CFOL dinner from NSW Labor’s MYOB accounting system show Mr Liao and Mr Tong, rather than Harbour City Group Pty Ltd or Valentine Yee, as the donors of \$5,000 sums to Country Labor in connection with invoices 40920 and 40924. The NSW Labor MYOB audit trail shows that, on 22 April 2015, a user who was logged in as “templ” deleted transactions 40920 and 40924. The MYOB cash receipts journal shows that on the same day, 22 April 2015, user “templ” issued new invoices 40920 and 40924, both dated 9 April 2015, to Mr Liao and Mr Tong respectively. This occurred 13 days after the banking of the \$100k cash.

When shown the MYOB records, Ms Wang gave evidence that she did not know about the deletion of transactions 40920 and 40924 but she accepted that such deletions could only be done deliberately. She said that she, Ms Zhao, and possibly casual employees, had access to the “templ” login. She accepted that whomever deleted transactions 40920 and 40924 was subject to her ultimate supervision.

Ms Wang agreed that the result of the changes to the MYOB system, in respect of invoice 40924, was that the accounting record showed that invoice 40924 had been issued to Mr Tong. A person relying on those records would have no idea that the same invoice had also been issued to Valentine Yee.

Mr Cheah’s meeting with Mr Wong on 17 April 2015

There is evidence that Mr Wong created an appointment in his parliamentary calendar for a meeting with Mr Cheah at 2–2.30 pm on 17 April 2015. That calendar entry is titled “Coffee with Kenrick” and indicates that the meeting was to be held at Parliament House.

At 2.26 pm on 17 April 2015, the receptionist at NSW Labor head office sent an email to Ms Zhao titled, “Please call Kenrick urgently – don’t send out the receipts from this morning”. There was no content in the body of that email. Mr Cheah gave evidence that he initiated that email by way of a call to NSW Labor head office. He said he understood that the receipts in relation to the \$100k cash had not been issued at that point. That is consistent with Ms Zhao’s evidence, noted in the previous chapter, that Mr Cheah instructed her on 9 April 2015 to hold off sending out receipts in connection with the \$100k cash.

Also at 2.26 pm on 17 April 2015, Mr Wong forwarded to Mr Cheah the email that he had received from Mr Liao on 31 March 2015 attaching the backdated donor declaration forms signed by Mr Liao and Mr Tong. It is clear on the face of that email that the forms of Mr Liao and Mr Tong

were filled in at Mr Wong’s request on 30 March 2015 and must have been backdated.

Mr Cheah initially gave evidence that he could not recall Mr Wong contacting him some time after the banking of the \$100k cash and asking him to replace two of the donor declaration forms previously reconciled with the \$100k cash with two new forms. When shown Mr Wong’s email at 2.26 pm on 17 April 2015, Mr Cheah said that was the first time that he received the donor declaration forms of Mr Liao and Mr Tong. However, he had no recollection of Mr Wong telling him that there was any problem with the forms and that a switch was required.

After a weekend adjournment of the public inquiry, Mr Cheah said that he had reviewed telephone records and diary entries that had refreshed his memory. He gave evidence that, on 17 March 2015, he had a conversation with Mr Wong who told him that a mistake had been made that needed to be fixed and that two donor declaration forms would be provided to Mr Cheah for that purpose. Mr Cheah said that Mr Wong did not explain what the error was that needed to be fixed, but Mr Wong made it clear to him that the two new forms would replace two of the original forms that had previously been provided. He said Mr Wong specifically identified the forms that needed to be replaced. On Mr Cheah’s account, Mr Wong requested that the forms be substituted before receipts were issued to the donors.

Mr Cheah could not recall whether the conversation with Mr Wong on 17 April 2015 took place while they were meeting for coffee at Parliament House, but accepted that it was possible. He said his telephone records showed that he made a telephone call to NSW Labor head office that day, which initiated the email at 2.26 pm from NSW Labor reception to Ms Zhao, telling her not send out the invoices. Mr Cheah said his telephone records showed that he was in the vicinity of the Botanic Gardens, near Parliament House, when he made that call. He said it was possible that he made that telephone call after meeting with Mr Wong.

Mr Wong was shown the parliamentary calendar entry for 17 April 2015 and agreed that he arranged to meet Mr Cheah that day. He said he could not recall why he made those arrangements or what they discussed. Mr Wong accepted that he emailed the forms of Mr Liao and Mr Tong to Mr Cheah on 17 April 2015. He also accepted that he told Mr Cheah on that day that the forms of Mr Liao and Mr Tong were forms associated with the 2015 CFOL dinner.

However, Mr Wong rejected Mr Cheah’s evidence that he told Mr Cheah to replace the forms of Valentine Yee and Harbour City Group Pty Ltd with the forms of Mr Liao and Mr Tong due to some kind of error. Mr Wong insisted

that he described to Mr Cheah the forms of Mr Liao and Mr Tong as being forms that needed to be submitted for contributions actually made to the dinner as opposed to being replacement forms associated with some kind of error. There are a number of difficulties with Mr Wong's evidence on this issue, including:

- the evidence clearly establishes that, prior to Mr Wong sending the donor declaration forms of Mr Liao and Mr Tong to Mr Cheah on 17 April 2015, 20 invoices had been issued in the NSW Labor MYOB system relating to 20 donations of \$5,000 (two each from 10 putative donors) in connection with the \$100k cash. At that point in time, the party's accounts appeared to be balanced
- Mr Wong procured the donor declaration forms of Mr Liao and Mr Tong from Mr Liao on or around 30 March 2015
- Mr Wong forwarded those forms to Mr Cheah on 17 April 2015, either during or immediately after meeting Mr Cheah for coffee at Parliament House. Mr Cheah was not given any money on 17 April 2015 in connection with those donor declaration forms
- as at 17 April 2015, in order to record Mr Tong and Mr Liao as the donors of sums of \$5,000 in connection with the 2015 CFOL dinner, it would have been necessary to alter the apparently balanced state of NSW Labor's accounts relating to the \$100k cash banked on 9 April 2015
- in these circumstances, there must have been at least some discussion between Mr Wong and Mr Cheah between 17 and 22 April 2015 as to the inevitable discrepancy created by the provision of the two new forms; namely, that NSW Labor head office was then in possession of 22 donor declaration forms associated with only 20 donations of \$5,000
- Mr Cheah gave evidence that Mr Wong specifically identified to Mr Cheah the particular forms that needed to be replaced with the new forms, being information which Mr Cheah needed to pass on to the finance department in order to carry out Mr Wong's instructions
- Ms Zhao corroborated Mr Cheah's evidence insofar as she said that Mr Cheah instructed her specifically to replace the donor declaration forms of Valentine Yee and Harbour City Group with the forms of Mr Liao and Mr Tong. Ms Zhao's evidence is set out later in this chapter.

On balance, the Commission is satisfied that Mr Wong did instruct Mr Cheah on 17 April 2015 to replace the donor declaration forms of Valentine Yee and Harbour City Group Pty Ltd with the forms of Mr Liao and Mr Tong.

Mr Cheah's instructions to Ms Zhao

During the public inquiry, Ms Zhao admitted that she was the person who deleted transactions 40920 and 40924, associated with Country Labor donations from Harbour City Group Pty Ltd and Valentine Yee, from the MYOB system on 22 April 2015. She also admitted that she was responsible for issuing the two new invoices in the MYOB system with the same invoice numbers, associated with Country Labor donations from Mr Liao and Mr Tong. Ms Zhao said that she did those things on Mr Cheah's instructions.

Mr Cheah admitted that, in the week after receiving Mr Wong's email forwarding the donor declaration forms of Mr Liao and Mr Tong, he gave specific instructions to Ms Zhao to use those forms to replace the forms of Harbour City Group Pty Ltd and Valentine Yee. Mr Cheah said he could not recall whether he told Ms Zhao whether the NSW Labor or Country Labor forms associated with Harbour City Group Pty Ltd and Valentine Yee should be replaced by the forms of Mr Liao and Mr Tong. Mr Cheah agreed that it was "very possible" that he assumed that the new forms were to replace the Country Labor forms of Harbour City Group Pty Ltd and Valentine Yee and that he may have given instructions to Ms Zhao on that basis.

At 11.48 am on 21 April 2015, the day before the MYOB records relating to invoices 40920 and 40924 were altered, Ms Zhao sent an email to Mr Cheah titled, "i have some question to ask you, could you please come to my office when you get a minute? Thanks". When shown that email, Mr Cheah agreed that it was logical that he may have given Ms Zhao instructions regarding the forms of Mr Liao and Mr Tong on 21 April 2015, in light of the fact that the records were switched the following day.

Mr Cheah was asked whether Harbour City Group Pty Ltd or Valentine Yee were given a refund in relation to the two transactions of \$5,000 to Country Labor that were deleted from the accounting records on 22 April 2015. He answered, "Not to my knowledge".

Mr Cheah agreed that, when the \$100k cash was banked on 9 April 2015, he understood Harbour City Group Pty Ltd and Valentine Yee to have each donated \$10,000. He said it did not occur to him when he passed on Mr Wong's instructions to the finance department on 21 April 2015 in respect of the switcheroo that there was a need to

refund \$5,000 to each of Harbour City Group Pty Ltd and Valentine Yee and to get \$5,000 from each of Mr Liao and Mr Tong. Mr Cheah said that he assumed that the finance department would take care of that, but he did not convey any such instructions. The financial records do not indicate that any refunds were made to Harbour City Group Pty Ltd or Valentine Yee.

Motivation for the switcheroo

The question arises as to why Mr Wong instructed Mr Cheah on 17 April 2015 to replace the donor declaration forms of Valentine Yee and Harbour City Group Pty Ltd with the forms of Mr Liao and Mr Tong.

Mr Cheah’s account is that Mr Wong told him that the switch was required in order to correct some unspecified mistake. There is no corroboration of that account. Mr Wong rejects Mr Cheah’s evidence on that issue. The fact that Mr Cheah says he was not told by Mr Wong what the mistake was, nor did he enquire as to why he was being asked to switch the identity of donors, weighs against acceptance of Mr Cheah’s explanation.

Counsel Assisting submitted that it is not believable that Mr Cheah genuinely thought that it was necessary to replace one of Valentine Yee and one of Harbour City Group Pty Ltd’s disclosure forms so as to correct a “mistake”. Counsel Assisting contends that it is not plausible that any “mistake” could have been made that, to be fixed, would require the financial records of the party to be modified to record Mr Liao and Mr Tong as the donors of money previously recorded as having been donated by Valentine Yee and Harbour City Group Pty Ltd.

That is particularly so in circumstances where there was no plausible reason for Mr Cheah to have believed that Mr Liao and Mr Tong had in fact donated any money in connection with the 2015 CFOL dinner and where no refunds were given to Valentine Yee and Harbour City Group Pty Ltd. The Commission finds that it is implausible that, on 17 April 2015, Mr Wong’s assertion of a “mistake” led Mr Cheah to believe that 18 of the 20 donor declaration forms that Mr Cheah had on 9 April 2015 were legitimate but that two of them were not.

Submissions were received on behalf of Mr Cheah that:

Mr Wong carried out a ruse in order to deceive Mr Cheah, by telling him that there was a “mistake”. That is, all of the evidence points to the fact that Mr Wong had deliberately not included Mr Cheah in the Scheme”.

The only evidence of such a ruse is the evidence of Mr Cheah.

On balance, the Commission finds that Mr Wong did not tell Mr Cheah on 17 April 2015 that the switcheroo was required in order to correct some unspecified mistake. There is insufficient evidence for the Commission to make any positive findings as to whether Mr Wong explained to Mr Cheah why it was necessary to effect the switcheroo and, if so, what that explanation may have been.

It was put to Mr Cheah that the instructions he received from Mr Wong, and which he communicated to Ms Zhao, to replace the forms of Valentine Yee and Harbour City Group Pty Ltd with the forms of Mr Liao and Mr Tong, pretending the former set of forms did not exist, were suspicious. Mr Cheah replied that, with the benefit of hindsight, those instructions were very suspicious. But he said that he did not think so at the time. He said that “[he] wasn’t looking for fraud at the time from anyone”. He denied that the instructions were suspicious on their face, saying that he was merely following instructions.

In the context of Mr Cheah’s conduct in reconciling the \$100k cash prior to its banking on 9 April 2015, the details of which are set out in the previous chapter, the Commission rejects Mr Cheah’s evidence that he did not find Mr Wong’s instructions to replace the forms of Valentine Yee and Harbour City Group Pty Ltd with the forms of Mr Liao and Mr Tong to be suspicious at the time. The Commission is satisfied that Mr Cheah must have found the events of 17 April 2015 suspicious at the time that they were occurring.

The question arises from these findings as to whether Mr Cheah, through his involvement in the switcheroo, may have engaged in conduct that might amount to participation in a scheme to circumvent prohibitions or restrictions in Part 6 of the EFED Act That question is considered in chapter 14.

Mr Wong’s involvement in instigating the switcheroo and procuring donor declaration forms from Mr Liao and Mr Tong is relevant to an assessment of his role as a principal actor in relation to the \$100k cash donation the subject of this investigation. Those matters are also considered in chapter 14.

Jonathan Yee procured all of the putative donors but for of Mr Liao and Mr Tong. Why were Harbour City Group Pty Ltd and Valentine Yee each used only in connection with one donation of \$5,000 whereas all of the other putative donors procured by Jonathan Yee were used for two such donations? There is no direct evidence to answer this question. However, the Commission notes that:

- of the putative donors procured by Jonathan Yee, his neighbour Mr Yip, proprietor of Harbour City Group Pty Ltd, was the only one who was not a family member or an employee of Jonathan Yee

- Valentine Yee gave evidence that, when Jonathan Yee asked him to falsely sign a donor declaration form to the effect that he had donated \$5,000 in connection with the 2015 CFOL dinner, Valentine made it clear to Jonathan that he was willing to help but was uncomfortable with what he had been asked to do.

On balance, the Commission finds that the most probable explanation for the switcheroo is that the donor declaration forms of Mr Liao and Mr Tong were used to replace the forms of Harbour City Group Pty Ltd and Valentine Yee so as to limit the involvement of Mr Yip and Valentine Yee in the scheme to disguise the true source of the \$100k cash and thereby reduce the risk that persons less close to Jonathan Yee, or more uncomfortable about being involved, might object to being used as fake donors.

Ironically, as will be explored later in this report, the switcheroo ultimately backfired on the architects of the scheme when Mr Tong objected to being used as a fake donor (chapters 11, 22 and 23).

Section 74A(2) statements

The Commission is satisfied that Mr Wong and Mr Cheah are “affected persons” with respect to the matters dealt with in this chapter.

A statement in relation to whether the Commission is of the opinion that consideration be given to obtaining the advice of the DPP with respect to the prosecution of certain persons, including Mr Wong and Mr Cheah, for scheme offences against s 96HB of the EFED Act can be found in chapter 14.

During the public inquiry, Ms Zhao admitted that she modified NSW Labor’s MYOB file to delete the entries recording Valentine Yee and Harbour City Group Pty Ltd as donors of \$5,000 to Country Labor and replacing them with entries that recorded Mr Liao and Mr Tong as the donors of that money. She said she acted on Mr Cheah’s instructions and accepted that, in doing so, she departed from proper accounting practice. Notwithstanding the objectively suspicious nature of Mr Cheah’s instructions, the evidence does not support a conclusion that Ms Zhao’s actions were done for a wrongful purpose. The Commission makes no adverse findings against Ms Zhao.

Chapter 11: Was the \$100,000 cash donated by the 12 putative donors?

Who are the putative donors?

Table 1 on page 20 reflects information from individual and party disclosures submitted to the NSWEC in respect of the donors of the \$100k cash, which was banked by NSW Labor and Country Labor on 9 April 2015.

As noted in previous chapters, on 30 March 2015, 18 days after the 2015 CFOL dinner, Mr Wong emailed to Jonathan Yee and Mr Liao copies of the pre-filled invitation/reservation form featuring a handwritten figure of \$5,000 next to the VVIP table ticket option and a strikethrough of non-cash payment options. Over the course of the next two days, Mr Liao and Jonathan Yee caused each of the 12 putative donors to fill in one of the pre-filled invitation/reservation forms.

Mr Liao was responsible for his own form and that of Mr Tong. In 2015, Mr Liao and Mr Tong worked together at Wu International. Mr Liao was the deputy general manager and Mr Tong was a project manager. Wu International director, Mr Wood, gave evidence that Mr Liao was his mentor and effectively ran the business in Australia on a day-to-day basis.

Jonathan Yee, director and general manager of Emperor's Garden Pty Ltd, was responsible for the forms of himself and the other nine putative donors, who were each associated with him in the following ways:

- Valentine Yee, brother of Jonathan and director and chief financial officer of Emperor's Garden Pty Ltd
- May Ho Yee, mother of Jonathan and director of Emperor's Garden Pty Ltd
- Emperor's Garden Pty Ltd, the Yee family business
- Ms Siu, full-time cashier at the Emperor's Garden yum cha restaurant
- Ms Tam, casual cashier at the Emperor's Garden barbecue noodle shop

- Mr Mo, former manager at the Emperor's Garden yum cha restaurant, who worked there full-time throughout 2015
- Mr Shi, full-time manager at the Emperor's Garden yum cha restaurant
- Mr Lin, casual waiter at the Emperor's Garden barbecue noodle shop
- Harbour City Group Pty Ltd, the company operating the souvenir shop next door to the Emperor's Garden yum cha restaurant, whose directors included Mr Yip.

There is no evidence to suggest that Mr Liao and Jonathan Yee were known to each other. Except for Jonathan Yee, none of the putative donors were members of the ALP in any of its manifestations. Other than members of the Yee family, none of the putative donors attended the 2015 CFOL dinner.

This chapter surveys the evidence relevant to the question of whether the putative donors in fact donated sums of \$5,000 to NSW Labor and/or Country Labor in connection with the 2015 CFOL dinner.

The evidence of the putative donors

NSW Labor and Country Labor disclosed to the NSWEC that, on 9 April 2015, they received donations of \$5,000 from the 12 putative donors in relation to the 2015 CFOL dinner. Corresponding disclosures were made by (or ostensibly by) each of the 12 putative donors in 2015 and 2016. The circumstances in which those disclosures were made are set out in chapter 15.

During the NSWEC investigation into this matter, some or all of the putative donors:

- produced documents in response to statutory notices issued by the NSWEC pursuant to

s 110A(1)(b) of the EFED Act, including tax invoices and correspondence, suggesting that he, she or it had donated \$5,000 to either or both of NSW Labor and Country Labor

- provided the NSWEC with cover letters that made statements to the effect that he, she or it had donated \$5,000 to either or both of NSW Labor and Country Labor
- provided written answers to questions asked by the NSWEC pursuant to s 110A(1)(c) of the EFED Act to the effect that the putative donor himself or herself was the source of \$5,000 donations to either or both of NSW Labor and Country Labor, that the donations were made in cash in \$100 notes and that some or all of the money came from Chinese “lucky money” or “red packets”
- participated in recorded interviews with NSWEC investigators in which statements were made to the effect that he, she or it had donated money in connection with the 2015 CFOL dinner.

The circumstances in which each of the putative donors engaged in some or all of that conduct are explored in part 3 of this report.

After the NSWEC referral of this matter under s 13A of the ICAC Act, this Commission conducted compulsory examinations with nine of the 10 natural person putative donors as well as with Mr Yip. It was not possible to conduct a compulsory examination of Mr Liao because, sadly, he died the evening before he was due to participate in a compulsory examination with the Commission in June 2018. The circumstances surrounding those events are set out in chapter 21.

Each of the natural person Emperor’s Garden putative donors and Mr Yip gave evidence in a compulsory examination to the effect that he or she had made one or more donations in connection with the 2015 CFOL

dinner (in Ms Tam’s case, in conjunction with her husband). Ms Tam’s husband, Ming Tam, gave evidence in a compulsory examination to the effect that his wife had made political donations with his knowledge and agreement.

On the first day of his compulsory examination in December 2018, Mr Tong gave evidence that he had donated \$5,000 to Mr Wong by giving that amount to Mr Liao before the 2015 CFOL dinner. Despite Country Labor disclosing that Mr Tong had made a “Chinese donation” of \$5,000 on 9 April 2015 and issuing a corresponding invoice in Mr Tong’s name, Mr Tong indicated that he had not heard of Country Labor.

Immediately upon returning to participate in the second day of his compulsory examination, Mr Tong said, “I would like to say sorry because what I said last week wasn’t the truth. I’m here to give you my apology”.

Mr Tong went on to say that he had not, in fact, donated any money to the Labor Party in connection with the 2015 CFOL dinner but had been asked to falsely say that he had done so by Mr Liao and Mr Wood. Mr Tong gave evidence to similar effect during the public inquiry.

Mr Tong gave evidence that, at stages throughout the NSWEC investigation, he voiced objections to Mr Liao and Mr Wood about the use of his name as the donor of money that he did not donate. Documentary evidence obtained by the Commission and tendered in the public inquiry, including emails and other correspondence, corroborates Mr Tong’s account. Mr Wood also gave evidence corroborating Mr Tong on this issue (chapters 16 and 17).

Mr Tong gave evidence that, in September 2018, he was asked to meet Mr Wong at Parliament House whereupon Mr Wong asked if Mr Tong had been contacted by “the Electoral Office”. Mr Tong said he told Mr Wong that he had not been contacted by electoral authorities. Mr Tong’s evidence is that Mr Wong responded by saying that,

if Mr Tong were to be so contacted, he should continue to tell the same story that he told the NSWEC previously. Mr Tong understood Mr Wong to mean that he should continue to tell lies. Mr Tong created a contemporaneous file note of that conversation. The particulars of that file note, and the Commission's findings in relation to that meeting, are set out in chapter 22.

The second of the putative donors called to give evidence during the public inquiry was Mr Yip of Harbour City Group Pty Ltd. Mr Yip gave evidence consistent with his compulsory examination; that is, he said that he did not donate \$5,000. He said that he paid \$500 in a personal capacity for a seat at a table at the 2015 CFOL dinner. Mr Yip said he paid that money to Jonathan Yee in cash before the event. He said he attended the dinner briefly and left. He said that Jonathan Yee explained to him that the NSW Labor receipt in Harbour City Group Pty Ltd's name for a \$5,000 donation was issued because the table at which Mr Yip sat had been booked in the name of Harbour City Group Pty Ltd.

The third of the putative donors called to give evidence during the public inquiry was Valentine Yee. For almost a whole day, Valentine Yee maintained that he had made a donation of \$5,000 in connection with the 2015 CFOL dinner and that Emperor's Garden Pty Ltd made donations of \$5,000 to each of NSW Labor and Country Labor. However, in the course of giving that evidence, Valentine Yee gave certain answers that he later admitted to be false, gave answers that were inconsistent with statements made earlier the same day or on previous occasions, and gave various other evidence that was implausible.

After being given an opportunity to reflect on whether he had been giving honest evidence, Valentine Yee gave evidence in a private session of the public inquiry convened pursuant to s 31(9) of the ICAC Act. The occurrence of the private session was subsequently made public as was the detail of an exchange at the start of that private session. During that exchange, Valentine Yee was asked if there was anything he wished to say about the evidence he had given up to that point in the public inquiry. He replied, "I would like to speak the truth".

When the public inquiry resumed on 16 September 2019, Valentine Yee gave evidence that neither he nor Emperor's Garden Pty Ltd had donated any money in connection with the 2015 CFOL dinner. He admitted that he had given false evidence to the contrary earlier in the public inquiry and during his compulsory examination. He gave evidence that he worked with his brother, Jonathon Yee, to provide false responses to enquiries made by the NSWEC (chapters 16 and 17).

Valentine Yee told the public inquiry that he had lied to the Commission because he was trying to help his brother,

Jonathan Yee. He said that he decided to tell the truth because he was concerned about his mother's welfare and his staff. Valentine Yee said that he called a family meeting prior to giving evidence on 16 September 2019, as he had decided that it was best for everybody to tell the truth. He said that Jonathan Yee was present at that family meeting and agreed that it was best to tell the truth.

After the first day of Valentine Yee's evidence at the public inquiry, each of the Emperor's Garden putative donors approached the Commission to advise that he or she wished to correct the evidence that he or she had given during their compulsory examination(s). The approach on behalf of Mr Mo was made before Valentine Yee gave evidence on 16 September 2019 that he had not made any contributions in connection with the 2015 CFOL dinner. The approaches on behalf of May Ho Yee and Ms Siu were made during the course of Valentine Yee's evidence that day. The other approaches were made soon afterwards.

During the public inquiry, May Ho Yee, Mr Mo, Ms Siu, Ms Tam, Mr Shi and Mr Lin each ultimately gave evidence to the effect that he or she had not donated any money to NSW Labor or Country Labor in 2015. They each admitted to having lied to the Commission by giving evidence in their compulsory examinations to the contrary.

On 27 August 2020, Mr Tam participated in a further compulsory examination, the transcript of which was tendered in evidence in the public inquiry. In the course of that compulsory examination, Mr Tam gave evidence that he had lied in his previous compulsory examination on 12 June 2019 when he said that his wife had donated two sums of \$5,000 in connection with the 2015 CFOL dinner. He admitted that she had not done so.

Valentine Yee, May Ho Yee, Mr Mo, Ms Siu, Ms Tam, Mr Shi and Mr Lin each gave evidence at the public inquiry that, in late March 2015, Jonathan Yee asked them to complete a pre-filled invitation/reservation form falsely stating that they had donated \$5,000 in connection with the 2015 CFOL dinner when in truth they had not done so.

Jonathan Yee gave evidence at the public inquiry after the other putative donors. He gave evidence to the effect that he did not make any \$5,000 contribution in connection with the 2015 CFOL dinner. He said he may have purchased a few seats at the event, but did not purchase a whole table. He admitted that the evidence he gave to the contrary in his compulsory examination was false.

Jonathan Yee also gave evidence that he arranged for his mother and brother and his employees, Mr Mo, Ms Siu, Ms Tam, Mr Shi and Mr Lin, and Mr Yip of Harbour City Group Pty Ltd, to sign donor declaration forms falsely stating that they had made a \$5,000 donation to NSW Labor in connection with the 2015 CFOL dinner. He said

that he did so because Mr Wong asked him to arrange for around 10 people to pretend that they had made donations of \$5,000 each. Jonathan Yee said that Mr Wong said he would find from other sources the money that was required to be raised.

Jonathan Yee made a number of further admissions regarding advice he gave to each of the Emperor's Garden putative donors and Mr Yip as to what they should say to the NSWEC and to this Commission (see part 3 of this report).

In relation to Harbour City Group Pty Ltd, Jonathan Yee gave evidence that he asked Mr Yip to sign a donor declaration form stating that he had made a \$5,000 donation to the Labor Party. Jonathan Yee said that he told Mr Yip that he would not need to contribute any money towards the donation. He said that Mr Yip agreed and signed the form. This evidence is in tension with the evidence that Mr Yip had previously given during the public inquiry.

A further compulsory examination was conducted with Mr Yip to give him an opportunity to respond to the evidence of Jonathan Yee. After Mr Yip was served with his summons, he advised the Commission that he wished to correct certain aspects of the evidence that he had previously given.

During the further compulsory examination, the transcript of which was tendered in evidence in the public inquiry, Mr Yip admitted that he had falsely told the NSWEC and this Commission that he had donated \$500 in connection with the 2015 CFOL dinner and that he had attended the dinner. He said that the truth was that he did not donate any money in connection with the 2015 CFOL dinner and had not attended the dinner.

The Commission notes that Mr Yip and Mr Tong were the only witnesses among the putative donors to give evidence during the public inquiry before Valentine Yee changed his evidence on 16 September 2019.

The circumstances in which Mr Yip and the other putative donors gave false evidence to the NSWEC and to this Commission, and the roles that Jonathan Yee, Mr Wong and others played in connection with that conduct, is considered in part 3 of this report.

Eleven of the 12 putative donors have thus admitted that they did not in fact donate the money in connection with the 2015 CFOL dinner that they said they did in their disclosures to the NSWEC and in response to NSWEC enquiries and in prior evidence given to this Commission. The only putative donor to not have made such an admission is Mr Liao.

Mr Liao's evidence to the NSWEC

Mr Liao participated in an electronically recorded interview with NSWEC investigators on 28 March 2017. Mr Liao told the NSWEC during that interview that he did donate \$5,000 to the Labor Party in connection with the 2015 CFOL dinner. Mr Liao told NSWEC investigators that he delivered an envelope, containing \$5,000 in cash and his signed donor declaration form, to staff at the 2015 CFOL dinner on 12 March 2015. That evidence is problematic.

As noted in chapter 4, the pre-filled invitation/reservation form completed by each of the 12 putative donors was not created by Mr Wong until 30 March 2015. Mr Wong emailed it to Mr Liao that day, asking for two forms to be completed. Mr Liao emailed Mr Wong two completed forms (one each signed by himself and Mr Tong) on 31 March 2015.

The Commission is satisfied that Mr Liao's signed donor declaration form did not exist on 12 March 2015. Mr Liao could not have delivered that form to staff at the 2015 CFOL dinner. The Commission finds that Mr Liao lied to the NSWEC in that respect (chapter 4). The question arises as to whether Mr Liao, like each of the other putative donors, also lied to the NSWEC about having made the \$5,000 donation.

Asked why he decided to donate \$5,000 to the Labor Party in 2015, Mr Liao told NSWEC investigators that he was honouring a promise that he made when praying for his health and a grandchild at a temple in China in 2014. Mr Liao explained that he made a commitment at that time to donate 30,000 Chinese Yuan to "people for doing good things". After his grandchild was born, Mr Liao said he decided to honour that commitment by giving \$5,000 (which, in 2015, equalled about 24,000 Chinese Yuan), to the Labor Party. Asked why he decided to donate to the Labor Party, he replied:

I choose to donate to the Labor because I was here during Tiananmen massacre, I think 1989. And then Labor Party, you know, made me to be Australian resident. So I just feel, you know, thankful.

Mr Liao told the NSWEC that he paid his \$5,000 donation in cash because he did not have a personal cheque facility and did not want to pay by credit card because, "too many problem, people can pass the credit card to people and then, you know, make a false, ah, statement". However, that explanation does not sit comfortably with other evidence, including an admission from Mr Wong, that Mr Liao made a donation in connection to a CFOL fundraising event in 2016, which he did pay by way of credit card.

As noted above, it was not possible for the Commission to conduct a compulsory examination of Mr Liao because he died on the evening before he was due to participate in a compulsory examination with the Commission in June 2018. It is impossible to know what Mr Liao might have said if the Commission had put to him the proposition that he did not donate \$5,000 in connection with the 2015 CFOL dinner.

Evidence as to the circumstances surrounding Mr Liao's death is set out in chapter 21. For present purposes, it suffices to note that that evidence suggests that Mr Liao committed suicide and his decision to do so followed the service of his compulsory examination summons and was connected with his involvement in political donations that were the subject of this investigation. Counsel Assisting submitted that:

...it seems unlikely that Mr Liao would take the extraordinary step of ending his own life if he had, in fact, donated \$5,000 as he said that he had in his reservation form, Electoral Commission disclosure and Electoral Commission interview.

The Commission accepts that submission. On the available evidence, the Commission is satisfied that the most probable explanation is that, like the other putative donors, Mr Liao did not in fact donate any sum of \$5,000 to NSW Labor or Country Labor in connection with the 2015 CFOL dinner.

Was the \$100k cash donated by the 12 putative donors?

The Commission is satisfied that the evidence comfortably supports the conclusion that the \$100k cash was not donated by the 12 putative donors. This conclusion is based on the following:

- 11 of the 12 putative donors admitted that they did not donate the amounts that they said they did on their disclosures to the NSWEC
- those admissions were made fundamentally against self-interest, exposing those persons to potential prosecution, including for giving false evidence to the Commission
- the available evidence supports the conclusion that the 12th putative donor, Mr Liao, also did not donate the amount that he said he did on his disclosure to the NSWEC
- no other persons with authorisation to appear ultimately suggested that the source of the \$100k cash was as indicated in NSW Labor and Country Labor's original disclosures
- during the public inquiry, NSW Labor and Country Labor lodged amended disclosures with the NSWEC omitting the \$100k cash and repaid \$100,000 to the NSWEC
- it is objectively unlikely that modestly remunerated restaurant workers (Ms Siu, Ms Tam, Mr Mo, Mr Shi, Mr Lin) would have donated the maximum permissible amount to either or both of NSW Labor and Country Labor
- other than Jonathan Yee, none of the putative donors were members of, or had any significant connection with, the Labor Party in any of its manifestations
- there is no evidence of any money being received from any of the putative donors, noting that none of them were recorded on Mr Wong's payment register or guest list, which he said identified expected payees and attendees in connection with the 2015 CFOL dinner
- it is implausible that each of 12 separate persons, including two businesses, would donate sums of \$5,000 or \$10,000 in cash comprised wholly of \$100 denominations
- there is evidence that supports a conclusion that Mr Huang was the true source of the \$100k cash (chapter 12).

The Commission finds that the \$100k cash was not donated by the 12 putative donors.

Section 74A(2) statements

The Commission is satisfied that Jonathan Yee, Valentine Yee, May Ho Yee, Mr Mo, Ms Siu, Ms Tam, Mr Tam, Mr Shi, Mr Lin, Mr Yip and Mr Tong are "affected persons" with respect to the matters dealt with in this chapter.

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the following persons for offences of giving false or misleading evidence in contravention of s 87 of the ICAC Act in relation to the evidence below:

- Jonathan Yee for:
 - false or misleading evidence given at the compulsory examination on 27 and 28 June 2019 to the effect that he donated \$5,000 in connection with the 2015 CFOL dinner
 - false or misleading evidence given at the compulsory examination on 27 and 28 June 2019 to the effect that Emperor's

- Garden Pty Ltd donated \$10,000 in connection with the 2015 CFOL dinner
- Valentine Yee for:
 - false or misleading evidence given at the compulsory examination on 30 January 2019 to the effect that he donated \$5,000 in connection with the 2015 CFOL dinner
 - false or misleading evidence given at the compulsory examination on 30 January 2019 to the effect that Emperor’s Garden Pty Ltd donated \$10,000 in connection with the 2015 CFOL dinner
- May Ho Yee for false or misleading evidence given at the compulsory examination on 11 December 2018 to the effect that she donated \$10,000 in connection with the 2015 CFOL dinner
- Mr Mo for false or misleading evidence given at the compulsory examination on 29 June and 9 July 2018 to the effect that he donated \$10,000 in connection with the 2015 CFOL dinner
- Ms Siu for false or misleading evidence given at the compulsory examination on 13 December 2018 and 23 January 2019 to the effect that she donated \$10,000 in connection with the 2015 CFOL dinner
- Ms Tam for false or misleading evidence given at the compulsory examination on 5 December 2018 and 21 January 2019 to the effect that she, together with her husband Mr Tam, donated \$10,000 in connection with the 2015 CFOL dinner
- Mr Tam for false or misleading evidence given at the compulsory examination on 12 June 2019 to the effect that his wife, Ms Tam, donated \$10,000 in connection with the 2015 CFOL dinner with his knowledge and agreement
- Mr Shi for false or misleading evidence given at the compulsory examination on 25 January 2019, 22 February 2019 and 8 March 2019 to the effect that he donated \$10,000 in connection with the 2015 CFOL dinner
- Mr Lin for false or misleading evidence given at the compulsory examination on 27 June and 10 July 2018 to the effect that he donated \$10,000 in connection with the 2015 CFOL dinner
- Mr Yip for:
 - false or misleading evidence given at the compulsory examination on 25 June 2018 to the effect that he contributed \$500 to purchase a seat at the 2015 CFOL dinner and that he attended that function

- false or misleading evidence given at the public inquiry on 10 September 2019 to similar effect.

Each of Jonathan Yee, Valentine Yee, May Ho Yee, Mr Mo, Ms Siu, Ms Tam, Mr Tam, Mr Shi, Mr Lin and Mr Yip admitted in the public inquiry (either by way of oral evidence given in the public inquiry or compulsory examination evidence tendered in the public inquiry) that they gave the false evidence that is the subject of the specified offences above. Those admissions represent the principal evidence upon which the Commission proposes to seek the advice of the DPP with respect to the specified offences.

The evidence given by each of Jonathan Yee, Valentine Yee, May Ho Yee, Mr Mo, Ms Siu, Ms Tam, Mr Tam, Mr Shi, Mr Lin and Mr Yip at the public inquiry and in compulsory examinations was given on objection pursuant to a declaration under s 38 of the ICAC Act. This means that the evidence of each person cannot be used against himself or herself in criminal proceedings other than proceedings for an offence under the ICAC Act. Their evidence, including relevant admissions, can be used in criminal proceedings for the specified offences of giving false or misleading evidence in contravention of s 87 of the ICAC Act.

In relation to Mr Tong, the fact that he initially gave false evidence in his compulsory examination on 4 December 2018 has been set out earlier in this chapter. So too has the fact that, immediately after returning to participate in the second day of his compulsory examination, Mr Tong apologised for giving false evidence and said he would like to tell the truth going forward. From that point, Mr Tong assisted the investigation by providing evidence that the Commission accepts as a full and truthful account. He also provided the Commission documentary evidence corroborating his account.

Mr Tong was the first of the putative donors to give evidence that they had not in truth donated sums of \$5,000 in connection with the 2015 CFOL dinner. Mr Tong’s assistance came at a critical stage in the Commission’s investigation, almost nine months prior to the public inquiry, at a time when other putative donors continued to maintain, falsely, that they had donated the sums that they had disclosed to the NSWEC. The Commission regards the level of assistance provided by Mr Tong as significant, noting that it materially advanced the progress of its investigation.

In these circumstances, the Commission has determined to exercise discretion not to recommend consideration be given to seeking the advice of the DPP in relation to the false evidence that Mr Tong gave in his compulsory examination on 4 December 2018.

The Commission has determined that it is appropriate to exercise similar discretion in relation to the false evidence given by Valentine Yee at the public inquiry on 12 September 2019. As noted above, after having given evidence that was implausible and internally inconsistent throughout that day, Valentine Yee accepted an offer of an adjournment to reconsider the truthfulness of his evidence. He was reminded of the seriousness of giving knowingly false or misleading evidence, provided with a copy of the Commission's witness cooperation policy and given an opportunity to consult with his legal representatives to reconsider his position.

Having had the benefit of that adjournment, Valentine Yee returned and gave evidence that the Commission accepts as truthful; namely, that neither he nor Emperor's Garden Pty Ltd donated any money in connection with the 2015 CFOL dinner.

The Commission regards the timing of Valentine Yee's changed evidence as significant and considers that it had a material effect on the progress and outcome of the public inquiry. As a manager at the Emperor's Garden restaurant, Valentine Yee was in a position of power in relation to other putative donors who were staff, or former staff, of the Emperor's Garden. His changed evidence created an environment in which those other putative donors felt able to follow suit and also give truthful evidence to the Commission.

Accordingly, the Commission has determined to exercise discretion not to recommend consideration be given to seeking the advice of the DPP in relation to the false evidence that Valentine Yee gave in the public inquiry on 12 September 2019.

To be clear, the foregoing considerations do not apply to the false evidence that Valentine Yee gave in his compulsory examination on 30 January 2019. Had Valentine Yee approached the Commission soon after that compulsory examination to change his evidence and tell the truth, it would no doubt have materially assisted the Commission's investigation. He did not do so. The Commission is satisfied that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Valentine Yee for offences of giving false or misleading evidence in his compulsory examination (as specified above).

Submissions were received on behalf of Mr Mo highlighting the fact that Mr Mo approached the Commission indicating that he wished to change his evidence before Valentine Yee gave evidence in public that he had not made any contributions to the 2015 CFOL dinner. Mr Mo approached the Commission on the morning of, but prior to, Valentine Yee's return to the witness box after having been given an opportunity

to reflect on, and obtain legal advice in relation to, the honesty of his evidence in the public inquiry to that point. The Commission accepts that, had Valentine Yee not publicly changed his evidence, the evidence that Mr Mo indicated that he would provide to the Commission could have materially advanced the Commission's investigation.

The submission has been made for Mr Mo that, in these circumstances, the Commission should exercise its discretion and refrain from stating that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mo for one or more offences under s 87 of the ICAC Act.

The Commission does not accept that submission. Mr Mo gave false evidence to the Commission in compulsory examinations on two separate occasions: 29 June and on 9 July 2018. The false evidence that he gave on those two occasions hindered the Commission's investigation. Had he approached the Commission soon after those compulsory examinations to change his evidence and tell the truth, it would have materially assisted the Commission's investigation. But he did not do so. In these circumstances, the Commission is satisfied that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mo for one or more offences under s 87 of the ICAC Act.

There was evidence at the public inquiry that Jonathan Yee and/or Mr Wong gave advice to each of the putative donors as to what they should say to the NSWEC and this Commission in connection with investigations into the \$100k cash. That evidence is relevant to understanding how the putative donors came to give false evidence to the Commission and is set out in part 3 of this report.

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Chapter 12: Who was the true source of the \$100,000 cash?

The opening statement of Counsel Assisting at the public inquiry flagged that a key question to be pursued was whether Mr Huang was the true source of the \$100k cash.

Earlier in this report, the Commission found that Mr Huang delivered the \$100k cash to Mr Clements at NSW Labor head office on 7 April 2015. It also found that the 12 putative donors did not donate the \$100k cash, contrary to disclosures made to the NSWEC. Who, then, was the true source of the \$100k cash? This chapter surveys the evidence relevant to that question.

The evidence of Jonathan Yee

Jonathan Yee gave evidence at the public inquiry that Mr Wong approached him in February 2015 and said that he needed Jonathan Yee to find five-to-10 people to sign forms pretending to be donors of sums of \$5,000 to the Labor Party. On Jonathan Yee's account, Mr Wong said that he would find the money for those purported donations from other sources.

Jonathan Yee's evidence that the above conversation with Mr Wong took place in February 2015 is consistent with other evidence which establishes that, on 16 February 2015, the CFOL organisers, including Mr Wong, met to plan the 2015 CFOL dinner. An email sent by Jonathan Yee to the CFOL organisers after the meeting on 16 February 2015 set out details of the "target" for the event, including the sale of 47 tables at \$800, four tables at \$2,000, four tables at \$5,000 and a "Head Table at \$10,000 per person". The email indicated that Mr Wong was responsible for the head table.

Mr Wong accepted in evidence that he attended the meeting of CFOL organisers on 16 February 2015. He agreed that it was decided at that meeting that he would be responsible for selling the seats on the head table. On Mr Wong's account, a decision was made at some later stage that the head table would be a free table.

The Commission's findings in relation to that evidence are set out in chapter 5.

Jonathan Yee gave evidence that, two or three weeks after the 2015 CFOL dinner, Mr Wong made it clear to him in discussions at the Emperor's Garden restaurant that Mr Wong had succeeded in procuring the donation that was to be covered up by the fake donors. On Jonathan Yee's account, Mr Wong told him that, "the donors have made the donation, I need those particular forms to be signed". Jonathan Yee said he did not know at that time who the real donor or donors were or how much money Mr Wong had procured. He said that he was surprised when he later learned that each of the putative donors had been "used" for \$10,000 because he had understood his role was to find five-to-10 people to sign forms pretending to be donors of sums of \$5,000.

Jonathan Yee's evidence that the above conversation with Mr Wong took place from two-to-three weeks after the 2015 CFOL dinner is also consistent with the email which Mr Wong sent to Jonathan Yee at 6.27 pm on 30 March 2015 attaching the pre-filled invitation/reservation form. That email was titled "Fwd: Scan Data from FX-AF807E" and contained no text or instructions as to what Jonathan Yee should do with the attached document. That is in contrast to the instructions that Mr Wong gave to Mr Liao in his email at 2.20 pm that same afternoon to "Please fill two of these in".

The fact that Mr Wong's email to Jonathan Yee on 30 March 2015 contained no explanation or instructions is consistent with Jonathan Yee's evidence that such instructions were given separately.

Jonathan Yee gave evidence that, after he received the email from Mr Wong on 30 March 2015 attaching the pre-filled invitation/reservation form, he did as Mr Wong had requested and asked members of his family, staff and Mr Yip to sign forms falsely purporting to be the donors of sums of \$5,000. He said that he did so understanding

that the purpose of the arrangement was to conceal the identity of the true donor(s) with the view of procuring donations for the Labor Party that might not otherwise be capable of being procured.

Jonathan Yee identified personal political ambition as his motivation for helping Mr Wong to orchestrate the scheme. He explained that he wanted to ingratiate himself with Mr Wong, who he understood to be a person with power within the ALP. Further details of the scheme described by Jonathan Yee are set out in chapter 14. Evidence in relation to conduct that appears to have been directed at covering up that scheme is surveyed in part 3 of this report.

During the public inquiry, the substance of Jonathan Yee's evidence above was put to Mr Wong. Mr Wong denied involvement in a scheme with Jonathan Yee to procure fake donors in order to conceal the true source of the \$100k cash. Mr Wong maintained that Jonathan Yee brought tens of thousands of dollars in cash to the 2015 CFOL dinner, which was among the money in a big bag of cash that Mr Wong gave to Mr Huang that night to deliver to Mr Clements at NSW Labor head office. The Commission has rejected Mr Wong's evidence on that issue (chapter 7).

Much of Jonathan Yee's evidence involves admissions as to his own conduct as a principal orchestrator of a scheme to procure fake donors for the purpose of concealing the identity of the true donor with the view of procuring donations for the Labor Party that might not otherwise be capable of being procured. Those admissions are fundamentally against self-interest and expose Jonathan Yee to serious adverse findings by the Commission as well as potential prosecution for criminal offences under NSW electoral laws and the ICAC Act. The Commission accepts Jonathan Yee's evidence, and rejects Mr Wong's denials, in circumstances where Jonathan Yee's evidence tends to incriminate himself.

In particular, the Commission accepts Jonathan Yee's evidence that, two or three weeks after the 2015 CFOL dinner, Mr Wong told him that "the donors (or donor) have made the donation, I need those particular forms to be signed", and, after he received the email from Mr Wong on 30 March 2015, attaching the pre-filled invitation/reservation form, he did as Mr Wong had requested and asked members of his family, staff and Mr Yip to sign forms falsely purporting to be the donors of sums of \$5,000.

During the public inquiry, Jonathan Yee was asked about his awareness as to the identity of the true source of the \$100k cash. He gave evidence that at the time that he asked members of his family, staff and Mr Yip to falsely sign their donor declaration forms, he did not know the identity of the true donor or donors. He said that, prior to his interview with the NSWEC on 23 June 2017, he did not know who the true donor was. He said that during the interview he learned that Mr Cheah had told the NSWEC that Mr Huang had delivered the \$100k cash to NSW Labor head office. Jonathan Yee gave evidence that soon after his NSWEC interview:

- he asked Mr Wong whether Mr Huang was the true donor of the \$100k cash, in response to which Mr Wong neither confirmed nor denied the proposition. Jonathan Yee's evidence is that Mr Wong told him that "there are several donors". Jonathan Yee said he then asked Mr Wong who those several donors were and that Mr Wong replied, "you don't have to worry about it"
- he asked Mr Cheah about the answers that Mr Cheah had given the NSWEC concerning Mr Huang and whether Mr Huang was the true donor of the \$100k cash. Jonathan Yee's evidence is that Mr Cheah replied that he did not know if the \$100k cash was Mr Huang's money, but confirmed that Mr Huang had delivered

the money to Mr Clements, who in turn asked Mr Cheah to count to it.

It is Jonathan Yee's evidence that, at that point in time, he speculated (but was not told) that the true donor of the \$100k cash might have been Mr Huang. He said he formed that view on the basis of Mr Huang's association with the Labor Party and his reputation as a political donor.

Jonathan Yee gave evidence that Mr Wong confirmed to him during the pendency of the public inquiry that Mr Huang was the true source of the \$100k cash. Jonathan Yee said that, on the evening of 15 September 2019, after Valentine Yee had convened a family meeting at which it was agreed that they would tell the truth at the public inquiry, he met Mr Wong at the Chinese Masonic Hall in Surry Hills. Jonathan Yee gave evidence that, during that meeting, he told Mr Wong that his brother, Valentine, was "going to spill beans" and:

I said to him, "We can't keep, keep telling lies anymore, the more lies we tell the more serious [sic] that we can get ourselves into". And I remember asking him a question, "Was the real donor Mr Huang Xiangmo?" and he said to me, "Yes, but can you please not tell the inquiry that the donor is Mr Huang Xiangmo".

Mr Wong agreed that he met Jonathan Yee at the Chinese Masonic Hall on 15 September 2019 but he disputed Jonathan Yee's account of their conversation. Relevantly, Mr Wong denied that Jonathan Yee asked him whether the real donor was Mr Huang. He said that Mr Huang was not mentioned at all and specifically denied telling Jonathan Yee that Mr Huang was the real donor.

Mr Wong's account of the meeting is that Jonathan Yee told Mr Wong that Stanley Yee (Jonathan's father and founder of the Emperor's Garden business) was worried about the Australian Tax Office investigating cash transactions and "so they have to change their evidence" and "they are not going to say any of those cash transactions". Mr Wong rejected the proposition that Jonathan Yee said to him that "we can't tell any lies anymore and we're going to change and tell the truth".

The Commission considers that it is inherently implausible that the Emperor's Garden putative donors would each change their evidence to falsely disavow genuine cash donations in order to protect the Emperor's Garden business from a tax investigation in circumstances where that changed evidence would expose each of those persons to possible prosecution, and potential imprisonment, for numerous criminal offences under the EFED Act and for giving false or misleading evidence to the Commission. The Commission rejects Mr Wong's account of the Chinese Masonic Hall conversation.

The rejection of Mr Wong's account of that conversation does not, however, automatically lead to the acceptance of Jonathan Yee's account. The Commission considers that Jonathan Yee is a witness whose evidence should not be accepted uncritically. He has admitted to giving false evidence in his compulsory examination before the Commission. He has admitted to carrying out numerous acts in furtherance of an orchestrated scheme to circumvent statutory restrictions and prohibitions relating to political donations. He has admitted to advising members of his family and staff to give false evidence to the NSWEC and this Commission (that evidence is surveyed in part 3 of this report).

Notwithstanding a critical approach to Jonathan Yee's evidence, the Commission notes that his account of the family meeting convened by Valentine Yee on 15 September 2015 is corroborated by Valentine Yee and May Ho Yee. The family meeting took place three days after Valentine Yee had given evidence in a private session of the public inquiry on 12 September 2019. During that private session, as noted in the previous chapter, Valentine Yee told the Commission "I would like to speak the truth" and gave evidence that neither he nor Emperor's Garden Pty Ltd had donated any money in connection with the 2015 CFOL dinner.

Jonathan Yee's account of the Yee family meeting on 15 September 2019 (that an agreement was reached that it was best to tell the truth) is consistent with the evidence that Valentine Yee gave on 12 September 2019 (that he had decided to tell truth), such evidence being given three days prior to the family meeting. The Commission accepts Jonathan Yee's evidence that, at the Chinese Masonic Hall on 15 September 2019, he told Mr Wong words to the effect that Valentine Yee was going to "spill the beans" and "we can't tell any lies anymore and we're going to change and tell the truth".

There is no evidence, however, to corroborate that part of Jonathan Yee's evidence as to the conversation he says that he had with Mr Wong at the Chinese Masonic Hall about Mr Huang being the true source of the \$100k cash. The Commission makes no finding in relation to that evidence. However, the substance of the asserted fact, namely that Mr Huang was the true source of the \$100k cash, is consistent with a substantial body of other evidence, which is considered below.

The evidence of Ms Murnain

Ms Murnain was one of two assistant general secretaries of NSW Labor at the time of the 2015 CFOL dinner. She succeeded Mr Clements as general secretary in January 2016. Ms Murnain gave evidence that Mr Wong contacted her after 6 pm on Friday, 16 September 2016 and sought to meet her in person on an urgent basis.

Ms Murnain gave evidence that, at that meeting, they were walking in The Domain when Mr Wong told her that there was a donor who had not donated the sum of money that they had said that they had donated, and that donor was worried about that fact. Ms Murnain said she could not recall whether Mr Wong mentioned the size of the particular donation. However, she understood that the donation was connected with the 2015 CFOL dinner. Ms Murnain said that:

I at some point responded back, "What the shit?" I remember that. I then asked him a question about who, I just said, "Who donated the money?" And he, he said very quickly, "Mr Huang."

Ms Murnain said that she responded to Mr Wong by asking if Mr Wong's mention of Mr Huang was a reference to "the Chinese property developer". Ms Murnain said that she stepped back at that point, realising the implications, as she understood them, of Mr Huang being a prohibited donor for the purpose of state electoral law. Ms Murnain said that she was distressed by the conversation with Mr Wong and spoke to Sam Dastyari, a federal Labor senator, about it soon afterwards, telling him the substance of what had occurred including what Mr Wong had said about Mr Huang. She said that Mr Dastyari advised her to seek legal advice from the party's lawyers and that she did so.

Much of Ms Murnain's account of the meeting with Mr Wong on 16 September 2016 is corroborated by other evidence.

Mr Dastyari gave evidence that he spoke to Ms Murnain after her meeting with Mr Wong. He said he observed Ms Murnain to be visibly distressed and that she told him that Mr Wong had disclosed that the CFOL accounts for the years prior to her becoming general secretary were not an accurate reflection of the fundraising activities that had taken place. Mr Dastyari said, "I recall that Ms Murnain specifically singled out Huang Xiangmo as someone she was highly concerned about".

Mr Dastyari gave evidence that he advised Ms Murnain to seek the advice of the Labor Party's lawyers, Holding Redlich. Further details of Ms Murnain's interactions with Mr Dastyari on 16 September 2016 are set out in chapter 18.

Telephone records, including call charge records and text messages, confirm that Mr Wong contacted Ms Murnain at 6.06 pm on 16 September 2016 and asked her to call him and that she made arrangements to meet Mr Wong on Hospital Road at the back of NSW Parliament House at about 6.42 pm that evening.

In his evidence, Mr Wong agreed that he did contact Ms Murnain on the evening of 16 September 2016 seeking

an urgent meeting. He said that he sought that meeting to discuss with Ms Murnain information he had received the previous day from Mr Liao to the effect that the NSWEC had issued a notice to Mr Tong to produce documents in connection with its investigation into donations made at the 2015 CFOL dinner.

There is evidence that the NSWEC issued a notice to Mr Tong on 14 September 2016 pursuant to s 110A(1)(b) of the EFED Act requiring production of payment summaries, a Notice of Assessment, bank statements and donation receipt. Mr Tong had retired from Wu International by that stage. Mr Tong gave evidence that, when he received the notice, he rang Mr Wood who told him to take the notice to Mr Liao. Mr Tong said that he took the notice to Mr Liao at the Wu International office and that Mr Liao made arrangements for the company accountant to prepare a response to the notice.

Mr Wood gave evidence that Mr Tong visited the Wu International office in September 2016 after receiving a letter from the NSWEC. Mr Wood said that Mr Tong went to see Mr Liao (who was often referred to as Dr Liao by Wu International staff) about it and that Mr Wood joined them half-way through their discussion. Asked what he heard when he entered the room, Mr Wood said:

They said words to the effect that Tong asked Dr Liao to help him because it related to donation, it had nothing to do with him, and he wanted to blow up the matter to become explosive news if Dr Liao didn't help him.

Mr Wong gave evidence that the essence of what he told Ms Murnain during their meeting on 16 September 2016 was that there was a donor who had not donated the money that they said they had. He agreed that the donor he had in mind was Mr Tong.

Mr Wong said that he told Ms Murnain that his friend (Mr Liao, who Mr Wong may not have named) had told him that a donor (Mr Tong, who Mr Wong also may not have named) had been approached by the NSWEC in relation to a donation that the donor had made but would be unable to produce documents to prove. Mr Wong said that he told Ms Murnain that his friend (Mr Liao) had said that he had loaned the money to the donor (Mr Tong) and that the donor (Mr Tong) had repaid, or would repay, that money. Mr Wong said he asked Ms Murnain whether the Labor Party would assist the donor (Mr Tong) by providing a lawyer. Mr Wong said that Ms Murnain rejected that proposal on the basis of a conflict of interest.

On cross-examination by senior counsel for Mr Wong, Ms Murnain accepted that there was some discussion of lawyers during the meeting with Mr Wong. She accepted that it is possible that Mr Wong may have asked whether

the party would assist by providing the donor with a lawyer and that she may have declined that request on the basis of a conflict of interest.

Mr Wong corroborated Ms Murnain's evidence that Mr Huang's name was mentioned in their conversation on 16 September 2016. Mr Wong gave evidence that after Ms Murnain declined to provide legal assistance, Mr Wong "got cranky" and told her that Mr Huang was the person who delivered the money to head office. On Mr Wong's account, he said that to Ms Murnain so that she would be aware of that fact in case there was "any embarrassment or any risk interpretation".

Mr Wong rejected the proposition that Ms Murnain asked him to identify the true donor. He denied that he told Ms Murnain that the true donor was Mr Huang.

Directly after her meeting with Mr Wong on 16 September 2016, Ms Murnain made arrangements for an after-hours face-to-face meeting with Ian Robertson AO of Holding Redlich. The Commission's findings in relation to Ms Murnain's meeting with Mr Robertson on 16 September 2016 are set out in chapter 18. For present purposes, it suffices to note that the Commission is satisfied that Ms Murnain sought that meeting with Mr Robertson in order to get advice concerning the substance of her conversation with Mr Wong.

In these circumstances, the Commission rejects Mr Wong's evidence that he told Ms Murnain that his friend (Mr Liao) had said that he had loaned the money to the donor (Mr Tong) and that the donor (Mr Tong) had repaid, or would repay, that money. The Commission does not accept that information of that nature could have caused Ms Murnain to seek urgent face-to-face legal advice from Holding Redlich after 7 pm on a Friday night.

Having considered all the evidence, the Commission accepts Ms Murnain's account that she asked Mr Wong during their meeting on 16 September 2016, "who donated that money", and that Mr Wong replied that Mr Huang had done so. Information of that sort is likely to have caused Ms Murnain to seek urgent legal advice in person after 7 pm on a Friday night.

Withdrawal of \$100,000 cash from The Star Sydney casino

Evidence obtained from The Star Sydney establishes that \$100,000 in cash was withdrawn on 3 April 2015 (Easter Good Friday 2015) from a casino junket account containing money sourced from Mr Huang.

Mr Houlihan, The Star's group investigations manager, gave evidence at the public inquiry. He explained that a junket program is an arrangement whereby a licensed

junket operator enters into an agreement with a casino under which certain incentives, such as the cost of travel, accommodation, food or entertainment, are subsidised by the casino and provided to registered players with a view to bringing in gaming participants who are likely to make the casino money. Mr Houlihan said that junket programs ordinarily last for a period of 28 days. Registered players deposit buy-in funds into "front money accounts" from which withdrawals can be made in gaming chips or cash.

The evidence from The Star establishes that:

- in December 2012, Wun Chi (Gary) Wong was approved by The Star as a junket operator, at which time he identified his occupation as a business manager at Shenzhen Yuhu Group
- on 3 April 2015, The Star entered into an agreement with Wun Chi Wong to operate a junket program for the period from 3 to 17 April 2015 ("the April 2015 junket program")
- the April 2015 junket program involved a \$5 million buy-in, which was funded by way of a cheque cashing facility from Mr Huang, who was one of the registered players on the program
- at 4.33 pm on 3 April 2015, Mr Huang moved his \$5 million buy-in from his own front money account to Wun Chi Wong's front money account, which had a prior balance of nil
- between 4.35 pm and 10.51 pm on 3 April 2015, gaming activity resulted in substantial withdrawals and deposits of gaming chips from and to Wun Chi Wong's front money account, with Mr Huang's initial buy-in of \$5 million increasing to \$9,970,000
- at 10.54 pm on 3 April 2015, Wun Chi Wong withdrew \$100,000 in cash from his front money account, being the only sum of cash withdrawn from that account during the pendency of the April 2015 junket program
- the \$100,000 in cash withdrawn by Wun Chi Wong on 3 April 2015 was sourced from, and connected with, Mr Huang's \$5 million buy-in
- at 10.57 pm on 3 April 2015, following a notification from the Private Gaming Room, The Star's surveillance department made a record of Wun Chi Wong's \$100,000 cash withdrawal which included the narrative, "Due to the large amount of money involved this transaction is considered suspicious"
- The Star's surveillance department observed Wun Chi Wong depart the casino and get into a white Audi vehicle with particular registration details.

Mr Houlihan gave evidence that when substantial amounts of cash are withdrawn from gaming accounts, The Star almost invariably dispenses that cash in \$100 notes organised in bundles of \$5,000 wrapped in white paper straps featuring a date stamp.

Vehicle registration details for the white Audi in which Wun Chi Wong departed The Star on 3 April 2015 establish that the vehicle was registered to Yuhu Investment Holdings Pty Ltd, a company in respect of which Mr Huang was at that time a director and shareholder.

Mr Xu gave evidence at the public inquiry that, like himself, Wun Chi Wong was employed by the Yuhu Group as an executive assistant to Mr Huang. On Mr Xu's account, Wun Chi Wong's role was to organise travel and Mr Huang's "high-roller" gaming activities at casinos in Australia. Mr Xu said that, prior to working for Mr Huang, Wun Chi Wong had worked for the Crown Group in Macau.

Mr Xu gave evidence that, if Mr Huang ever requested substantial parcels of cash, such as \$10,000 or \$35,000 (being cash sums that Mr Clements admitted that Mr Huang gave to him during 2015), those requests would be made directly to Wun Chi Wong.

There is no question that the \$100,000 cash that Wun Chi Wong withdrew from The Star junket account on 3 April 2015 was money sourced from his employer, Mr Huang. The Commission is satisfied to the requisite standard that that \$100,000 cash was dispensed to Wun Chi Wong in \$100 notes.

There is, however, no direct evidence from either Wun Chi Wong or Mr Huang as to why \$100,000 of Mr Huang's money was withdrawn in cash from The Star that night. The circumstances as to why there is no such direct evidence are considered later in this chapter.

Mr Huang's submission: temporal coincidence

Submissions were received on behalf of Mr Huang, which contend that he was not the true source of the \$100k cash. Those submissions contend that Mr Huang's withdrawal of the \$100,000 in cash from The Star junket account on 3 April 2015 was a "temporal coincidence". The submission is made that there is no evidence of a causal relationship between Mr Huang's withdrawal of \$100,000 from the casino on 3 April 2015 and his meeting with Mr Clements on 7 April 2015, the arrangements for which were made on the morning of 7 April 2015.

Mr Huang's "temporal coincidence" submission contends that:

...it would not be logical to retrospectively impress Mr Huang's act of withdrawing \$100,000 on 3 April 2015 with the foresight of meeting Jamie Clements on 7 April 2015 in the absence of any other evidence of organisation or basis to expect an upcoming meeting.

The Commission accepts that there is no direct evidence linking Mr Huang's withdrawal of \$100,000 cash from The Star on 3 April 2015 with his visit to Mr Clements on 7 April 2015.

However, the Commission does not accept that there is no evidence of such a connection. Whether or not Mr Huang's withdrawal of \$100,000 cash from The Star on 3 April 2015 was connected in some manner with his meeting with Mr Clements on 7 April 2015 must be properly considered in the context of a substantial body of contextual evidence.

Earlier in this report, the Commission found that the \$100k cash was delivered by Mr Huang to Mr Clements at NSW Labor head office on 7 April 2015. It was also established that the \$100k cash, banked into the accounts of NSW Labor and Country Labor on 9 April 2015, was wholly comprised of \$100 notes.

The evidence of the withdrawal of \$100,000 cash, invariably in \$100 notes, from The Star on Easter Good Friday, 3 April 2015, is entirely consistent with Mr Huang being the true source of the \$100k cash, which he delivered to Mr Clements on 7 April 2015, being the next business day after the Easter long weekend. The fact that both of those transactions involved Mr Huang, the same amount of cash, and identical denominations, would require the Commission to accept as mere coincidence not only the close proximity of the timing of those events but also the identical sum and denominations of those cash transactions.

When considered in combination with the following contextual evidence (most of which has been surveyed earlier in this report) pointing towards a finding that Mr Huang was the true source of the \$100k cash, Mr Huang's "temporal coincidence" submission becomes untenable:

- income of \$100,000 was budgeted to be received in relation to the head table at the 2015 CFOL dinner
- the organising committee for the 2015 CFOL dinner agreed that seats on the head table were to be sold for \$10,000 per person (the table having 10 seats)
- a person who was interested in purchasing "[t]he table with Bill Shorten and Chris Bowen" was told by Mr Wong that the "head table has already been taken for \$100k"

- Mr Huang was present at the 2015 CFOL dinner and sat at the head table
- Mr Huang was allocated five seats on the head table at the 2015 CFOL dinner with the remainder being allocated to Mr Wong, Mr Clements and ALP dignitaries (and one seat being allocated to Jonathan Yee's father, Stanley Yee)
- prior to the 2015 CFOL dinner, Mr Huang (either by himself or by companies associated with him) had been a generous political donor (at the federal level) to both NSW Labor (\$510,000) and the NSW Liberal Party (\$585,000)
- during the meeting at which Mr Huang delivered the \$100k cash to Mr Clements on 7 April 2015, Mr Huang asked Mr Clements to facilitate a meeting with Mr Shorten. Mr Clements called Mr Shorten while Mr Huang was in his office
- a private lunch attended by Mr Shorten, Mr Huang, Mr Clements and Mr Xu was held about two weeks later, during which Mr Huang asked for help in arranging a meeting between the Victorian Premier Mr Andrews, with a delegation from Jiangxi
- a meeting ultimately did take place between Mr Andrews and a delegation from Jiangxi on or around 23 June 2015
- on Mr Xu's account, Mr Huang was trying to cultivate Mr Clements as a very senior person in the Labor Party and Mr Clements was trying to cultivate Mr Huang as a potential substantial donor to the Labor Party
- on Mr Clements' account, Mr Huang was seeking to get "friendship, proximity to power" out of his relationship with Mr Clements, which was "really triggered off" by "the Jiangxi thing"
- according to Mr Cheah (but denied by Mr Clements), Mr Clements gave Mr Cheah a bag containing \$100,000 in cash within about half an hour of Mr Clements' meeting with Mr Huang on 7 April 2015
- on 9 April 2015, a total of \$100,000 in \$100 notes was banked into the accounts of NSW Labor and Country Labor
- Mr Huang gave Mr Clements substantial amounts of cash in \$100 notes on at least two occasions in 2015. On one of those occasions, he gave Mr Clements \$35,000 in \$100 notes organised in bundles of \$5,000 with paper wraps.

Mr Huang's submission must also be considered in light of the witness accounts, considered earlier in this chapter, of

Jonathan Yee and Ms Murnain as to admissions made by Mr Wong to the effect that: the "real donor" of the \$100k cash was Mr Huang (on Jonathan Yee's account, denied by Mr Wong), and that a donor had not donated the money that they had said they had and that the true donor was Mr Huang (on Ms Murnain's account, denied by Mr Wong).

Having weighed the evidence, the Commission rejects Mr Huang's submission that his withdrawal of \$100,000 in cash from The Star junket account on 3 April 2015 was a "temporal coincidence" unconnected with his meeting with Mr Clements on 7 April 2015.

The delay of four weeks

A question that was explored in the public inquiry was, given that the 2015 CFOL dinner took place on 12 March 2015, why was the \$100k cash, which was said to comprise donations received in connection with that event, not banked until 9 April 2015? In circumstances where the 2015 CFOL dinner was a fundraising event held in the lead up to the NSW state election on 28 March 2015, what was the reason for this delay of four weeks?

There was evidence that, on 16 March 2015, being four days after the 2015 CFOL dinner and 12 days before the NSW state election, Mr Cheah sent an email titled "Well done and banking" to Mr Wong and three others, which congratulated the Irish, Vietnamese, and Chinese LACs for running successful fundraising events. In that email, Mr Cheah wrote:

Could I ask you to bank the money with Head Office at your earliest opportunity, with not long left in this campaign, the faster we receive this money, the faster we can spend it on target seats. This election is getting super close and your groups contribution's [sic] could make a huge difference.

Mr Cheah agreed that there was pressure from head office as at 16 March 2015 to get donation money in so that it could be used for the election campaign. Mr Cheah said that no one gave him an explanation as to why there was a delay of four weeks between the 2015 CFOL dinner and the delivery of the \$100k cash. Mr Cheah said he did not consider the four-week delay to be extraordinary. However, he could only recall one other occasion during which there had been a similar delay (involving a much smaller sum raised at a trivia night).

Mr Clements gave evidence that, "ideally", his expectation was that, if money was raised in connection with a particular fundraising event, that that money should find its way to head office as soon as possible after the event. He said, however, that he was not concerned whether money from fundraising came in before or after an election, as bills could be paid later from funds raised afterwards.

Ms Wang gave evidence that it was exceedingly unusual to receive cash amounts in the order of \$100,000 at NSW Labor head office. Ms Wang said that she could not recall receiving any explanation about the delay between the 2015 CFOL dinner on 12 March 2015 and the finance department receiving the \$100k cash on 9 April 2015. Ms Wang said she did not know in advance that there was a large amount of cash coming in, but that the delay in getting revenue to the office would concern her as financial controller because the money was needed for the election campaign.

On balance, the Commission is satisfied that there was pressure within NSW Labor head office, as at 16 March 2015, to ensure that donations made in the lead up to the NSW state election were received and banked promptly so as to be available to be spent on the election campaign. In these circumstances, the delay of four weeks between the 2015 CFOL dinner and the delivery of the \$100k cash to head office takes on additional significance.

Records of Mr Huang's international travel movements established that Mr Huang:

- was in Australia at the time of the 2015 CFOL dinner on 12 March 2015
- departed Australia for China on 21 March 2015
- returned from China to Australia on 28 March 2015
- was in Australia at the time that the \$100k cash was banked on 9 April 2015.

Previously in this chapter, the Commission accepted Jonathan Yee's evidence that, two or three weeks after the 2015 CFOL dinner, Mr Wong told him, "the donors have made the donation, I need those particular forms to be signed". The date range for that conversation would be approximately between 26 March and 2 April 2015.

The timing of that conversation coincides with Mr Huang's return to Australia from China on 28 March 2015, which was a Saturday. The next business day was Monday, 30 March, which is when Mr Wong created the pre-filled invitation/reservation form using the scanner in his parliamentary office and emailed it to both Jonathan Yee and Mr Liao. Four days later, on Easter Good Friday, 3 April 2015, Wun Chi Wong withdrew \$100,000 of Mr Huang's money in cash in \$100 notes from The Star. The next business day after the Easter long weekend was Tuesday, 7 April 2015, which is when Mr Huang delivered the \$100k cash in \$100 notes to Mr Clements. The \$100k cash was banked two days later, on 9 April 2015.

The Commission is satisfied that the reason for the delay of four weeks from the 2015 CFOL dinner and the delivery of the \$100k cash to NSW Labor head office is,

at least in part, explained by Mr Huang's absence from Australia for part of the period.

The Commission further finds that Mr Huang's return to Australia on 28 March 2015 was the trigger, which initiated the critical sequence of events, namely:

- Mr Wong telling Jonathan Yee that he had sourced the money and asking him to procure the false donor declaration forms
- Mr Wong's email to Jonathan Yee and Mr Liao attaching the pre-filled invitation/reservation form
- Mr Huang's withdrawal of \$100,000 cash from The Star
- the delivery by Mr Huang of the \$100k cash to Mr Clements
- the banking of the \$100k cash on 9 April 2015.

Mr Huang and Wun Chi Wong decline to participate in the inquiry

Despite the importance of Mr Huang's conduct to matters at the heart of the Commission's investigation, the Commission has not heard any evidence from Mr Huang. Nor has it heard any evidence from Wun Chi Wong, whose conduct is pertinent to the matters set out in this chapter.

Chapter 1 of this report sets out the circumstances in which Mr Huang came to be beyond the Commission's jurisdiction in the midst of its investigation. That chapter also details steps taken by the Commission to facilitate Mr Huang's voluntary participation in the inquiry.

By way of summary, Mr Huang applied for, and was granted, leave to appear and be represented in the public inquiry. But he declined to participate in an interview with the Commission by telephone or video link, in advance of the public inquiry. He did not avail himself of the opportunity expressly given by the Commission during the course of the public inquiry to "present his side of the story", by video link if necessary. Mr Huang's legal representatives (who were present throughout the public sessions of the public inquiry) did not seek leave to cross-examine any witness. Nor did they seek to have any documents placed before the public inquiry.

Wun Chi Wong was also overseas and beyond the Commission's jurisdiction during the public inquiry. He too expressly refused to participate in an interview, provide a statement or give evidence at the public inquiry notwithstanding the fact that the Commission's correspondence with him specifically identified the particular issue on which the Commission sought his input. Wun Chi Wong's stated reason for refusing to

participate in an interview was that he was “current oversea [sic] of Australia”. There was no response to an email sent to Wun Chi Wong advising that, if he was overseas, any interview could be conducted by telephone or video link.

Counsel Assisting submitted that:

In those circumstances, and in circumstances where it was clear that Mr Huang was a person of interest to the Commission and where the issue relevant to Wun Chi Wong was specifically identified in correspondence to which Wun Chi Wong responded, the Commission should infer that Mr Huang and Wun Chi Wong were content to leave the evidence otherwise before the Commission unchallenged. That being so, the absence of evidence from Mr Huang or Wun Chi Wong permits the Commission to more comfortably draw inferences adverse to Mr Huang and Wun Chi Wong than might otherwise have been the case had Mr Huang or Wun Chi Wong given evidence.

The Commission accepts that submission. Mr Huang submitted that:

...whether or not the Commission were to draw an adverse inference from Mr Huang’s failure to give evidence, the Commission cannot use the language of adverse inferences to fill gaps in the evidence or to connect conjecture into suspicion.

The Commission accepts that submission and notes the substantial body of relevant evidence set out in this chapter.

Having weighed the evidence, and considered relevant submissions, the Commission is satisfied that Mr Huang was the true source of the \$100k cash. The Commission finds accordingly.

Section 74A(2) statements

The Commission is satisfied that Mr Huang, Mr Wong and Jonathan Yee are “affected persons” with respect to the matters dealt with in this chapter.

A statement in relation to whether the Commission is of the opinion that consideration be given to obtaining the advice of the DPP with respect to the prosecution of certain persons for scheme offences against s 96HB of the EFED Act can be found in chapter 14.

Chapter 13: Was it unlawful for NSW Labor and Country Labor to accept the \$100,000 cash?

In the preceding chapters, the Commission found that Mr Huang was the true source of the \$100k cash, which he delivered to Mr Clements on 7 April 2015, and which was deposited into the bank accounts of NSW Labor (\$50,000) and Country Labor (\$50,000) on 9 April 2015. This chapter considers the question of whether it was unlawful for NSW Labor and Country Labor to accept the \$100k cash.

Was the \$100k cash a donation exceeding the cap?

As noted in chapter 2, Part 6 of the EFED Act establishes requirements and prohibitions that regulate political donations and electoral expenditure in NSW.

Division 1 of Part 6 of the EFED Act defines a “political donation” as a gift made to or for the benefit of a party, an elected member or a candidate (s 85). It includes an amount paid to participate in a fundraising venture. A payment for a seat or table at the 2015 CFOL dinner would therefore constitute a “gift” for the purpose of the definition of a political donation in s 85 of the EFED Act.

In circumstances where the \$100k cash was hand delivered to Mr Clements, general secretary of NSW Labor (and, by virtue of that position, also general secretary of Country Labor), at NSW Labor head office, the \$100k cash was clearly “a gift made to or for the benefit of a party” and falls within scope of the definition of a political donation in s 85 of the EFED Act. This finding is fortified by the fact that the money was then deposited into the bank accounts of NSW Labor and Country Labor.

Section 95B of the EFED Act makes it unlawful to accept a political donation that exceeds the applicable cap. That cap was \$5,000 at the relevant time. An exception under s 95B(2) means that it was not unlawful to accept a political donation exceeding the cap if that donation was

paid into an account kept exclusively for the purpose of federal or local government election campaigns.

The \$100k cash was plainly a gift that exceeded the applicable cap of \$5,000. Evidence was tendered in the public inquiry that established that the bank accounts into which the \$100k cash was deposited on 9 April 2015 were the “ALP NSW **State Campaign Account**” (\$50,000) and the “ALP NSW Country Labor **State Campaign Account**” (\$50,000) (emphasis added). This evidence includes receipts to each of the putative donors in connection with donations of \$5,000 (pertaining to portions of the \$100k cash) and the NSW Labor MYOB bank deposit slip relating to the banking of the \$100k cash on 9 April 2015. The \$100k cash donation was clearly not paid into an account kept exclusively for the purpose of federal or local government election campaigns. The exception in s 95B(2) of the EFED Act does not apply.

Exceeding the applicable cap on political donations is the first basis upon which the acceptance of the \$100k cash may have been unlawful.

Was Mr Huang a person from whom donations could be accepted?

In chapter 2, the Commission considered whether Mr Huang was a “property developer” for the purposes of Division 4A of Part 6 of the EFED Act, which defines classes of “prohibited donors”. It suffices to note here that the evidence does not demonstrate that Mr Huang was a “close associate” of a corporation, which falls within the narrow definition of a “property developer” in s 96GB(1)(a) of the EFED Act.

That conclusion does not mean, however, that Mr Huang was a person from whom political parties could accept donations. Section 96D of the EFED Act relevantly provides that:

- (1) *It is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is:*
- (a) *an individual who is enrolled on the roll of electors for State elections, on the roll of electors for federal elections, or on the roll of electors for a local government election or, if not so enrolled, who has supplied to the Commissioner identification that is acceptable to the Commissioner showing the individual's full name and an Australian residential address, or*
- (b) *an entity that has a relevant business number or a principal or executive officer of which has supplied to the Commissioner identification that is acceptable to the Commissioner showing the principal or officer's full name and an Australian residential address.*

Correspondence from the NSWEC establishes that Mr Huang was not enrolled on the Electoral Roll at the relevant time. Searches of agency records conducted by staff of the NSWEC also could:

...not [find] any evidence of an application being lodged under section 96D(1)(a) or (b) of the EFED Act in relation to Mr Xiangmo Huang as a potential political donor.

The Commission is satisfied that Mr Huang was not a person from whom political donations could be accepted at the time that the \$100k cash was received. This is the second basis upon which acceptance of the \$100k cash may have been unlawful.

Was the donation of \$100k cash accepted in relation to a state election?

The requirements and prohibitions of Part 6 of the EFED Act, including s 95B(1) (prohibition on political donations that exceed the applicable cap) and s 96D(1) (identification of persons from whom donations can be accepted), are limited in application by s 83(1) of the Act, which provides that:

This Part applies in relation to:

- (a) *State elections and elected members of Parliament, and*
- (b) *local government elections and elected members of councils (other than Divisions 2A and 2B [which concerned state elections only]).*

It is therefore necessary to consider whether the \$100k cash was accepted “in relation to” a state election (there being no suggestion that the \$100k cash had any connection to local government elections).

A preliminary question to be answered is: when was the \$100k cash accepted for the purpose of Part 6 of the EFED Act? The Commission is satisfied that the proper approach to this question, consistent with the purpose and practical operation of Part 6, is one which would permit a person to take physical possession of a gift while not “accepting” that gift until such time as the party had an opportunity to satisfy itself that it would not be unlawful to “accept” it (by means, for example, of checking the NSW Electoral Roll).

Adopting this approach, it follows that the \$100k cash was not “accepted” when Mr Clements took physical possession of it on 7 April 2015. Rather, it was “accepted” at or around that time that it was banked into the State Campaign Accounts of NSW Labor and Country Labor on 9 April 2015.

The question to be answered is whether, at or around the time that the \$100k cash was banked on 9 April 2015, it was a donation received in relation to a state election. The Commission is satisfied that the following evidence supports a conclusion that it was:

- the receipts issued to each of the putative donors in connection with donations of \$5,000 (pertaining to portions of the \$100k cash) indicated that that money had been banked into the State Campaign Accounts of NSW Labor and Country Labor
- the NSW Labor MYOB bank deposit slip relating to the \$100k cash indicates that, on 9 April 2015, \$50,000 was deposited into the State Campaign Accounts of each of NSW Labor and Country Labor
- the \$100k cash was delivered by Mr Huang to Mr Clements at NSW Labor head office on 7 April 2015, being just 10 days after the NSW state election on 28 March 2015. It was “accepted” and banked two days later
- on Mr Clements’ evidence, he was not concerned whether money from fundraising events came in before or after an election, as bills could be paid later
- the \$100k cash was delivered by Mr Huang to Mr Clements at NSW Labor head office 26 days after the 2015 CFOL dinner, which was a “Chinese Launch” for the NSW state election campaign

- Mr Huang attended the 2015 CFOL dinner and sat at the head table with Labor dignitaries, having been allocated half the seats on the head table
- the head table at the 2015 CFOL dinner was sold to Mr Huang for \$100,000 (chapter 5)
- there is no evidence that the \$100k cash was earmarked by Mr Huang for use only in connection with federal elections.

The Commission is satisfied that the \$100k cash was a political donation that was accepted “in relation to” the 2015 NSW State Election. It follows that the requirements and prohibitions of Part 6 of the EFED Act apply to that donation.

Findings

Having weighed the evidence, and considered relevant submissions, the Commission finds that it was unlawful for NSW Labor and Country Labor to accept the \$100k cash from Mr Huang. It was unlawful to do so on two grounds. First, the donation exceeded the applicable \$5,000 cap on political donations, and, secondly, Mr Huang was not a person from whom political donations could be accepted at the relevant time.

The Commission notes that, on 13 September 2019, during the pendency of the public inquiry, NSW Labor, pursuant to s 96J of the EFED Act, forfeited to the state of NSW the amount of \$100,000, which was equivalent to the \$100k cash the subject of this investigation. Submissions on behalf of NSW Labor and Country Labor explain that, “[t]hat decision was made because it was abundantly clear from the important work undertaken by this Commission that the Cash \$100k was an unlawful donation”.

Section 74A(2) statements

The Commission is not satisfied that there is sufficient evidence to support a referral to the DPP for consideration of any potential criminal offence arising solely from the unlawful acceptance by NSW Labor and Country Labor of the \$100k cash donation. Such offences under the EFED Act might have included:

- s 96HA(1) – “a person who does any act that is unlawful under Division 2A [caps on political donations for State elections] ... is guilty of an offence if the person was, at the time of act, aware of the facts that result in the act being unlawful”; and/or
- s 96I(1) – “a person who does any act that is unlawful under ... Division ... 4 [prohibition of

certain political donations etc] or 4A [prohibition on donations from prohibited donors] is guilty of an offence if the person was, at the time of the act, aware of the facts that result in the act being unlawful”.

However, these offences require proof of subjective knowledge as to the facts that result in the relevant act being unlawful. As noted above, the \$100k cash was “accepted”, for the purposes of Part 6 of the EFED Act, at or around the time that it was banked into the State Campaign Accounts of NSW Labor and Country Labor on 9 April 2015. Ms Zhao of NSW Labor’s finance department was the person who banked the \$100k cash that day. There is no evidence that Ms Zhao had knowledge of the facts that resulted in the acceptance of the \$100k cash being unlawful.

Mr Huang’s conduct in relation to the giving of the \$100k cash, being a political donation in relation to a state election that was unlawful to accept, is considered in more depth in the next chapter.

Chapter 14: Schemes regarding non-disclosure of the true source of the \$100,000 cash

The allegation at the centre of this investigation is:

...whether, from January 2015, officials of the New South Wales Branch of the Australian Labor Party, members of Chinese Friends of Labor, political donors and others have entered into or carried out a scheme to circumvent prohibitions or requirements under Part 6 of the Election Funding, Expenditure and Disclosures Act 1981 relating to political donations.

Counsel Assisting submitted that the evidence before the Commission supports factual findings that a number of persons have entered into or carried out certain schemes for the purpose of circumventing the requirement in s 88(2) of Part 6 of the EFED Act (read in conjunction with s 92(2)) to the effect that the true source of a reportable political donation received or made in relation to a state election must be disclosed to the NSWEC.

The evidence surveyed in previous chapters of this report, and upon which key factual findings have been made, is pertinent to the Commission's consideration of Counsel Assisting's submission regarding schemes to circumvent Part 6 of the EFED Act. This chapter draws on such evidence as is relevant to that submission and, in doing so, seeks to avoid where possible unnecessary duplication.

What is a scheme to circumvent prohibitions or requirements of the EFED Act?

Section 96HB of the EFED Act is found in Part 6 of the Act and provides that:

(4) A person who enters into or carries out a scheme (whether alone or with others) for the purpose of circumventing a prohibition or requirement of this Part with respect to political donations or electoral expenditure is guilty of an offence.

*Maximum penalty (on conviction on indictment):
Imprisonment for 10 years*

(5) It does not matter that the person also enters into or carries out the scheme for other purposes.

(6) In this section:

***Scheme** includes an arrangement, an understanding or a course of conduct.*

Referring to the legislative history and the terms of s 96HB of the EFED Act, Counsel Assisting submitted that s 96HB is properly understood as proscribing two classes of conduct (whether or not that conduct would otherwise constitute an offence):

- first, entering into an agreement, arrangement or understanding for the purpose of getting around or avoiding a prohibition or requirement of Part 6 of the EFED Act
- secondly, carrying out a plan or engaging in a course of conduct for such a purpose.

It follows that a mere breach of a prohibition or requirement of Part 6 of the EFED Act would not, without more, amount to a contravention of s 96HB. Conduct would only contravene s 96HB if it involved:

- an agreement upon, or implementation of a plan for the purpose of getting around a prohibition or requirement of Part 6, or
- engaging in a pattern of conduct that evidences a continuity of purpose of a kind proscribed by s 96HB of the EFED Act.

Counsel Assisting submitted that a scheme for the purposes of s 96HB of the EFED Act may be ongoing in relation to a particular requirement or prohibition of Part 6 even though an offence relating to such a requirement or prohibition may already be complete.

For example, if a person knowingly makes a false disclosure to the NSWEC that he or she had made a particular reportable political donation when they had not done so, then an offence will be complete under s 96H(2) of the EFED Act. If that person goes on to take further steps to conceal the falsity of that disclosure, those further steps (if forming part of a course of conduct or the implementation of a plan) may amount to carrying out a scheme in contravention of s 96HB of the EFED Act. That is because those further steps may properly be regarded as steps forming part of a “course of conduct” taken for the ongoing purpose of avoiding the requirements of Part 6 of the EFED Act (in particular s 88(2) and s 92(2)) to the effect that the true source of a reportable political donation be disclosed to the NSWEC.

With respect to the fault element, Counsel Assisting submitted that s 96HB of the EFED Act should be read as prohibiting entering into or carrying out a scheme in circumstances where *the person* doing so is doing so for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act. It follows that s 96HB cannot be contravened recklessly. For the prosecution to prove that a person had the purpose of circumventing such a prohibition or requirement, it would be enough to prove that the person engaged in a course of conduct that was intended to get around or avoid something occurring that happened to amount to a prohibition or requirement of Part 6 of the EFED Act.

Counsel Assisting’s interpretation of s 96HB of the EFED Act has not been contested by any interested party. The Commission accepts that interpretation.

Mr Wong and Jonathan Yee

Counsel Assisting submitted that the available evidence combines strongly to support a conclusion that Mr Wong and Jonathan Yee entered into and carried out a scheme for the purpose of circumventing the requirements in

s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the true source of a reportable political donation must be disclosed to the NSWEC.

The principal evidence in support of that conclusion has been set out in detail in preceding chapters of this report. It includes:

- Jonathan Yee’s evidence that he entered into an agreement with Mr Wong in advance of the 2015 CFOL dinner in accordance with which Jonathan Yee would procure “five to 10 people” to sign forms falsely stating that they had each donated \$5,000 so as to conceal the true source of donations that Mr Wong had arranged or was intending to arrange
- Jonathan Yee’s evidence that Mr Wong emailed him the pre-filled invitation/reservation form a couple of weeks after the 2015 CFOL dinner and requested him to have the forms filled out, following which he promptly arranged for the Emperor’s Garden putative donors and Mr Yip to complete the forms without making any donations
- email records from Mr Wong’s parliamentary account and evidence from the Emperor’s Garden putative donors and Mr Yip corroborating Jonathan Yee’s evidence above, including admissions by each of the Emperor’s Garden putative donors and Mr Yip that, at Jonathan Yee’s request, they falsely disclosed to the NSWEC that they had made donations in connection with the 2015 CFOL dinner
- evidence implicating Mr Wong in procuring from Mr Liao false donor declaration forms from Mr Liao and Mr Tong, including:
 - call charge records showing that Mr Wong attempted to contact Mr Wood on 30 March 2015 and sent two SMS messages to him at 2.37 pm and 2.39 pm

- email records which establish that
 - (a) Mr Wong emailed the pre-filled invitation/reservation form to Mr Liao at 2.40 pm on 30 March 2015; (b) on 31 March 2015, Mr Liao returned to Mr Wong two completed forms, one each ostensibly signed by Mr Liao and Mr Tong, both of which were backdated; and (c) on 17 April 2015, Mr Wong forwarded those two backdated forms to Mr Cheah
- Mr Tong’s evidence, corroborated by file notes and correspondence, that he did not donate any money in connection with the 2015 CFOL dinner.
- Mr Wong told a person who was interested in purchasing “[t]he table with Bill Shorten and Chris Bowen” that the “head table has already been taken for \$100k”
- Mr Wong invited Mr Huang to the 2015 CFOL dinner and allocated to him five seats on the head table
- Mr Huang was present at the 2015 CFOL dinner and sat on the head table
- Mr Wong was a “close friend” and a “good friend” of Mr Huang at all relevant times and was in communication with Mr Huang at material times, including around the time that the Mr Huang delivered the \$100k cash to Mr Clements at NSW Labor head office.

The Commission is satisfied that Mr Wong procured the donor declaration forms (either directly or through Jonathan Yee) from each of the 12 putative donors in circumstances where he knew that those putative donors had not in fact donated any money in connection with the 2015 CFOL dinner. As a principal organiser of the 2015 CFOL dinner, Mr Wong was responsible for maintaining a register of bookings and payments. In these circumstances, it is inconceivable that Mr Wong wrongly thought that the 12 putative donors had donated sums of \$5,000 or \$10,000 in connection with the 2015 CFOL dinner, none of whom were recorded on his payment register.

As noted in chapter 12, Jonathan Yee gave evidence (denied by Mr Wong) that Mr Wong admitted to him during the pendency of the public inquiry that Mr Huang was the true source of the \$100k cash. That evidence is consistent with Ms Murnain’s evidence to the effect that Mr Wong told her, on 16 September 2016, that there was a donor who had not donated a sum of money that they had said that they had donated in connection with the 2015 CFOL dinner and that Mr Huang was the person who donated that money.

There is also ample circumstantial evidence to establish that Mr Wong knew that Mr Huang was the true source of the \$100k cash and, indeed, that it was Mr Wong who procured those funds from Mr Huang. That includes evidence that:

- Mr Wong was one of the principal organisers of the 2015 CFOL dinner
- Mr Wong budgeted to receive income of \$100,000 from the sale of the head table at the 2015 CFOL dinner
- the CFOL organisers, including Mr Wong, agreed that seats on the head table at the 2015 CFOL dinner would be sold for \$10,000 each (there being 10 seats) and that Mr Wong would be responsible for the head table

Having weighed the evidence, the Commission finds that Mr Wong knew, at the time that he procured donor declaration forms from each of the 12 putative donors, that his friend Mr Huang, who Mr Wong understood to be a “prohibited donor”, was the true source of the \$100k cash.

There is also a substantial body of evidence indicating that Mr Wong and Jonathan Yee gave advice to the putative donors and Mr Yip as to what they should say to the NSWEC and the Commission in the course of investigations into this matter. Such evidence includes admissions from Jonathan Yee, the other putative donors and Mr Yip. Documentary records corroborate a number of those admissions. That evidence establishes that Mr Wong and Jonathan Yee took steps over an extended period of time to monitor and influence investigations into this matter with a view to concealing the falsity of the donor declarations made by each of those putative donors. That evidence is surveyed in detail in part 3 of this report.

The evidence of the ongoing involvement of Mr Wong and Jonathan Yee in conduct designed to “cover-up” the putative donors’ false donor declarations combines to further support the conclusion that Mr Wong and Jonathan Yee entered into and carried out a scheme for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the true source of a reportable political donation must be disclosed to the NSWEC.

Submissions were received on behalf of Mr Wong, which accept that the available evidence, including the “changed evidence” of Jonathan Yee and his associates, might support a finding by the Commission:

...that Mr Wong, and others, may have committed particular offences and that the advice of the DPP should be sought with respect to the possible prosecution of Mr Wong and others.

However, Mr Wong contends that the Commission should refrain from making any findings of fact in relation to his alleged involvement in a scheme to circumvent prohibitions or requirements of Part 6 of the EFED Act, such facts being:

...foundational to the criminal offences that he may have committed and in respect of which it is proposed that the advice of the DPP should be obtained.

Mr Wong submits that the fact-finding exercise in this matter should be undertaken by the courts, and not by this Commission, given that “the findings proposed against Mr Wong are tantamount to findings that Mr Wong committed criminal offences”.

The Commission’s powers and obligations concerning the making of findings on conduct of a kind that may amount to criminal offences are set out in chapter 1.

The ICAC Act provides that the Commission’s principal functions include to investigate and expose corrupt conduct (s 13(1)(a)(i)). The Commission has the parallel function of investigating and exposing conduct that may involve possible criminal offences, which has been referred to the Commission by the NSWEC (s 13A(1)). These exposure functions are fundamental to the Commission’s operation.

Section 14(1)(a) of the ICAC Act provides that the “other functions” of the Commission include to gather and furnish to the DPP evidence that may be admissible in the prosecution of a person for a criminal offence in connection with an investigation into conduct referred to the Commission under s 13A. While this is an important function, it is not among the principal functions of the Commission.

A public inquiry has been conducted in this matter to ascertain and expose the true facts in relation to the \$100k cash donation received in connection with the 2015 CFOL dinner. Section 74(3) of the ICAC Act requires the Commission to publish a public report in relation to this investigation. The Commission is authorised under s 74A of the ICAC Act to include in such a report statements as to any of its findings, opinions and recommendations.

The Commission’s findings of fact are made on the balance of probability. The Commission makes no findings and expresses no opinions as to the guilt or innocence of any person at criminal law.

The Commission has weighed the risk of reputational harm and is satisfied that it is in the public interest to include in this report findings of fact in relation to persons who entered into and carried out schemes for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that

the true source of a reportable political donation must be disclosed to the NSWEC.

Mr Wong further submitted that the evidence against him, on which Counsel Assisting’s submissions are founded, is unreliable and should not be accepted. Mr Wong’s principal submission on this issue is that the “changed” evidence of Jonathan Yee and the Emperor’s Garden putative donors and Mr Yip was not adequately tested in the public inquiry to determine whether it was “part of another orchestrated endeavour to serve the interests of Jonathan Yee ... to minimise his involvement in the scheme by blaming Mr Wong”.

As has been noted previously in this report, the changed evidence of each of the Emperor’s Garden putative donors and Mr Yip involves admissions that are adverse to their own interests. They have each admitted to conduct that, if proved to the requisite standard in a prosecution, may amount to offences under the EFED Act. They have each accepted that they knowingly gave false or misleading evidence to the Commission in compulsory examinations, and in the case of Valentine Yee and Mr Yip, at the public inquiry.

Each of the Emperor’s Garden putative donors and Mr Yip have thereby exposed themselves to potential prosecution for serious criminal offences. Each of those persons was legally represented at the public inquiry. The Commission considers it to be inherently unlikely that the Emperor’s Garden putative donors and Mr Yip would expose themselves to such serious consequences if their changed evidence was false evidence.

The changed evidence of the Emperor’s Garden putative donors and Mr Yip followed in the wake of Valentine Yee’s decision, on 12 September 2019, after giving answers to the public inquiry that were internally inconsistent or patently implausible, that he “would like to speak the truth”. There is evidence that Valentine Yee was regarded by employees of the Emperor’s Garden as “the first master”. In these circumstances, the Commission is satisfied that the Emperor’s Garden putative donors and (to a lesser degree) Mr Yip felt that they had licence to tell the truth at the public inquiry in the wake of Valentine Yee’s admissions. Ms Tam has made submissions to this effect. The Commission does not consider their changed evidence to be unreliable.

The Commission finds that Mr Wong and Jonathan Yee did enter into and carry out a scheme for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the true source of the \$100k cash donation had to be disclosed to the NSWEC. As to the roles that they each performed in executing that scheme, the Commission is satisfied that:

- Mr Wong arranged with Mr Huang to obtain the \$100k cash donation, a person who Mr Wong understood to be a prohibited donor
- Mr Wong asked Jonathan Yee to procure “five to 10 people” to sign forms falsely stating that they had each donated up to the legal cap of \$5,000, so as to conceal the true source of the donation that Mr Wong had arranged or was intending to arrange
- Jonathan Yee agreed to procure fake donors as requested by Mr Wong and did procure 10 fake donors from among members of his family, staff and his neighbour Mr Yip
- Mr Wong procured false donor declaration forms from Mr Liao and Mr Tong and furnished those forms to Mr Cheah in circumstances leading to the switcheroo of donors in NSW Labor’s MYOB records
- between April 2015 and the public inquiry in 2019, Mr Wong and Jonathan Yee each took numerous steps to monitor and influence investigations into this matter with a view to concealing the falsity of the donor declarations made by each of the putative donors (that evidence is surveyed in detail in part 3 of this report).

Mr Huang

Counsel Assisting submitted that the Commission should find that Mr Huang also carried out a scheme for the purpose of circumventing the requirement of Part 6 of the EFED Act that the true source of a reportable political donation received or made in relation to a state election must be disclosed to the NSWEC.

A submission in reply on behalf of Mr Huang contends that there is no evidence of any agreement or understanding between Mr Huang and any other person regarding the 2015 CFOL dinner, the head table or the \$100k cash. The submission contends that “Mr Huang must be taken to be ignorant of any scheme, if it did exist, being perpetrated by any other person”.

The evidence supporting Counsel Assisting’s submission has been detailed in preceding chapters of this report. It includes the fact that Mr Huang made his \$100,000 donation in cash, which was procured from Mr Huang’s junket account at The Star by Mr Huang’s executive assistant, Wun Chi Wong. The Commission is satisfied that Wun Chi Wong made that withdrawal on Mr Huang’s directions and that Mr Huang would have had to have engaged in a course of conduct to facilitate that withdrawal. There is evidence that at least one act

in that course of conduct was Mr Huang’s deposit of \$5 million into his junket account several hours prior to the withdrawal of the \$100k cash.

Counsel Assisting submitted that the fact that Mr Huang made his \$100,000 donation in cash, rather than by some other readily traceable means, such as electronic funds transfer or cheque, suggests that Mr Huang was seeking to conceal the fact that he was the source of the \$100k cash.

Submissions in reply received on behalf of Mr Huang contend that:

As a matter of logic, the fact that a person gifts money in the form of cash does not, without more, lead to an inference that the person had the purpose of concealment.

The Commission has found that Mr Huang was the true source of the \$100k cash, which he delivered to Mr Clements at NSW Labor head office on 7 April 2015 (chapter 12). There is no evidence that Mr Huang made any disclosures to the NSWEC or to the Australian Electoral Commission (AEC), in connection with the \$100k cash donation. There is evidence, however, that Mr Huang (and entities with which he was associated) had previously disclosed federal political donations to the AEC. The Commission is satisfied that Mr Huang knew of the obligation to make such disclosures. The fact that Mr Huang did not disclose to any electoral authority that he had made the \$100k cash donation is consistent with an intention on his part to conceal the fact that he was the source of that donation.

In chapter 13, the Commission found that, for the purpose of s 83 of the EFED Act, the \$100k cash was a political donation that was accepted “in relation to” the 2015 NSW State Election and that the requirements and prohibitions of Part 6 of the EFED Act therefore applied to that donation. On that basis, it was unlawful for NSW Labor and Country Labor to accept the \$100k cash from Mr Huang.

Counsel Assisting submitted that the Commission could only make a finding that Mr Huang carried out a scheme for the purpose of circumventing the requirement of Part 6 of the EFED Act to the effect that the true source of a reportable political donation received or made must be disclosed to the NSWEC if the Commission were satisfied that Mr Huang knew that his donation “related to” a state election. The Commission accepts that analysis.

There is evidence from which the Commission can infer that Mr Huang did know that his \$100k cash donation was “related to” a state election. That includes evidence that Mr Huang delivered his \$100k cash donation to the general secretary of NSW Labor less than two weeks

after the 2015 NSW State Election. Further, Mr Huang delivered that donation less than four weeks after the 2015 CFOL dinner – a “Chinese launch” for the NSW state election campaign – which Mr Huang attended, during which he sat at the head table, and for which he was allocated five seats.

In chapter 5, the Commission found that the head table at the 2015 CFOL dinner was sold by Mr Wong for \$100,000. Having considered the further evidence in chapters 8, 9 and 12, the Commission is satisfied that the person to whom Mr Wong sold the head table at the event for \$100,000 was Mr Huang. The Commission finds that the \$100k cash, which Mr Huang delivered to Mr Clements on 7 April 2015, was a contribution made in connection with his purchase of the head table at the 2015 CFOL dinner.

That Mr Huang did not disclose to the AEC in the year ending 30 June 2015 the fact that he had made the \$100k cash donation, even though he had made such disclosures in previous years, suggests that Mr Huang did not intend for his donation to be used other than in connection with the 2015 NSW State Election; not, for example, in relation to federal political matters.

The Commission is satisfied that Mr Huang knew that his \$100k cash donation was “related to” a state election. The Commission finds that Mr Huang did carry out a scheme for the purpose of circumventing the requirement of Part 6 of the EFED Act that the true source of the \$100k cash donation, which was received or made in relation to a state election, must be disclosed to the NSWEC.

Mr Cheah

The question arises on the evidence available to the Commission as to whether Mr Cheah’s conduct, in causing for the \$100k cash to be recorded as having been donated by, in the first instance, 10 of the 12 putative donors and then, in having records changed to introduce two new putative donors, was performed innocently or wrongfully.

Counsel Assisting submitted that the Commission would find that Mr Cheah engaged in a course of conduct in connection with the switcheroo for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the names of donors of reportable political donations must be disclosed to the NSWEC.

Much of the evidence in support of Counsel Assisting’s submission has been detailed in previous chapters of this report (in particular, chapters 9 and 10). It includes evidence which establishes that:

- on 7 April 2015, Mr Cheah observed Mr Huang meet with Mr Clements at NSW Labor head office, after which Mr Clements handed Mr Cheah the \$100k cash
- on 9 April 2015, Mr Cheah gave the \$100k cash to Ms Zhao for processing, after which Ms Zhao:
 - banked \$50,000 into the campaign accounts of each of NSW Labor and Country Labor
 - made entries in the NSW Labor’s MYOB file to the effect that 10 persons (including Valentine Yee and Harbour City Group Pty Ltd) donated \$5,000 to each of NSW Labor and Country Labor
- according to Ms Zhao, at the request of Mr Cheah, she did not send the putative donors closed invoices on 9 April 2015, which was a departure from usual procedure
- on 17 April 2015, Mr Wong met with Mr Cheah and, during the course of that meeting, or immediately after, two events occurred, both at 2.26 pm:
 - Mr Wong emailed to Mr Cheah backdated donor declaration forms in the name of Mr Liao and Mr Tong that had not previously been provided to NSW Labor head office (it being clear from the email chain that the forms must have been backdated)
 - Mr Cheah called NSW Labor head office and caused an email to be sent from the receptionist to Ms Zhao titled, “Please call Kenrick urgently – don’t send out the receipts from this morning”
- on 22 April 2015, NSW Labor’s MYOB file was modified, on Mr Cheah’s instructions, so as to:
 - delete the entries made in NSW Labor’s MYOB file recording that Valentine Yee and Harbour City Group Pty Ltd had each donated \$5,000 to Country Labor
 - record, using the same invoice numbers originally allocated to Valentine Yee and Harbour City Group Pty Ltd in relation to their supposed donations to Country Labor, \$5,000 donations by each of Mr Liao and Mr Tong
- there is no evidence that any refunds were given to Valentine Yee or Harbour City Group Pty Ltd in relation to the \$5,000 donations to Country Labor that had previously been recorded in their

names (according to Mr Cheah, it did not occur to him that such refunds were necessary)

- according to Ms Wang, having two invoices issued in the same amount with the same number, but issued to two different people, suggests that there may have been some sort of fraud or cheating of the system
- Mr Cheah accepted that, at least with the benefit of hindsight, the instructions he received from Mr Wong to implement the switcheroo were “very suspicious”. The Commission has found that he must have considered the events of 17 April 2015 suspicious at the time that they were occurring.

The Commission has rejected Mr Cheah’s evidence that Mr Wong explained to him that the substitution of donors was necessary in order to correct some unspecified mistake. The basis for that finding is set out in chapter 10.

Counsel Assisting submitted that the Commission should find that – by at least 17 April 2015 – Mr Cheah knew the \$100k cash was not donated by the 12 putative donors but that the switcheroo, directed by Mr Wong and implemented by Mr Cheah, was done by Mr Cheah for the purpose of causing NSW Labor and Country Labor wrongly to treat the \$100k cash as being donated by the 12 putative donors.

Counsel Assisting also submitted that the Commission should make a further finding that the direction or advice that Mr Cheah gave to Ms Zhao to effect the switcheroo was done for the purpose of circumventing the requirement in s 88(2) of the EFED Act (read with s 91(2) and s 92(2)) that the name of donors of reportable political donations must be disclosed to the NSWEC.

Submissions in reply were made on behalf of Mr Cheah. Those submissions contended that Mr Cheah lacked knowledge of the “programme, or plan of action” central to the scheme being implemented by Mr Wong and Jonathan Yee. It was submitted that Mr Cheah did not know that Mr Huang was the true source of the \$100k cash and was therefore unaware that the participants in that scheme had a purpose of attempting to mask the involvement of a prohibited donor.

The Commission accepts that the evidence is not sufficiently cogent to permit the Commission to find that Mr Cheah knew, in April 2015, that Mr Huang was the true source of the \$100k cash. However, the Commission also accepts the submission of Counsel Assisting that Mr Cheah must have at least had a suspicion that that was the case.

In any event, the question of whether or not Mr Cheah possessed knowledge in April 2015 that Mr Huang was the true source of the \$100k cash has limited bearing on the present issue. That is so for two reasons.

First, as has been previously noted, Mr Huang does not appear to have been an “associate” of a “property developer” within the narrow definition of that term in the EFED Act. He was not, therefore, a “prohibited donor”. Mr Cheah’s awareness that others might have been scheming to mask the involvement of a person whom they believed to be a prohibited donor is of limited relevance to the question of Mr Cheah’s personal involvement in a scheme in connection with the switcheroo directed towards getting around the EFED Act requirement that the name of donors of reportable political donations must be disclosed to the NSWEC.

Secondly, in order to make a finding that Mr Cheah engaged in a scheme to circumvent requirements or prohibitions of Part 6 of the EFED Act, it would be enough for the evidence to establish that Mr Cheah engaged in a course of conduct that was intended to get around or avoid something occurring that happened to amount to a prohibition or requirement of Part 6 of the EFED Act.

In Mr Cheah’s case, the relevant course of conduct relates to his actions in connection with the switcheroo and his knowledge at the relevant time that at least some of the 12 putative donors, in particular Mr Liao and Mr Tong, were not the source of any part of the \$100k cash. To find that Mr Cheah engaged in such a scheme, it is not necessary for the evidence to establish that Mr Cheah was aware of, and knew the purpose of, any other schemes being implemented by other persons.

The Commission is satisfied that the evidence establishes that, at least as far Mr Liao and Mr Tong are concerned, Mr Cheah knew that those two individuals were not the source of any part of the \$100k cash and that he knew that to be the case when he effected the switcheroo.

Whether or not Mr Cheah also knew, at the time he effected the switcheroo, that some or all of the other 10 putative donors were not the source of the \$100k cash requires consideration of the surrounding body of evidence, which establishes that:

- Mr Cheah sent to Ms Murnain an email on 2 February 2015 attaching the roadmap to money spreadsheet, which estimated revenue of \$100,000 from the 2015 CFOL dinner and named Mr Wong as the main organiser
- Mr Cheah attended the 2015 CFOL dinner on 12 March 2015 and knew that Mr Huang was in attendance and sat at the head table
- Mr Cheah sent an email to LAC organisers, including Mr Wong, on 16 March 2015, titled “Well done and banking”. The email congratulated LACs, including CFOL, for hosting

successful fundraisers and urged organisers to “bank” funds raised with head office promptly so that the funds could be spent on target seats (for the state election on 28 March 2015)

- on 7 April 2015, almost a month later, Mr Cheah observed Mr Huang attend NSW Labor head office and meet with Mr Clements, immediately after which Mr Clements handed Mr Cheah the \$100k cash, said to comprise donations in connection with the 2015 CFOL dinner
- the circumstances in which Mr Cheah received the \$100k cash on 7 April 2015 were objectively suspicious in nature. Those circumstances include that:
 - according to Ms Wang, it was “exceedingly unusual” for NSW Labor to receive cash sums in the order of \$100,000
 - Mr Clements handed Mr Cheah the \$100k cash immediately after Mr Clements’ meeting with Mr Huang on 7 April 2015
 - the \$100k cash was comprised entirely of \$100 notes, implausibly said to constitute donations from 10 separate persons
 - as the Commission found in chapter 9, the \$100k cash was received on 7 April 2015 without any accompanying donor declaration forms
- Mr Cheah kept possession of the \$100k cash from 7 to 9 April 2015, during which time he took it home with him for two nights. Mr Cheah could not satisfactorily explain why he did so. The Commission found the most likely explanation is that Mr Cheah was holding the \$100k cash while waiting for the delivery of donor declaration forms at which point he was able to provide the money and forms to the finance department (chapter 9)
- during the public inquiry, Mr Cheah falsely stated on a number of occasions that he conducted checks of the NSW Electoral Roll in the process of reconciling the \$100k cash with the donor declaration forms ostensibly signed by the Emperor’s Garden putative donors and Mr Yip. He gave this false evidence in the context of attempting to explain the delay between the receipt and banking of the \$100k cash
- according to Jonathan Yee, when he delivered the 10 original forms to Mr Cheah at NSW Labor head office, Mr Cheah did not query why Jonathan Yee was delivering forms without any money. Jonathan Yee’s evidence was that Mr Cheah “would know what was going on”
- on 9 April 2015, Mr Cheah instructed Ms Zhao to bank half of the \$100k cash into the NSW Labor campaign account and half into the Country Labor campaign account even though there was no evidence of any donor intention to contribute money to Country Labor. In doing so, Mr Cheah gave Ms Zhao two piles of forms, one comprising the 10 original forms and the other comprising black-and-white photocopies of the 10 original forms
- the donor declaration forms that Mr Cheah gave to the finance department with the \$100k cash on 9 April 2015:
 - were all signed copies of the pre-filled invitation/reservation form (created by Mr Wong on 30 March 2015), which featured an identical handwritten “\$5,000” figure and strikeout of cheque and credit card (that is, non-cash) payment options
 - included, in addition to the 10 original forms and the black-and-white photocopies of them, an additional form, making 21 in total, in the name of Sydney Today, which Ms Zhao regarded as a surplus form in relation to which no money had been received (and in relation to which, on 2 July 2015, Mr Cheah emailed Ms Wang, saying “Hi maggie will have to write this one off I can’t remember but Ernest explained this one to me before”).

In contrast to the putative donors, who are considered later in this chapter and were inexperienced in matters of political donations, Mr Cheah, in his capacity as the community relations director for NSW Labor, was sufficiently experienced in handling and processing such donations to have appreciated the significance and function of statutory caps and disclosure requirements. Mr Cheah’s conduct in connection with his handling of the \$100k cash must be considered with that experience in mind.

Having considered all the evidence, the Commission is satisfied that Mr Cheah did know, at least at the time he effected the switcheroo, if not earlier, that some or all of the other 10 putative donors (that is, in addition to Mr Liao and Mr Tong) were not the source of the \$100k cash.

Submissions received on behalf of Mr Cheah point to what is submitted to be exculpatory evidence of Ms Murnain to the effect that she became aware, after the 2015 CFOL dinner, that there were some missing donor declaration forms in connection with that event, and that she instructed Mr Cheah to follow up with Mr Wong and Jonathan Yee to obtain those forms.

Ms Murnain's evidence is that Mr Clements discussed the need to obtain such missing forms with her on at least two occasions. The submission is made on behalf of Mr Cheah that Ms Murnain's instructions to Mr Cheah pertained to missing forms associated with the \$100k cash and that those instructions legitimise his involvement in the switcheroo. The submission is that:

Mr Cheah cannot be held responsible for his role in taking instructions from Mr Wong in respect of forms to match the donation associated with the CFOL dinner, and acting upon those instructions. Such conduct was the subject of a direct instruction of the Assistant General Secretary, and understood more generally on the part of the General Secretary to be occurring in any event.

However, it is not clear on the evidence whether the missing forms in relation to which Ms Murnain gave evidence were connected with the \$100k cash or some other contributions associated with the 2015 CFOL dinner. On cross-examination by senior counsel for Mr Robertson, Ms Murnain told the public inquiry that she was aware that there were missing forms in connection with the 2015 CFOL dinner, but that she did not know whether those missing forms were connected with the \$100k cash as opposed to "other money" banked in connection with the event.

Mr Cheah's evidence has consistently been that 20 signed donor declaration forms accompanied the \$100k cash when Mr Clements handed it to him on 7 April 2015. If that evidence were accepted, it would follow that, from the point in time when \$100k cash was delivered to head office, there were never any missing forms in connection with the \$100k cash.

The Commission rejects Mr Cheah's evidence that forms were provided to him together with the \$100k cash (chapter 9). Notwithstanding that finding, the tension between Mr Cheah's own evidence (that there were no missing forms in connection with the \$100k cash) and the submission that has been made on his behalf (that Ms Murnain asked Mr Cheah to follow up with Mr Wong to obtain missing forms in connection with the \$100k cash) cannot be easily reconciled.

The Commission found that Jonathan Yee delivered the 10 original forms to Mr Cheah to NSW Labor head office late on 8 April or early 9 April 2015 (chapter 9). It is clear on the evidence that, ostensibly, there were no missing forms at the time that the \$100k cash was banked on 9 April 2015. Any instruction from Ms Murnain to Mr Cheah to procure missing forms could not possibly have pertained to the switcheroo, which was put into effect by Mr Cheah two weeks later, at a point in time when the records of the party showed that there were no missing forms in connection with the \$100k cash.

On the evidence, the only window of time during which forms associated with the \$100k cash were missing is the period between the receipt of the \$100k cash at NSW Labor head office on 7 April 2015 and the banking of that money on 9 April 2015. Mr Cheah was in possession of the \$100k cash during that period.

There is insufficient evidence to make any finding as to whether or not Ms Murnain's instruction to Mr Cheah to liaise with Mr Wong to obtain missing forms in connection with the 2015 CFOL dinner did relate to the \$100k cash, as opposed to some other contributions in connection with that event.

Even assuming that Ms Murnain's instruction to Mr Cheah did pertain to the \$100k cash, logically, such an instruction could only have been given to Mr Cheah while he was holding the \$100k cash and waiting for the delivery of forms to match the money. If so, that would establish that Mr Cheah had possession of the \$100k cash, in \$100 notes, knowing it had been delivered by Mr Huang, in the absence of any donor declaration forms, and that Mr Cheah took steps, albeit on instructions, to arrange with Mr Wong and/or Jonathan Yee for the separate delivery of donor declaration forms to marry up with the \$100k cash. The Commission is not satisfied that such a scenario would be exculpatory of Mr Cheah.

On balance, the Commission finds that Mr Cheah engaged in a course of conduct in connection with the switcheroo for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the name of donors of reportable political donations must be disclosed to the NSWEC.

The putative donors and Mr Yip

With respect to the putative donors and Mr Yip, Counsel Assisting submitted that:

...each of the Twelve Putative Donors and To Yip engaged in a series of steps constituting a course of conduct the purpose of which was to mislead the Electoral Commission (and this Commission) into thinking that he, she or it (as opposed to the true donor) had made a donation of \$5,000 or \$10,000 in connection with the 2015 CFOL Dinner in circumstances where those persons knew that that was untrue.

That submission has not been put in issue by any interested party. The Commission is satisfied that the evidence, set out in chapter 11 and surveyed in part 3 of this report, supports such a conclusion. The Commission finds accordingly.

Counsel Assisting submitted that the courses of conduct engaged in by the putative donors:

... were apt to ... conceal or assist in concealing the identity of the true donor of certain political donations that were to be or had been made and thereby circumvent the requirement that the true source of reportable political donations be disclosed to the Electoral Commission.

The Commission accepts that submission and finds that those courses of conduct were, objectively, apt to achieve such a result.

As noted earlier in this chapter, however, s 96HB of the EFED Act is an offence provision that cannot be contravened recklessly. In order for a putative donor to have contravened that subsection, it would be necessary to establish that they subjectively intended to get around or avoid something occurring that happened to amount to a prohibition or requirement of Part 6 of the EFED Act.

The critical question is whether an inference can be drawn from the available evidence that the subjective purpose of the putative donors in providing false information to the NSWEC was to prevent the NSWEC from discovering the identity of the true source of reportable political donations. The evidence surveyed earlier in this chapter clearly supports such a finding in relation to Jonathan Yee. In relation to the other putative donors, however, the position is less clear.

Insofar as the Emperor's Garden putative donors and Mr Yip are concerned, there is evidence that Jonathan Yee asked each of them to sign documents that falsely stated that they were donors of sums of money they had not donated. The evidence suggests they complied with such requests in circumstances where Jonathan Yee was their boss, a family member, neighbour, and/or friend. There is evidence that Jonathan Yee's employees were motivated by a desire to do as their boss asked and, having told the initial lie, a desire not to get into further trouble.

As with Mr Cheah, there is no evidence that any of the putative donors, except possibly Jonathan Yee, knew the identity of Mr Huang as the true donor. Unlike Mr Cheah, however, there is no evidence of circumstances from which the putative donors might have suspected that Mr Huang might have been the true donor.

As with Mr Cheah, there is also no evidence that any of the putative donors, except Jonathan Yee, had knowledge or awareness of the factual matters constituting the agreement, arrangement or course of conduct amounting to a scheme formed between and/or undertaken by Mr Wong, Jonathan Yee and Mr Huang.

While Mr Cheah was an employee of NSW Labor and experienced in matters of political donations, including

having an appreciation of statutory caps and disclosure obligations, the putative donors were far from experienced in such matters. The conduct of the putative donors, and their subjective purpose, must be considered in this context.

There is evidence that the majority of the putative donors lacked sufficient English-language skills to read and/or comprehend the disclosure documents and statutory notices put before them to sign and/or respond to.

There is evidence that May Ho Yee, Valentine Yee, Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam and Mr Yip were guided by, and subject to pressure from, Jonathan Yee and/or Mr Wong throughout the course of the relevant events, including during investigations into that conduct. The detail of such evidence is considered in part 3 of this report.

Submissions received on behalf of Ms Tam contend that she acted under pressure from her boss, Jonathan Yee, and Mr Wong, in circumstances of a significant power imbalance. The submission is made that she was manipulated by Jonathan Yee and Mr Wong, who took advantage of her relative social position and lack of education to conceal their own purposes. It is submitted that she was concerned about losing her job and that is why she complied with Jonathan Yee's requests.

It has been submitted on behalf of Mr Lin that he was roped into involvement in this matter by Jonathan Yee, his employer, and was used as a pawn. It is submitted that his lies to the NSWEC and this Commission were motivated by a desire to comply with his employer's wishes and a desire not to get into further trouble, after having lied initially. He submits that he lacked any knowledge of the purpose of the scheme.

Submissions on behalf of Mr Mo contend that there is no evidence that he knowingly engaged in a scheme with the intention of circumventing the EFED Act. It is submitted that he did not set out with any such intention and that each of Mr Mo's false representations to the NSWEC was a discrete isolated response to an enquiry from the NSWEC and did not form part of any pre-organised plan, at least on his part. It is submitted that, at most, Mr Mo may have been unknowingly or, possibly, recklessly involved in a scheme devised by others and that that is not sufficient to establish the state of mind necessary to prove a scheme offence.

So far as Mr Tong is concerned, he gave evidence that he signed the pre-filled invitation/reservation form but could not recall having done so. He said that he first found out that his name had been used by others falsely in connection with a donation when he received a donation invoice from Country Labor.

Mr Tong's evidence, which is not disputed by Mr Wood, is that he confronted Mr Liao and Mr Wood with the donation invoice, complained that his name had been used for a donation and asked who had used his name. On Mr Tong's account (but denied by Mr Wood), Mr Liao and Mr Wood initially denied any involvement but then told him that Mr Wood's father, Bobby Wu, had used Mr Tong's name to make a donation and that if anything happened, the company (Wu International) would hire a lawyer to deal with it.

There is evidence that, at each stage of investigations into this matter, Mr Tong voiced objections regarding his involvement to Mr Liao and/or Mr Wood. That evidence, which includes file notes and correspondence kept by Mr Tong, is surveyed in part 3 of this report. Mr Tong gave evidence that "the way they spoke to me sounds like I had to comply with what Dr Liao said" and that he was afraid of losing his job if he did not do so.

The Commission is not satisfied that the evidence supports a conclusion that Mr Tong's conduct in relation to his role as a fake donor was undertaken for the purpose of hiding the identity of the true donor from the NSWEC. To the contrary, the evidence suggests that Mr Tong was motivated to comply, albeit as an unwilling party, with his employer's directions.

The Commission accepts that Chinese cultural norms, including those concerning the hierarchy of social obligations in family and employment contexts, likely contributed to the pressure applied to the putative donors by Jonathan Yee, Mr Wong and those who controlled Wu International. The subjective motivations of the putative donors must be considered in this context.

The evidence does not establish that the putative donors had received any clear or fulsome explanation as to what part they were being asked to play within the scope of a plan or scheme. In particular, there is no evidence that the putative donors were made aware of the overall scheme propounded by Mr Wong and Jonathan Yee or the significance of the acts they were asked to perform within such a scheme.

On balance, the Commission is not satisfied that the available evidence supports an inference that the subjective purpose of the putative donors (other than Jonathan Yee) in providing false information to the NSWEC was to prevent the NSWEC from discovering the identity of the true source of reportable political donations. The Commission is therefore not satisfied that the putative donors (other than Jonathan Yee) engaged in a scheme for the purpose of circumventing the requirement in Part 6 of the EFED Act to the effect that the name of donors of reportable political donations must be disclosed to the NSWEC.

There is, however, compelling evidence that the putative donors engaged in conduct of a kind that might have contravened various other offence provisions contained within Part 6 of the EFED Act. Those matters are considered in part 3 of this report.

Other persons

On the evidence, a number of other parties played at least some role in the events surrounding the delivery of the \$100k cash donation, the reconciliation of that money and the switcheroo. Those parties include Mr Clements, Mr Xu, Ms Zhao, Ms Wang, Mr Wood, and NSW Labor and Country Labor. Counsel Assisting submitted that the evidence does not establish that any of those parties entered into or carried out a scheme of the kind proscribed by s 96HB of the EFED Act.

Mr Clements

There is no evidence that Mr Clements entered into any agreement or understanding for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act. The Commission accepts the submission of Counsel Assisting that the extent of the factual findings that are available to be made in relation to Mr Clements' involvement with the \$100k cash is that he received it from Mr Huang and gave it to Mr Cheah. Notwithstanding that the delivery of \$100,000 in cash was an unusual event, and that Mr Clements must have known that the \$100k cash was a gift from Mr Huang that was related to the 2015 NSW State Election, the available factual findings as to Mr Clements' actions on 7 April 2015 are not sufficient to support a conclusion that Mr Clements carried out a plan or engaged in a course of conduct with a continuity of purpose directed towards circumventing a prohibition or requirement of Part 6 of the EFED Act.

Mr Xu

Mr Xu attended the meeting between Mr Huang and Mr Clements at NSW Labor head office on 7 April 2015. He accepted that it was possible that there was an exchange of a gift or bag between Mr Huang and Mr Clements during that meeting but did not positively confirm or deny such an exchange.

There was some evidence that Mr Xu felt pressured to avoid giving evidence to implicate Mr Huang. That includes evidence of communications directly and indirectly from Mr Huang to Mr Xu during the pendency of, and concerning, the Commission's investigation. Counsel Assisting submitted that, despite this, the evidence does not support a conclusion that Mr Xu gave false or misleading evidence in relation to the meeting on 7 April 2015. The Commission accepts that submission.

It is plausible that money was exchanged during the meeting on 7 April 2015 without Mr Xu knowing about it. That would be consistent with the manner in which Mr Huang provided Mr Clements parcels of thousands of dollars in cash on at least two other occasions in 2015 (chapter 8). In these circumstances, the Commission makes no adverse findings against Mr Xu.

Ms Zhao

There is evidence that, on Mr Cheah's instructions, Ms Zhao took a series of steps to alter financial records at NSW Labor head office to implement the switcheroo. This included deleting MYOB records pertaining to \$5,000 donations to Country Labor apparently from Valentine Yee and Harbour City Group Pty Ltd and substituting them with new records showing Mr Liao and Mr Tong to be the donors of those funds. This raises the question as to whether or not Ms Zhao was a participant in the scheme that was carried out by Mr Cheah.

The Commission accepts the submission of Counsel Assisting that, although Ms Zhao's actions were unsatisfactory in the sense that they involved an admitted departure from proper practice, the evidence does not support a conclusion that those actions were done for a wrongful purpose. The evidence suggests Ms Zhao was following instructions, albeit in circumstances which she considered suspicious. The evidence does not support a conclusion that Ms Zhao knew that following Mr Cheah's instructions would facilitate a scheme to circumvent prohibitions or restrictions of the EFED Act. In these circumstances, the Commission makes no adverse findings against Ms Zhao.

Ms Wang

At all relevant times, Ms Zhao reported to Ms Wang. There is evidence that Ms Zhao sought and obtained the approval of Ms Wang prior to banking the \$100k cash on 9 April 2015. Ms Wang gave evidence that it was highly unusual to receive \$100,000 in cash at NSW Labor head office. She accepted that the finance department, under her supervision, took approaches that were wrong as a matter of proper accounting practice and were "apt to conceal" what had really happened. Ms Wang accepted that what occurred "suggests that there may well have been some form of defrauding or cheating the system".

Counsel Assisting submitted that the evidence is not sufficiently strong to support a conclusion that Ms Wang engaged in any conduct herself (or entered into an agreement or arrangement) with the purpose of circumventing Part 6 of the EFED Act or with the intention of aiding someone else to commit some other offence. The Commission accepts that submission.

There is evidence that Mr Wong sought out a meeting with Ms Wang in July 2017, shortly before her interview with NSWEC investigators in relation to this matter. The circumstances surrounding that meeting are considered in part 3 of this report.

Mr Wood

There is evidence from call charge records which establishes that Mr Wong attempted to contact Mr Wood by telephone and text message several times between 2.33 pm and 3.39 pm on 30 March 2015. Those attempts coincide with Mr Wong's email to Mr Liao at 2.40 pm on 30 April 2015, which attached the pre-filled invitation/reservation form. The contacts on 30 March 2015 between Mr Wong and Mr Wood were the only contacts between them in the period from 25 March to 20 April 2015.

This evidence raises the question as to whether Mr Wood may have been involved in procuring the false invitation/reservation forms apparently signed by Mr Liao and Mr Tong. Mr Wood gave evidence that Mr Wong contacted him on 30 March 2015 to ask for Mr Liao's email address. Counsel Assisting submitted that Mr Wood's evidence is to be considered in circumstances where Mr Wood was an unsatisfactory witness, who often gave evidence that was evasive and often did not appear to be making a genuine attempt to answer the questions asked of him.

The Commission agrees that Mr Wood was an unsatisfactory witness. However, notwithstanding the call charge records on 30 March 2015, the Commission is not satisfied that the available evidence is of sufficient cogency to make the serious finding that Mr Wood was knowingly involved in procuring the forms of Mr Liao and Mr Tong.

Other findings concerning Mr Wood's role with respect to meetings involving Mr Tong between 2015 and 2018 are presented in part 3 of this report.

NSW Labor and Country Labor

There is evidence that, in 2015, NSW Labor and Country Labor (which shared leadership as well as financial, administrative and governance structures) lacked proper procedures and controls around the handling and management of political donations.

Ms Sibraa was appointed as the parties' first governance director in September 2016. Ms Sibraa gave evidence that, prior to her appointment, the parties had, to at least some extent, "sloppy processes", "poor governance" and a "terrible way of functioning". It was part of Ms Sibraa's role to make changes to improve governance. Such changes and improvements are considered in chapter 25.

The evidence suggests that the lack of proper procedures at NSW Labor head office in 2015 may well have made it easier for certain individuals associated with NSW Labor to implement and conceal unlawful schemes to circumvent the requirements or prohibitions of Part 6 of the EFED Act in connection with the delivery and receipt of the \$100k cash.

The question arises as to whether or not NSW Labor and Country Labor were participants in such schemes. This raises a potential legal issue. NSW Labor is, and Country Labor was, unincorporated associations. Can such associations be held liable for criminal offences under the EFED Act, which, like s 96HB, require proof of a particular state of mind, and, if so, how?

For present purposes, however, this legal question is not a live issue. It does not arise on the facts. Counsel Assisting submitted, and the Commission accepts, that the evidence does not establish that NSW Labor or Country Labor entered into any agreement or understanding for the purpose of circumventing requirements or prohibitions of Part 6 of the EFED Act. Nor does the evidence establish that the parties engaged in a coordinated course of conduct for such a purpose. On this basis, the Commission finds that NSW Labor and Country Labor did not enter into or engage in any scheme to circumvent the requirements or prohibitions of Part 6 of the EFED Act.

The question of criminal liability of unincorporated associations under the EFED Act is, however, a live issue in connection with the NSW Labor and Country Labor responses to statutory notices issued to them by the NSWEC in December 2016. The Commission presents that issue in chapter 19.

Section 74A(2) statements

The Commission is satisfied that Mr Wong, Jonathan Yee, Mr Huang and Mr Cheah are “affected persons” with respect to the matters dealt with in this chapter.

Ernest Wong

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong for:

- an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act in contravention of s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) of the Act (read with s 92(2)) to the effect that the true source of a “reportable political donation” received or made must be disclosed to the NSWEC.

During the public inquiry, Mr Wong gave evidence on objection pursuant to a declaration under s 38 of the ICAC Act. Any evidence that he gave during the public inquiry could not be used against him in criminal proceedings other than proceedings for an offence under the ICAC Act. The admissible evidence in relation to the alleged offence by Mr Wong includes:

- Jonathan Yee’s evidence regarding Mr Wong’s request to procure fake donors
- the evidence of Emperor’s Garden putative donors and Mr Yip that they were recruited as fake donors by Jonathan Yee
- the evidence of all of the putative donors (except Mr Liao) and Mr Yip that they did not donate any money in connection with 2015 CFOL dinner
- documentary evidence from Mr Wong’s parliamentary server and email account, including in relation to budgets for the 2015 CFOL dinner, the sale of the head table for \$100,000, guest lists, seating plans and the creation of the pre-filled invitation/reservation form.

Evidence in relation to the switcheroo, and Mr Wong’s role in it, would also be admissible against him. That evidence includes:

- email records and call charge records evidence regarding Mr Wong’s procurement of backdated donor declaration forms from Mr Liao and Mr Tong
- financial records of NSW Labor, including the evidence of the manipulation of MYOB files
- email records of NSW Labor
- Mr Wong’s electronic parliamentary diary
- Mr Cheah’s evidence as to his relevant interactions with Mr Wong
- Ms Zhao’s evidence as to steps that she took to effect the manipulation of MYOB files.

The evidence of Jonathan Yee and Ms Murnain in relation to discussions they had with Mr Wong in which Mr Huang was mentioned in the context of being the source of some or all of the \$100k cash would also be admissible in evidence against Mr Wong.

Further evidence in relation to a number of meetings that Mr Wong sought out with persons involved in the scheme, during the pendency of investigations into this matter by the NSWEC and this Commission, suggest that Mr Wong sought to monitor and influence the progress of those investigations with a view to concealing the falsity of the donor declarations made by each of those putative donors.

That evidence, which is surveyed in part 3 of this report, is relevant to Mr Wong's ongoing course of conduct in connection with the scheme offence identified above. Such evidence includes:

- records from Mr Wong's electronic parliamentary diary
- evidence from mobile telephones, including chats and photographs
- evidence of Mr Clements, Mr Tong, Yueran (Kenny) Zhan, Ms Wang, Jonathan Yee and the other Emperor's Garden putative donors, who had such meetings with Mr Wong.

This extends to the evidence of Ms Tam and Mr Tam about interactions with Mr Wong, and a document he provided to them, in the lead up to Mr Tam's compulsory examination.

Chapter 22 of this report considers the related question of whether Mr Wong's conduct, including in the course of carrying out the scheme for the purpose of circumventing the requirement of the EFED Act that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC, may also constitute corrupt conduct for the purposes of the ICAC Act.

Jonathan Yee

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Jonathan Yee for:

- an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act in contravention of s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) of the Act (read with s 92(2)) to the effect that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC.

During the public inquiry, Jonathan Yee gave evidence on objection pursuant to a declaration under s 38 of the ICAC Act. This means that his evidence cannot be used against him in criminal proceedings other than proceedings for an offence under the ICAC Act. The admissions that Jonathan Yee made during the public inquiry as to his conduct in connection with the scheme, which he says he entered into and carried out with Mr Wong, would not be admissible against him in any prosecution of the scheme offence identified above.

However, the Commission is satisfied that there is a compelling body of other evidence that would be admissible against Jonathan Yee. Much of that evidence

has been identified above in relation to Mr Wong (and is not repeated here). Of particular significance is the evidence of Emperor's Garden putative donors and Mr Yip, not only in relation to Jonathan Yee's recruitment of them as fake donors but also in relation to steps taken by Jonathan Yee to guide their responses over an extended period of time to enquiries made by the NSWEC and this Commission in the course of investigations into this matter. The evidence in relation to that guidance is set out in part 3 of this report.

Huang Xiangmo

The Commission is satisfied that there is sufficient admissible evidence in relation to Mr Huang's conduct in connection with the \$100k cash to seek the advice of the DPP with respect to the prosecution of Mr Huang for:

- an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act in contravention of s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) of the Act (read with s 92(2)) to the effect that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC.

The admissible evidence in relation to the alleged offence by Mr Huang includes the evidence (identified above) that the putative donors did not contribute any money towards the \$100k cash donation and Jonathan Yee's evidence as to the arrangement that he and Mr Wong came to in relation to the procurement of fake donors to mask the \$100k cash donation that Mr Wong would procure from another source.

The available evidence also includes:

- records and emails from Mr Wong's parliamentary office relating to his organisation of the 2015 CFOL dinner, including his budget that anticipated \$100,000 income from the sale of the head table and his payment register that shows Mr Huang was allocated half the seats at the head table
- emails that show that the CFOL organisers anticipated that Mr Wong would sell seats on the head table for \$10,000 each
- NSW Labor documents anticipating \$100,000 revenue from the 2015 CFOL dinner
- Mr Wong's email to Mr Law advising that the head table at the event had already been sold for \$100,000.

The admissible evidence also includes:

- emails and documents, such as the invitation/reservation form, which establish that the 2015 CFOL dinner was a fundraising event hosted in connection with the 2015 NSW State Election
- witness evidence, such as that of Mr Wong and Mr Clements, that Mr Huang attended the 2015 CFOL dinner, sat at the head table with Labor Party dignitaries, and was allocated half the seats at the head table.

Evidence from Mr Clements' telephone download would also be admissible, which shows that Mr Huang hosted a lunch meeting with Mr Wong and Mr Clements at Mr Huang's Mosman home on 15 March 2015. Travel records show that Mr Huang departed Australia shortly after this meeting and returned shortly before the withdrawal of \$100,000 cash of Mr Huang's money from a casino junket account by his employee, Wun Chi Wong, on Easter Good Friday, 3 April 2015. Business records from The Star would be admissible to prove that withdrawal, as would the evidence of Mr Houlihan, which establishes that the \$100k cash was most likely issued in \$100 notes organised in bundles of \$5,000 wrapped in paper straps.

Mr Clements' evidence of receiving separate cash sums of \$10,000 and \$35,000 from Mr Huang in 2015 in \$5,000 bundles of \$100 notes wrapped in paper straps would also be available to the DPP. Also admissible would be:

- call charge records and text messages in relation to the organisation of Mr Huang's meeting with Mr Clements at NSW Labor head office on 7 April 2015
- Mr Xu's evidence regarding the meeting on 7 April 2015 to the effect that it is possible there was an exchange of gifts or bags between Mr Huang and Mr Clements
- the evidence of Mr Clements in relation to that meeting with Mr Huang and arrangements that he made for Mr Huang to meet Mr Shorten and for the Jiangxi delegation to meet with Mr Andrews.

NSW Labor records, including the files containing the donor declaration forms of the putative donors and MYOB files in relation to the receipt and handling of the \$100k cash, would also be admissible against Mr Huang, as would bank records indicating that the \$100k cash, banked on 9 April 2015, was comprised wholly of \$100 notes.

Kenrick Cheah

The Commission is satisfied that there is sufficient admissible evidence in relation to Mr Cheah's conduct in connection with the switcheroo to seek the advice of the DPP with respect to his prosecution for:

- an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act in contravention of s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) of the Act (read with s 92(2)) to the effect that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC.

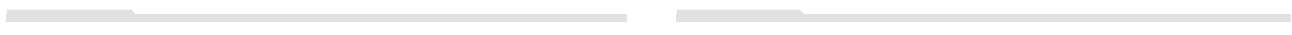
During the public inquiry, Mr Cheah gave evidence on objection pursuant to a declaration under s 38 of the ICAC Act. His evidence cannot be used against him in criminal proceedings other than proceedings for an offence under the ICAC Act. Any admissions that Mr Cheah made during the public inquiry as to his conduct in connection with the \$100k cash and the switcheroo would not be admissible against him in any prosecution of the scheme offence identified above.

The Commission is satisfied that there is sufficient other admissible evidence in relation to Mr Cheah. Much of that evidence has been identified above in relation to Mr Wong, Jonathan Yee and Mr Huang (and is not repeated here).

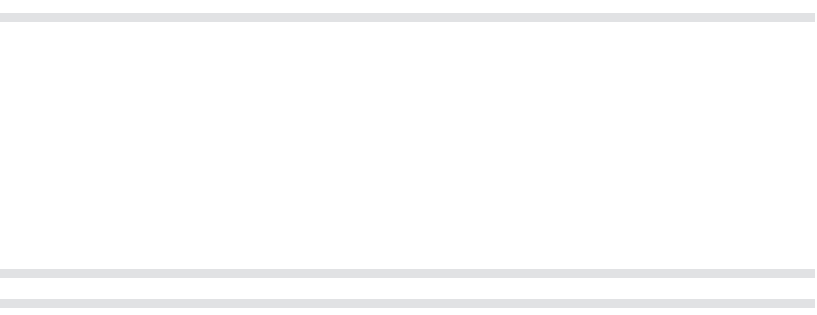
Admissible documentary evidence includes files from NSW Labor head office, including the donor declaration forms of the putative donors which, on their face, appear suspicious. The bank records, which establish that the \$100k cash was in \$100 denominations, would also be available. The evidence of Mr Clarke, which establishes that Mr Cheah undertook no searches of the NSW Electoral Roll, would also be relevant. So too would Jonathan Yee's evidence that he delivered the 10 original forms to Mr Cheah, that Mr Cheah did not query why he was delivering forms without money and his evidence relating to Mr Cheah's awareness of what was going on.

Of particular relevance to Mr Cheah is the evidence of Ms Zhao, supported by email records, relating to Mr Cheah's instructions to her in connection with the handling and banking of the \$100k cash. Ms Zhao's evidence in relation to Mr Cheah's subsequent instructions regarding the manipulation of Labor Party records in effecting the switcheroo, which Ms Zhao found to be suspicious, would also be admissible.

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PART 3 – Investigations into the donation of \$100,000 cash



Chapter 15: Disclosures to the NSWEC

Part 6 of the EFED Act establishes prohibitions and requirements, including a disclosure regime, with respect to political donations and electoral expenditure applicable to state elections and elected members of Parliament (and to local government elections and elected members of councils). Relevant to the subject of this chapter, under Part 6 of the EFED Act:

- a donation of or exceeding \$1,000 is defined as a “reportable political donation” (s 86)
- a person who has made a reportable political donation is defined as a “major political donor” (s 84)
- a political party is required to disclose to the NSWEC all political donations received during the relevant disclosure period (being the 12-month period to 30 June) (s 88(1)(a))
- a major political donor is (separately) required to disclose to the NSWEC any reportable political donations they have made during the relevant disclosure period (s 88(2))
- the details of reportable political donations that are required to be disclosed to the NSWEC include:
 - the party, elected member, group or candidate to or for whose benefit the donation was made
 - the date on which the donation was made
 - the name of the donor
 - the residential address (for individuals) or the address of the official office (for entities other than individuals) of the donor
 - the amount of the donation
 - in the case of a donor that is an entity and not an individual, the relevant business number of the entity (s 92(2)).

Disclosures by NSW Labor and Country Labor

For the 12-month period to 30 June 2015, NSW Labor and Country Labor disclosed to the NSWEC that they received total proceeds of \$138,930 in relation to the 2015 CFOL dinner. Documents provided by NSW Labor and Country Labor to the NSWEC indicated that \$100,000 of that amount was recorded as received in cash from a total of 12 putative donors each of whom were recorded as having contributed \$5,000 to either or both of NSW Labor and Country Labor. Those 12 putative donors were the 10 Emperor’s Garden putative donors (including Harbour City Group Pty Ltd), Mr Tong and Mr Liao.

On 13 September 2019, during the pendency of the public inquiry, NSW Labor and Country Labor amended their disclosures to omit reference to the 12 putative donors. On the same day, NSW Labor and Country Labor repaid \$100,000 to the NSWEC as contemplated by s 96J of the EFED Act on the stated basis that:

...the donations were unlawful because the \$100,000 either originated from a prohibited donor(s) and/or were not made by the persons who alleged they were the donors.

Disclosures by the putative donors

There is evidence that the NSWEC received one or more disclosures ostensibly from each of 12 putative donors, which contained false statements to the effect that he, she or it had donated sums of \$5,000 to either or both of NSW Labor and Country Labor in connection with the 2015 CFOL dinner. A number of the putative donors lodged multiple disclosure and/or amended disclosure forms.

The disclosure forms received by the NSWEC were tendered in evidence in the public inquiry. They were shown to each of the natural person putative donors and

Mr Yip, who gave the following evidence in relation to those disclosures.

Jonathan Yee

The disclosure records establish that the NSWEC received two disclosures from Jonathan Yee in relation to donations associated with the 2015 CFOL dinner. The first disclosure was received by the NSWEC on 20 November 2015 and declared that he had donated \$5,000 to each of NSW Labor (invoice 40915) and Country Labor (invoice 40925) on 12 March 2015. The second disclosure was received by the NSWEC on 30 January 2016 and disclosed for a second time one of the two donations that were the subject of his first disclosure; namely, the \$5,000 donation to NSW Labor (invoice 40915).

On 2 February 2016, the NSWEC emailed Jonathan Yee to advise that his second disclosure, received on 30 January 2016, could not be accepted as the NSWEC had already received a disclosure from him for the same period. He was invited to submit an amended disclosure form if he wished to amend the first disclosure. Jonathan Yee did submit an amended disclosure form on 3 February 2016, but the amendment did not relevantly alter the substance of his first disclosure in relation to the two \$5,000 donations to each of NSW Labor and Country Labor.

During the public inquiry, Jonathan Yee admitted that his disclosure, that he had personally donated \$5,000 to each of NSW Labor and Country Labor was false; a fact which he knew at the time that he made that disclosure.

Jonathan Yee further admitted to lodging a separate disclosure form, which falsely stated that Emperor's Garden Pty Ltd had also donated two sums of \$5,000 on 9 April 2015. That form, which was received by the NSWEC on 20 November 2015, declared that both of those donations were made to NSW Labor, a fact which, if true, would have constituted a breach of the statutory cap of \$5,000.

Jonathan Yee gave evidence that he subsequently asked his brother, Valentine Yee, to complete an amended disclosure form on behalf of Emperor's Garden Pty Ltd, which falsely stated that that business had donated \$5,000 to each of NSW Labor and Country Labor. That amended disclosure form was received by the NSWEC on 26 November 2015.

Valentine Yee

Valentine Yee admitted that he signed the amended disclosure form on behalf of Emperor's Garden Pty Ltd and that he knew at the time that he did so that Emperor's Garden Pty Ltd had not donated any money in connection with the 2015 CFOL dinner.

Valentine Yee further admitted to lodging a disclosure that he had personally donated \$5,000 to NSW Labor in connection with the 2015 CFOL dinner, knowing at the time that he made that disclosure that he had not made such a donation. The disclosure records indicate that Valentine Yee in fact submitted two disclosure forms, which were received by the NSWEC on 13 October 2015 and which appeared to disclose two identical donations; one made at a fundraising function and the other not made at a fundraising function. The NSWEC invited Valentine Yee to lodge an amended disclosure form to clarify the ambiguity. He submitted an amended form, received by the NSWEC on 28 January 2016, which omitted the previously disclosed donation that was not made at a fundraising function.

May Ho Yee

Jonathan Yee also gave evidence that he completed the disclosure forms for his mother, May Ho Yee, and that she signed the forms at his request. He said that he explained to his mother that the disclosure related to a donation to the Labor Party, which she did not have to pay, but he did not expressly tell her she was being asked to sign a false declaration. However, there is some tension between Jonathan Yee's evidence and that of May Ho Yee, Valentine Yee and the disclosure records.

The disclosure records indicate that the first disclosure received by the NSWEC from May Ho Yee was an "amended disclosure for a major political donor" form, received on 8 February 2016. It was the same type of form that was emailed to Valentine Yee by the NSWEC and which he had lodged in late January 2016. Like Valentine Yee's form, the information entered into May Ho Yee's form was typed. The form disclosed \$5,000 donations to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

On 25 August 2016, the NSWEC issued a warning letter to May Ho Yee advising that the declaration received on 8 February 2016 was invalid and was not accepted as lodged. A second disclosure for May Ho Yee, this time using the correct "disclosure of political donations for a major political donor" form, was received by the NSWEC on 26 August 2016. The substance of that second disclosure was identical to the first. The information entered into the second disclosure, like the first, was typed.

May Ho Yee gave evidence that Valentine Yee typed the information into her disclosure form and that she signed it. She said she knew she was providing information to the government, but that she relied on Valentine who did not explain the form to her. She gave evidence that she knew Valentine wanted her to sign the form to help Jonathan.

While she admitted knowing at that time that she had not donated any money, May Ho Yee said that she did not think she was telling a lie; rather, she thought she was helping her son. There is also evidence that May Ho Yee could not read English and relied on Valentine Yee to read English correspondence for her.

Valentine Yee gave evidence that he assisted his mother at each stage with the steps that needed to be taken in relation to the NSWEC, including the disclosure of donations. He admitted that he assisted May Ho Yee by preparing proposed documents, giving them to her to sign and then sending them off to the NSWEC.

It appears likely that Valentine Yee, rather than Jonathan Yee, entered the typed information into May Ho Yee's invalid amended disclosure form in February 2016. However, Jonathan Yee's specific admission regarding his mother's disclosure must be weighed against Valentine Yee's more generic evidence. There is also some evidence (set out below) that Jonathan Yee did in fact type information into the disclosure forms that were signed by, and submitted on behalf of, several of the other putative donors.

Ultimately, the evidence is not of sufficient cogency to enable the Commission to make any positive finding as to which of Jonathan Yee or Valentine Yee entered the typed information into May Ho Yee's two disclosure forms.

Ms Siu

The NSWEC received two disclosure forms in Ms Siu's name. The first was received on 5 February 2016 and contained handwritten information to the effect that Ms Siu had donated \$5,000 to each of NSW Labor and Country Labor on 9 April 2015. When shown that disclosure, Ms Siu admitted that she signed and entered the information into that form at Jonathan Yee's request. She said Jonathan explained to her that the purpose of doing so was to demonstrate that she had donated those amounts, which she knew was not true. She said she complied with Jonathan Yee's request because she trusted him. She completed the disclosure form in his office at the Emperor's Garden restaurant and left it with him afterwards. Jonathan Yee gave evidence that he told Ms Siu what to write on that first disclosure form.

On 25 August 2016, the NSWEC issued a warning letter to Ms Siu advising that her disclosure, which was received on 5 February 2016, had been lodged later than the required date of 20 October 2015. She was advised that she did not need to take any action in relation to the warning. Notwithstanding, a second disclosure from Ms Siu was received by the NSWEC shortly afterwards, on 8 September 2016.

Ms Siu's second disclosure contained typed information to similar effect of the first disclosure; namely, that she had donated \$5,000 to each of NSW Labor and Country Labor on 9 April 2015. When shown the second disclosure, Ms Siu agreed that it looked like her signature on the first page, but she could not recall signing it. She said someone else must have typed the information into the form. Jonathan Yee gave evidence that he probably typed the information into Ms Siu's second disclosure form.

Ms Tam

While Ms Tam admitted during the public inquiry that she completed and signed a false invitation/reservation form (at Jonathan Yee's request), she denied any involvement in preparing, signing or lodging the disclosure form in her name that was received by NSWEC on 21 March 2016, and which declared that she had donated \$5,000 to each of NSW Labor and Country Labor on 12 March 2015. She denied that the signature on that disclosure form was hers. She stated that no one showed her that disclosure form before it was sent to the NSWEC.

Jonathan Yee was shown the disclosure form in Ms Tam's name. While he admitted that he typed the information into Ms Tam's form, he said that he then gave the form to Ms Tam to sign and explained to her that it was a declaration to the NSWEC. He agreed that the declaration he asked her to sign was false.

There is evidence before the Commission that enables the tension between Ms Tam and Jonathan Yee on this issue to be resolved in favour of Ms Tam. First, the signature on the disclosure form in Ms Tam's name appears different from the signature on the invitation/reservation form; the latter of which Ms Tam has accepted was hers.

Secondly, there is evidence that, on 10 March 2015 (11 days before the disclosure in Ms Tam's name was received by the NSWEC), an email was sent from Jonathan Yee's account to Mr Wong purporting to have been written by Ms Tam. That email requested that Mr Wong correct a spelling error relating to Ms Tam's name (which had been erroneously spelled "Tay" on donation invoices), asking for copies of donation invoices pertaining to Ms Tam and to "Please also forward any forms for declaration to AEC [sic]". Mr Wong's email on 18 March 2016 in reply was addressed to "Jonathan" and not Ms Tam. It attached the NSWEC major political donor disclosure form, and requested Jonathan Yee to help Ms Tam complete and lodge the form.

During the public inquiry, Ms Tam was shown this email exchange. She gave evidence that she had never seen it before. She said that she had never been told by Jonathan Yee or anyone else that such an email was to be sent

in her name. The evidence that Jonathan Yee engaged in communications pretending to be Ms Tam, coupled with Ms Tam's evidence that she was not involved in completing or lodging the disclosure form, are sufficient for the Commission to draw the inference that Jonathan Yee forged Ms Tam's signature on, and lodged, the disclosure form in her name. The Commission finds accordingly.

Mr Mo

The disclosure records indicate that Mr Mo made two disclosures for the 12-month period to 31 June 2015. The first disclosure, received by the NSWEC on 8 September 2015, indicated that Mr Mo had not made any reportable political donations in the relevant period. The second disclosure, received by the NSWEC a month later, on 8 October 2015, as an amendment to the first disclosure, declared that Mr Mo had donated \$5,000 to each of NSW Labor and Country Labor on 9 April 2015.

Mr Mo admitted in evidence that he signed the disclosure form, which falsely declared that he donated sums of \$5,000 to NSW Labor and Country Labor. He said that he did so because Jonathan Yee asked him to. Mr Mo said that, when he signed the form, he understood that he was falsely telling the NSWEC that he had made those donations. Mr Mo said he was afraid he might lose his job if he refused Jonathan Yee's request.

Jonathan Yee gave evidence that he showed Mr Mo how to fill out the disclosure form and explained to Mr Mo that the disclosure related to the same donations the subject of the invitation/reservation form that Mr Mo had signed earlier in 2015.

Mr Shi

The disclosure records indicate that the NSWEC received a disclosure form in Mr Shi's name on 5 February 2016, which was assessed as invalid on the basis that it was not signed or dated. A further disclosure form, properly signed and dated, was received on 29 February 2016. That disclosure declared that Mr Shi had donated \$5,000 to each of NSW Labor and Country Labor on 9 April 2015.

When shown the first of those disclosures, Mr Shi admitted that he wrote the donation details on the form as requested by Jonathan Yee, who provided him with that information. He admitted that he signed the second disclosure form, also at Jonathan Yee's request. He said that, when he did so, he knew that he was falsely telling the NSWEC that he had made a donation. He said that he filled out the form and handed it back to Jonathan Yee. Mr Shi's evidence is consistent with that of Jonathan Yee, who agreed that he assisted Mr Shi to complete his

disclosure forms and that he told Mr Shi what should be written on them.

Mr Lin

Mr Lin gave evidence that he signed the first page of the disclosure form in his name, which was received by the NSWEC on 5 February 2016. That form declared that Mr Lin donated \$5,000 to each of NSW Labor and Country Labor on 9 April 2015.

Mr Lin said that he signed the first page of the disclosure form because Jonathan Yee asked him to. Mr Lin said that Jonathan Yee presented him only with the first page of the form to sign and not with the other pages. He said that he did not know whose writing was on the other pages. Mr Lin said that Jonathan Yee explained to him that the form concerned Labor Party donations. He said that he knew when he signed the form that he was falsely telling the government that he had donated money when he had not done so. Jonathan Yee admitted that, as with the other Emperor's Garden putative donors, he told Mr Lin what to write on the disclosure form.

Mr Yip (Harbour City Group Pty Ltd)

The disclosure records indicate that, on 8 September 2016, the NSWEC received a disclosure signed by Mr Yip on behalf of Harbour City Group Pty Ltd, which declared a donation of \$5,000 to NSW Labor on 9 April 2015.

Mr Yip gave evidence in a compulsory examination, the transcript of which was tendered in the public inquiry, that he sought Jonathan Yee's help when he was required by the NSWEC to complete the disclosure form. Mr Yip said that Jonathan Yee provided him with a partially completed form bearing typed information relating to the purported \$5,000 donation by Harbour City Group Pty Ltd to NSW Labor in 2015.

Mr Yip admitted that he signed the form at Jonathan Yee's request and that he understood when he did so that the form was telling the NSWEC that his company had donated \$5,000, when in fact it had not. Mr Yip said he signed the form and gave it back to Jonathan Yee, who sent it in to the NSWEC.

Jonathan Yee gave evidence that he assisted Mr Yip in completing the disclosure form on behalf of Harbour City Group Pty Ltd and agreed that he probably completed the typed sections of the form prior to taking it to Mr Yip to be signed. The typed sections include the business name, Harbour City Group, and the details of the \$5,000 donation to NSW Labor on 9 April 2015.

Mr Tong

On 25 August 2016, the NSWEC sent Mr Tong a warning letter advising that he had failed to lodge a disclosure on time in relation to a reportable political donation for the period ending 30 June 2015. On 26 August 2016, the NSWEC emailed a copy of the disclosure form to Mr Tong. On 30 August 2016, the NSWEC received a completed disclosure form from Mr Tong, which declared a donation of \$5,000 to “Chinese Friends of Labor” on 12 March 2015. The form was signed and dated 22 August 2016, which was prior to the NSWEC issuing the warning letter to Mr Tong.

During the public inquiry, Mr Tong gave evidence that, when he received the warning letter from the NSWEC, he called Mr Wood at Wu International who told Mr Tong to take the letter to Mr Liao’s office. Mr Tong said he took the letter to Mr Liao’s office and left it there. He said Mr Liao asked him to return the next day to sign the disclosure form. Mr Tong said that Mr Liao told him what to write on the form, and he did as he was told. Mr Tong said he signed the form, and backdated it to 22 August 2016, at Mr Liao’s request. After signing the form, Mr Tong said he left it with Mr Liao to lodge.

Mr Tong admitted that he made a false declaration on the form to the NSWEC and that he did not make any \$5,000 donation in connection with the 2015 CFOL dinner. Mr Tong said he felt he had no choice and was concerned about what people at Wu International might do if he said anything against them.

Mr Liao

On 20 January 2016, the NSWEC advised Mr Liao by letter that he had been identified as a person who had made a reportable political donation in the period to 30 June 2015, and that he was required to complete a disclosure form. A copy of the relevant form was provided to Mr Liao with instructions to “complete both parts of the form (A and B)”.

On 25 January 2016, the NSWEC received a completed disclosure form from Mr Liao, which disclosed in:

- Part A (General Reportable Political Donations – not made at a fundraising function), a \$5,000 donation to “Labor, Chinese Friends of Labor, Bill Shorten MP, Luke Foley MLC, Ernest Wong MLC” on 12 March 2015
- Part B (Reportable Political Donations – made at a fundraising function), a \$5,000 donation to “Labor” in connection with the 2015 CFOL dinner at The Eight restaurant.

The same invoice number was listed on the disclosure for each of those donations.

A business record from the NSWEC records a telephone conversation with Mr Liao on 28 January 2016 in which Mr Liao:

...confirmed by phone that the donation he made were [sic] only \$5000 and was confused when filling out the form thus wrote the donation both in Part A and Part B”.

Findings regarding disclosures

Section 96H(2) of the EFED Act makes it a criminal offence to knowingly provide false information to the NSWEC in a declaration or disclosure under Part 6:

96H Offences relating to disclosures

...

(2) *A person who makes a statement:*

(a) in a declaration or other disclosure under this Part, or

(b) in a request under this Part for an extension of the due date for making the disclosure

that the person knows is false, or that the person does not reasonably believe is true, is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

The evidence above clearly establishes that, except for Ms Tam and May Ho Yee, each of the natural person putative donors who gave evidence at the public inquiry (that is, Jonathan Yee, Valentine Yee, Ms Siu, Mr Mo, Mr Shi, Mr Lin and Mr Tong) admitted to making statements in disclosures to the NSWEC that were knowingly false. The Commission is satisfied that each of those natural persons engaged in conduct which may amount to an offence under s 96H(2) of the EFED Act.

In relation to Ms Tam, the evidence supports the finding that Jonathan Yee forged Ms Tam’s signature on the disclosure form in her name, and lodged it.

In relation to May Ho Yee, the evidence suggests that Valentine Yee and/or Jonathan Yee completed her two disclosure forms and asked her to sign them. May Ho Yee gave evidence that she relied on Valentine Yee, who did not explain the form to her. She said that she did not think she was making a false statement in signing the form. That is consistent with Jonathan Yee’s evidence that he did not tell his mother that he was asking her to make a false declaration. The available evidence is not sufficiently cogent to support a finding that May Ho Yee made statements in her disclosure that she knew to be false or did not believe were true.

Mr Liao is the only natural person putative donor who has not given evidence to the Commission. As noted in chapter 21, Mr Liao died the evening before he was due to participate in a compulsory examination in June 2018. The Commission has found that, like the other putative donors, Mr Liao did not in fact donate any sum of \$5,000 in connection with the 2015 CFOL dinner. The Commission is satisfied that, like the other natural person putative donors, Mr Liao's disclosure to the NSWEC, that he had made such a donation, was false and that Mr Liao understood that to be the case when he lodged that disclosure.

In relation to the two putative donors that were corporate entities, each of the relevant disclosure forms clearly identified the name of the major political donor the subject of the forms as the corporate legal entity (Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd) as opposed to the officers of those entities who caused for the disclosures to be lodged. Each of those forms also clearly identified that each relevant officer (Jonathan Yee, Valentine Yee and Mr Yip) signed the disclosure form on behalf of the relevant donor entity (that is, on behalf of Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd respectively).

Submissions were received on behalf of Mr Yip, which contend that he was one of four directors of Harbour City Group Pty Ltd, and that there is no evidence that any of the other three directors of the company were knowingly involved in Mr Yip's false disclosure to the NSWEC. In these circumstances, the submission is made that Mr Yip's disclosure form is consistent with it being made by Mr Yip personally and not by Harbour City Group Pty Ltd. In support of this submission, it is contended:

For example, the disclosure document dated 8 September 2016 (Exhibit 237, 11-13) carries as the donor name "To Yip" and is signed by To Yip. There is no evidence that in so doing Mr Yip signed otherwise than as "the donor".

The Commission does not accept that submission. The first page of the disclosure form signed by Mr Yip clearly identifies Harbour City Group Pty Ltd as the "Donor Entity" on behalf of which Mr Yip signed the form. The first page of the form also includes details of the Australian Business Number and the business address of Harbour City Group Pty Ltd. Additionally, on pages 2 and 3 of the form, the name of the major political donor is clearly identified in typed text as Harbour City Group. Mr Yip gave evidence that he added the handwritten letters "Pty Ltd" to the typed name of his business on those pages.

In these circumstances, the Commission is satisfied that,

if any substantive offences were committed in relation to false disclosures by Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd, then they were committed by those corporate legal entities. On the evidence above, the Commission finds that each of Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd engaged in conduct that may amount to an offence under s 96H(2) of the EFED Act.

Section 74A(2) statements

The Commission is satisfied that each of the putative donors and Mr Yip are "affected persons" with respect to the matters dealt with in this chapter.

False statement offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the people and companies below for offences of making a false statement in a disclosure in contravention of s 96H(2) of the EFED Act:

- Jonathan Yee, in relation to his disclosures received by the NSWEC on 20 November 2015 and 30 January 2016
- Jonathan Yee, in relation to the disclosure ostensibly signed by Ms Tam and received by the NSWEC on 21 March 2016. In relation to the disclosure in Ms Tam's name, the Commission is further satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Jonathan Yee also, or alternatively, for an offence of forgery in contravention of s 253 of the *Crimes Act 1900* ("the Crimes Act")
- Valentine Yee, in relation to his disclosures received by the NSWEC on 13 October 2015 and 28 January 2016
- Ms Siu, in relation to her disclosures received by the NSWEC on 5 February 2016 and 8 September 2016
- Mr Mo, in relation to his disclosure received by the NSWEC on 8 October 2015
- Mr Shi, in relation to his disclosure received by the NSWEC on 29 February 2016
- Mr Lin, in relation to his disclosure received by the NSWEC on 5 February 2016
- Emperor's Garden Pty Ltd, in relation to its disclosures received by the NSWEC on 20 November 2015 and 26 November 2015
- Harbour City Group Pty Ltd, in relation

its disclosures received by the NSWEC on 8 September 2016.

Each of the natural person putative donors who gave evidence in the public inquiry did so on objection pursuant to a declaration under s 38 of the ICAC Act. As a result, the answers given by each putative donor at the public inquiry are not admissible against him or her in criminal proceedings other than, relevantly, in proceedings for an offence under the ICAC Act.

Despite that, there remains significant evidence that would be admissible against the putative donors should any criminal proceedings be commenced against them for the offences specified above. That evidence includes the evidence of other putative donors as well as documentary evidence, including the disclosure records from the NSWEC. In particular, the evidence of Jonathan Yee, who assisted and guided the other Emperor's Garden putative donors in making their false disclosures, would be admissible against those persons.

Like the other putative donors, Mr Tong's admissions in the public inquiry regarding disclosures to the NSWEC were made on objection and cannot be used against him in criminal proceedings for any offence against s 96H(2) of the EFED Act.

However, the admissible evidence available against Mr Tong is to be contrasted to the other putative donors (except for Mr Liao, who is deceased). In relation to the other putative donors, there is corroborative evidence from other witnesses regarding their disclosures to the NSWEC. In particular, Jonathan Yee provides evidence of their knowledge as to the falsity of those disclosures. This is not the case with Mr Tong. In his case, there is no other witness who can give evidence as to his state of mind with respect to the disclosure in his name.

The absence of any corroborating witness evidence is exacerbated by the lack of evidence that Mr Tong, himself, actually lodged the disclosure that was received by the NSWEC in his name. On Mr Tong's account, he left the signed form with Mr Liao to submit. There is no evidence that the form was lodged electronically and it appears likely that it was submitted via the postal system.

Having weighed these issues, the Commission is of the opinion that there is insufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Tong for offences relating to false disclosures to the NSWEC.

Aid, abet, counsel or procure offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the persons below for

offences of aiding, abetting, counselling or procuring the making of a false statement in a disclosure in contravention of s 96H(2) of the EFED Act:

- Jonathan Yee, in relation to the disclosures by:
 - Emperor's Garden Pty Ltd, received by the NSWEC on 20 November 2015
 - Ms Siu, received by the NSWEC on 5 February and 8 September 2016
 - Mr Mo, received by the NSWEC on 8 October 2015
 - Mr Shi, received by the NSWEC on 29 February 2016
 - Mr Lin, received by the NSWEC on 5 February 2016
 - Harbour City Group Pty Ltd, received by the NSWEC on 8 September 2016
- Valentine Yee, in relation to the disclosures by:
 - Emperor's Garden Pty Ltd, received by the NSWEC on 20 November 2015
 - May Ho Yee, received by the NSWEC on 8 February and 26 August 2016
- Mr Yip, in relation to disclosure by Harbour City Group Pty Ltd, received by the NSWEC on 8 September 2016.

The admissible evidence that would be available to the DPP in relation to the above offences would include the NSWEC disclosure records and the evidence of the other putative donors. In particular, against Jonathan Yee, the admissible evidence includes that of Valentine Yee, Ms Siu, Mr Mo, Mr Shi, Mr Lin and Mr Yip in relation to Jonathan Yee's role in assisting them to complete their disclosures. Similarly, against Valentine Yee, the evidence of May Ho Yee and Jonathan Yee would be admissible. In the case of Mr Yip, the admissible evidence would include the evidence of Jonathan Yee as to Mr Yip's role in completing the disclosure on behalf of Harbour City Group Pty Ltd.

Chapter 16: NSWEC investigation – documents from the putative donors

After receiving the disclosures from NSW Labor, Country Labor and the 12 putative donors in relation to the \$100k cash in connection with the 2015 CFOL dinner, the NSWEC conducted a compliance audit. As a result of that audit, the NSWEC discovered that five of the putative donors, who had each disclosed donations totalling \$10,000, appeared to be waiters or waitresses, namely, Mr Lin, Mr Mo, Ms Siu, Ms Tam and Mr Shi, with employment links to the Emperor's Garden restaurant.

The NSWEC compliance audit also revealed that another four of the putative donors had links to the Emperor's Garden; namely, Jonathan Yee (\$10,000), his mother, May Ho Yee (\$10,000), his brother, Valentine Yee (\$5,000 to NSW Labor) and Emperor's Garden Pty Ltd itself (\$10,000).

The matter was referred to the NSWEC investigation team, which, between September 2016 and June 2017, exercised statutory powers to obtain documents and/or that information from each of the putative donors and conducted interviews with a number of them.

This chapter details the documents provided to the NSWEC in response to notices issued under s 110A(1)(b) of the EFED Act, many of which were false or misleading.

The following chapter details information provided by the putative donors to the NSWEC in response to notices issued under s 110A(1)(c) of the EFED Act and by way of answers in interviews (chapter 17), much of which was false or misleading.

Included in this chapter and chapter 17 are findings as to whether the putative donors were guided in their responses to the NSWEC investigation and, if so, by whom, and in what manner.

Statutory notices to produce documents

On 14 September 2016, the NSWEC issued notices pursuant to s 110A(1)(b) of the EFED Act to six of the putative donors. This series of notices required each of Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam and Mr Tong to produce to the NSWEC four classes of documents:

- copies of employment payment summaries (group certificates) for the 2014–15 financial year
- a copy of the Notice of Assessment issued by the ATO for that financial year
- copies of all personal bank statements for the period from 1 February to 30 April 2015
- copies of receipts provided by the person(s) or organisation(s) who received the donations on either 12 March or 9 April 2015 at the time of the purported donations of \$5,000 to either or both of NSW Labor and Country.

Five months later, on 22 February 2017, the NSWEC issued a further series of notices pursuant to s 110A(1)(b) of the EFED Act to the other six putative donors. This second series of notices required each of Emperor's Garden Pty Ltd, Harbour City Group Pty Ltd, Mr Liao, Jonathan Yee, May Ho Yee and Valentine Yee to produce two classes of documents:

- copies of all personal bank statements for the period from 1 February to 30 April 2015
- copies of receipts provided by the person(s) or organisation(s) who or that received the donations on either 12 March or 9 April 2015 at the time of the purported donations of \$5,000 to either or both of NSW Labor and Country Labor.

Each of the putative donors produced documents to the NSWEC in response to the s 110A(1)(b) notices.

The notices, and the documents produced in response to them, were tendered in evidence in the public inquiry. Each of the natural person putative donors who gave evidence at the public inquiry, and Mr Yip, were shown the relevant notices and documents produced in response. The evidence of those persons in relation to that material is set out below.

The 14 September 2016 notices

Mr Lin

The s 110A(1)(b) notices issued to Mr Lin and five of the other putative donors on 14 September 2016 required them to produce the four specified classes of documents by 28 September 2016. On the due date, the NSWEC received a number of documents from Mr Lin accompanied by a typed cover letter signed by him. The cover letter explained that Mr Lin was trying to obtain a copy of his employment payment summary from a previous employer and would provide it to the NSWEC once received. The cover letter further stated:

I want to take this opportunity to clarify how the total \$10,000 cash donations to Country Labor and NSW Labor came about. More specifically where the cash came from. On a weekly basis I have a practices [sic] of saving \$100 cash aside for safe keepings [sic] and unfortunate times. Also my 3 sons would on a regular basis give me and my wife money as a respect to us as their parents. A truly Chinese tradition in taking card [sic] of family.

Over the years I was able to save some cash and when 2015 State Election came about, I choose to donate to the Labor Party to Support our Chinese Candidate, Ernest Wong. I and many first generation Chinese had always supported Labor and will continue to do so. I personally would provide extra support to a Chinese running for a position in politics if my financial position permits.

The documents produced by Mr Lin included bank statements, a copy of Mr Lin's Notice of Assessment from the ATO for the year ending 30 June 2015, and donation receipts. The bank statements did not identify any withdrawal that might correspond to Mr Lin's \$10,000 purported donation. The Notice of Assessment established that Mr Lin's taxable income for the year ending 30 June 2015 was just \$14,463.

The two donation receipts produced by Mr Lin in response to the s 110A(1)(b) notice purported to establish that he had donated \$5,000 to each of NSW Labor and Country Labor in relation to the 2015 CFOL dinner. Those receipts were almost, but not quite, identical to the original receipts issued to Mr Lin and which were obtained from the files at the NSW Labor head office. Those differences, and their significance, are examined later in this chapter.

Mr Lin gave evidence that he worked for Jonathan Yee as a manager at the Emperor's Garden barbecue and noodle shop until late 2015. Mr Lin said he then worked at a restaurant in Carlingford before retiring from full-time work in 2016. Since then, Mr Lin has worked at the Emperor's Garden on a casual basis, a couple of times each month.

Mr Lin said that he recalled receiving the letter from the NSWEC requiring him to produce documents. He said that he collated his bank statement and the ATO Notice of Assessment but could not recall whether he sent those two documents to the NSWEC himself or whether he gave them to someone else to do so. Mr Lin said that he had never before seen the two donation receipts that were produced to the NSWEC in his name, and that someone else must have produced them.

Mr Lin gave evidence that he signed the cover letter but did not draft the contents of it. He explained:

I remember on that day I was working in Carlingford, and one day someone came to me and asked me to

sign on this letter. He said Jonathan sent him. And then after the signature, he took the letter away.

Mr Lin said that he did not read the letter, but he knew it related to the donation of \$10,000, which he had previously falsely disclosed to the NSWEC. Mr Lin agreed that what was said in the letter was not true. He said that he signed it because “Jonathan asked, said that it has to be signed in order to answer the inquiries from the Electoral Commission”. Mr Lin said that he signed the letter because he wanted “the problem finished”.

Jonathan Yee gave evidence that he assisted Mr Lin to respond to the NSWEC notice to produce documents. He was shown the cover letter that was signed by Mr Lin and admitted that he typed the letter for Mr Lin to sign. Jonathan Yee said that Mr Lin told him that he had a weekly practice of saving \$100 and so Jonathan added that detail to the cover letter. He admitted that he invented the line in the cover letter about choosing to support Mr Wong as a Chinese candidate. Jonathan Yee gave evidence that the cover letter contained part of a “story” that he and Mr Wong concocted in an attempt to convince the NSWEC that the putative donors were the source of the \$100k cash. Further evidence as to the circumstances surrounding the concoction of that story is set out in chapter 17.

Mr Mo

The documents produced by Mr Mo in response to the s 110A(1)(b) notice issued to him on 14 September 2016 included:

- a copy of his Notice of Assessment issued by the ATO for financial year ending 30 June 2015, showing a taxable income of \$30,741
- a bank statement in relation to a line of credit for the period 1 April to 30 June 2015, which did not assist in identifying any transactions that might correspond with Mr Mo’s purported donations
- a copy of a letter from NSW Labor, dated 6 September 2015, setting out the details of his purported donations of \$5,000 to each of NSW Labor and Country Labor on 9 April 2015.

Like Mr Lin, Mr Mo did not produce any employment payment summary for the 2014–15 financial year. However, unlike Mr Lin, Mr Mo did not produce copies of any donation receipts. Mr Mo gave evidence that he could not recall receiving any donation receipts.

Mr Mo gave evidence that, when he received the NSWEC notice requiring production of documents, he knew that the NSWEC was investigating whether there was any wrongful conduct in relation to the 2015 CFOL dinner. After receiving the notice, he took it to Jonathan

Yee and asked him what he should do. He said that he told Jonathan Yee that he was troubled about the notice. He explained to the Commission that he was concerned because he had already lied in his disclosure form about having made donations that he had not made. On Mr Mo’s account, Jonathan Yee told him not to worry and that he should just prepare the information that the NSWEC was asking for.

Mr Mo’s version of events is consistent with Jonathan Yee’s evidence, that he assisted Mr Mo in responding to the NSWEC notice to produce documents.

Mr Shi

The documents produced by Mr Shi in response to the s 110A(1)(b) notice issued to him on 14 September 2016 included:

- his Notice of Assessment from the ATO for the financial year ending 30 June 2015, showing a taxable income of \$28,631
- employment payment summaries for the 2014–15 period from Emperor’s Garden Pty Ltd and another employer, indicating combined gross salary of about \$52,000
- a bank statement for the period from 2 October 2015 to 1 April 2016 (outside the period of interest to the NSWEC)
- two donation receipts.

The two donation receipts produced by Mr Shi purported to establish that he had donated \$5,000 to each of NSW Labor and Country Labor in relation to the 2015 CFOL dinner. As was the case with Mr Lin’s donation receipts, the receipts produced by Mr Shi were almost, but not quite, identical to the original receipts from NSW Labor head office. Those differences are examined later in this chapter.

The material produced by Mr Shi in response to the NSWEC notice was accompanied by a handwritten letter, signed by Mr Shi, which apologised for the late production of documents, explaining that Mr Shi had been overseas in China.

During the public inquiry, Mr Shi gave evidence that, when he received the NSWEC notice to produce, he did not understand it, so he showed it to Jonathan Yee to see what needed to be done. Mr Shi’s evidence is that Jonathan Yee said, “that I should provide what is requested to the extent I have them and ... in terms of anything else that’s required he will provide them”.

Mr Shi said that Jonathan Yee identified for Mr Shi the documents that he should provide and, accordingly, he gave Jonathan Yee his bank statement, Notice of

Assessment and payment summary. Mr Shi said that Jonathan Yee presented him with the handwritten cover letter and asked him to sign it, which he did. He said he likely signed the letter in October or November 2016, after he returned from China, notwithstanding that the letter appears to be dated 6 September 2016. He said that he left the signed letter and associated documents with Jonathan Yee to send in to the NSWEC.

Jonathan Yee gave evidence that is broadly consistent with that given by Mr Shi. He agreed that he assisted Mr Shi in responding to the notice to produce documents issued by the NSWEC. Jonathan Yee agreed with the proposition put by Counsel Assisting that:

...at least in communications between what I might call the Emperor's Garden set and the Electoral Commission, you were involved every step of the way and you are in effect controlling the communication between those fake donors and what's occurring with the Electoral Commission.

However, when shown the handwritten cover letter, which accompanied the documents produced by Mr Shi to the NSWEC, Jonathan Yee said that he had never seen that letter before and had no input in relation to it. There is insufficient evidence before the Commission to enable any positive finding to be made as to who wrote that cover letter.

For completeness, the records indicate that, on 17 February 2017, Mr Shi provided the NSWEC with an additional bank statement for the period from 2 April to 1 July 2015. That statement did not assist the NSWEC to identify any transaction corresponding to Mr Shi's purported donations.

Ms Siu

The documents produced by Ms Siu in response to the s 110A(1)(b) notice issued to her included:

- a PAYG payment summary issued by Emperor's Garden Pty Ltd for the year ending 30 June 2015, showing gross payments of \$33,332
- bank statements for the periods from 3 September to 3 October 2014 (outside the period of interest to the NSWEC) and from 3 February to 3 March 2015
- two donation receipts.

Like Mr Lin and Mr Shi, the donation receipts produced by Ms Siu, which purported to establish that she had donated \$5,000 to each of NSW Labor and Country Labor in relation to the 2015 CFOL dinner, were almost, but not quite, identical to the original receipts from NSW Labor head office. Those differences are examined below.

Also like Mr Lin and Mr Shi, Ms Siu produced the documents in response to the NSWEC notice under cover of a letter. Ms Siu's letter, which was handwritten and dated 26 September 2016, stated:

...As requested, within I have enclosed the 4 documents you have requested. I have also included an extra bank statement dated September 2014 where I had made a withdrawal of \$5000.

The documents [sic] to Country Labor and NSW Labor in support of Mr Wong (Ernest) who is a family friend of mine.

The cash was made up of the withdrawal of \$5000 in September 2014, lucky money received in 2015 Chinese New Year from family friends and colleagues and customers, and from tips I had always kept [sic] aside working as a waitress.

I hope the above gives you a bit of light where the donations had come from.

During the public inquiry, Ms Siu gave evidence that she remembered receiving the NSWEC letter, which required her to produce documents, and she knew that the NSWEC was investigating whether people who had said they had donated were in fact genuine donors. Ms Siu said she took the letter to Jonathan Yee and he told her to gather the documents that were required to be produced. Ms Siu said she did not have the donation receipts at that time, so she asked Jonathan Yee to get new receipts.

When shown the handwritten cover letter, dated 26 September 2016, Ms Siu gave evidence that, after gathering various documents required to be produced, she met Jonathan Yee at the Emperor's Garden whereupon he handed her a handwritten draft of that letter and told her to copy it out on a piece of paper in her handwriting and to sign it. Ms Siu agreed that what is written in the letter is not true. Having written and signed the letter, Ms Siu delivered it with the attached documents to the reception desk at the NSWEC the next day.

Ms Siu gave evidence that she retained the handwritten draft of the cover letter that Jonathan Yee had asked to her to copy. She said that she kept that draft until a few weeks after receiving her summons to attend and give evidence at the public inquiry. Ms Siu explained that she was at work at the Emperor's Garden when a colleague told her to go upstairs to a private dining room where someone wanted to see her. Entering the private dining room, she found Mr Wong dining alone. Ms Siu's evidence is that Mr Wong spoke of his own good deeds and then told her to persist and say to the public inquiry that the \$10,000 was donated from her own money.

Mr Wong admitted that he met with Ms Siu prior to the public inquiry and that he said words to her to the effect, “You should tell the same story and you will be alright”. Mr Wong added that he told Ms Siu that “she should tell what she believe [sic] that was the truth, and she should actually say what she said before”. There is evidence that Mr Wong conducted a series of similar meetings with other putative donors. That evidence, and the Commission’s findings in relation to it, is surveyed in chapters 22 to 24.

On Ms Siu’s account, during the meeting with Mr Wong in the private dining room, Mr Wong came to know that Ms Siu possessed the draft letter to the NSWEC that Jonathan Yee had given her explaining the source of the \$10,000. Ms Siu said she may have told Mr Wong about it during the meeting. She said that Mr Wong wanted to see the draft and told her to bring it in to work and he would pick it up from her. Ms Siu said she brought it in to work and Mr Wong came to the cashier counter about a week later and asked her for it. Ms Siu says she gave it to him. It was her only copy.

Ms Siu was not cross-examined by senior counsel for Mr Wong. No submission was made on behalf of Mr Wong in relation Ms Siu’s evidence concerning her delivery to him of the original draft cover letter.

Jonathan Yee gave evidence that he assisted Ms Siu in responding to the NSWEC notice to produce documents. Jonathan Yee said that his assistance included procuring the receipts for her that were provided to the NSWEC. In relation to the cover letter, Jonathan Yee admitted that he composed the text of the letter and gave her a draft to copy out in her own handwriting. He admitted that he suggested to Ms Siu that she should deliver the cover letter and the attached documents to the NSWEC herself.

Ms Tam

Ms Tam did not produce in response to her s 110A(1)(b) notice any employment payment summaries or a Notice of Assessment for the 2014–15 financial year. She did produce a bank statement for the period from 3 February to 1 May 2015, which did not assist in identifying any transaction that might correspond to her purported donation of \$10,000. She also produced two donation receipts, which, like those produced by other putative donors, were almost, but not quite, identical to the original receipts from NSW Labor head office. Those differences are examined below.

Like other putative donors, Ms Tam produced the documents in response to the notice to her under cover of a letter. Ms Tam’s letter, which was typed and dated 23 September 2016, included the following explanation:

I writing to you regarding your recent correspondence in relations to my donations to NSW Labor and Labor Country in March of 2015. During that time, my husband Ming Biu Tam and I together had made 2 donations of \$5000 each to the respective parties mentioned above. These donation [sic] was made in support of my good friend The Hon. Ernest Wong MLC who was on the Labor Ticket for Upper House of NSW during the 2015 State Election.

We had made a cash donation as it was seemed more sincere...

The cover letter explained that Ms Tam did not produce a payment summary or tax records as she did not work and was a housewife by occupation. During the public inquiry, Ms Tam gave evidence that she worked casually at the relevant time at the Emperor’s Garden restaurant.

Ms Tam gave evidence that she recalled the NSWEC requiring her to produce documents. She said that she showed that letter to Jonathan Yee, who told her that she needed to provide bank statements and that a letter needed to be written to the NSWEC to explain. She said that she did not know that the NSWEC also required her to produce donation receipts.

When shown a copy of the cover letter, dated 22 September 2016, Ms Tam gave evidence that Jonathan Yee presented the typed letter to her, explained the content and asked her to sign it. Ms Tam said Jonathan Yee told her that her husband’s name had to be used in the letter, “because I was a casual worker, I didn’t, I wouldn’t have enough to donate”. She said that she signed the letter at the Emperor’s Garden restaurant and then left it with Jonathan Yee. She admitted knowing when she signed the letter that it contained false statements about donations. She signed because “the boss” asked her to.

Ms Tam’s evidence is corroborated by Jonathan Yee, who admitted that he stage-managed her evidence to the NSWEC and was involved in manufacturing the story that her husband had contributed to the donation, so as to make it appear more likely that Ms Tam could afford the purported donation. Jonathan Yee said that he composed and typed the cover letter in Ms Tam’s name, and that she had no input in it. He said it was his idea to write that Mr Wong was a “good friend” of Ms Tam’s, which was not true.

Jonathan Yee gave evidence that he consulted Mr Wong in relation to the responses that were to be provided to the NSWEC notices. He said that Mr Wong asked “whether they had any family members, could they contribute”, in response to which Jonathan Yee told Mr Wong about Ms Tam being married with children. Jonathan Yee accepted that, while the kernel of the idea

may have originated from Mr Wong, it was his own idea to incorporate Mr Tam into Ms Tam's false explanation to the NSWEC.

Other aspects of stories concocted by Jonathan Yee and Mr Wong for the NSWEC to explain the purported contributions of the putative donors are set out in chapter 17. The involvement of Mr Wong and Jonathan Yee in the false evidence given by Mr Tam to the Commission at a compulsory examination in June 2019 is explored in chapter 23.

Mr Tong

The documents produced by Mr Tong in response to the s 110A(1)(b) notice issued to him included:

- bank statements for the period from 8 January to 31 July 2015, which did not identify any withdrawal corresponding to his purported \$5,000 donation
- a donation receipt showing that Mr Tong had donated \$5,000 to Country Labor in relation to the 2015 CFOL dinner (identical to the original receipt from the files at NSW Labor head office)
- employment payment summaries, including from Wu International, showing combined income of about \$42,000 for the 2014–15 financial year
- Centrelink records relating to aged pension payments
- a Notice of Assessment showing taxable income of \$46,489 for the relevant year.

The documents produced by Mr Tong were received by the NSWEC under cover of a typed letter dated 22 September 2016, which itemised the documents produced in response to the statutory notice. The letter and attached documents were received by post in an envelope franked by a machine at a Haymarket accountancy firm, Teh & Ng Pty Ltd.

Mr Tong gave evidence that, when he received the NSWEC notice requiring him to produce documents, he rang Mr Wood, who told him to take the notice to Mr Liao. Mr Tong said that he took the notice to Mr Liao at the offices of Wu International and that Mr Liao explained to Mr Tong what documents he needed to gather and also made arrangements for the company's external accountant, Leon Teh, to prepare a response to the NSWEC.

Mr Wood gave evidence consistent with that of Mr Tong. Mr Wood said that Mr Tong told him in September 2016 that the NSWEC required him to produce documents. He said that Mr Tong came back to the company to see Mr Liao for help after receiving the letter from the

NSWEC in September 2016. Mr Wood said that he joined the conversation between Mr Liao and Mr Tong halfway through, at which point:

Tong asked Dr Liao to help him because it related to a donation, it had nothing to do with him, and he wanted to blow up the matter to become an explosive news if Dr Liao didn't help him.

Mr Wood said he discussed the issue with Mr Liao, who set up a meeting with Mr Teh. Email records establish that Mr Liao wrote to Mr Teh on 19 September 2016 asking for advice in relation to a donation of \$5,000 made by Mr Tong to the Labor Party and that arrangements were made between them for a meeting in relation to that issue. Mr Wood denied attending that meeting.

Mr Tong gave evidence that, at Mr Liao's request, he compiled the documents required by the NSWEC and provided them to Mr Liao. On Mr Tong's account, Mr Teh prepared the response letter and Mr Liao called Mr Tong and instructed him to attend the accountant's office, where he signed the letter at the reception desk. Mr Tong said that he did not meet the accountant, Mr Teh, or have any discussion with him in relation to the response. Mr Tong said he asked the receptionist for a copy of the letter that he signed, but she refused to provide him with a copy. When shown a copy of the cover letter received by the NSWEC, Mr Tong confirmed that it was the document that he signed at the accountant's office.

Mr Teh gave evidence at the public inquiry. He said that Teh & Ng had been the accountants for Wu International since 2010, and that he also acted as the personal accountant for Mr Liao, when he was alive, and for Mr Wood, his mother and his sister. He agreed that Mr Liao contacted him in September 2016 asking for assistance in relation to preparing a response to the NSWEC regarding a \$5,000 donation by Mr Tong. Mr Teh agreed that a meeting was arranged to discuss the matter, at which point he was provided a copy of Mr Tong's notice from the NSWEC.

Mr Teh confirmed that he prepared the cover letter in response to Mr Tong's notice from the NSWEC to produce documents. He agreed that his personal assistant compiled the documents, which were delivered to him after the meeting, and the cover letter for Mr Tong to sign.

Mr Teh gave evidence that, when drafting the cover letter, he reviewed the documents to be produced in response to the notice. He agreed that, in light of Mr Tong's modest income, that it appeared that Mr Tong lacked the capacity to donate \$5,000 and it seemed quite unlikely that Mr Tong was the true donor of that money. He said that he did not share his suspicions with the NSWEC because it was not his duty to do so. Mr Teh said that he did not ask Mr Tong, and did not want to know, if he was

the true donor of that \$5,000 because it looked suspicious as a matter of common sense. Mr Teh agreed that he was careful not to ask too many questions, as he did not want to know anything more about the matter.

There is tension between the evidence of Mr Tong and Mr Teh as to whether or not Mr Tong attended any meeting at the offices of Teh & Ng to discuss the response to the NSWEC notice. As noted above, Mr Tong is adamant that he did not meet Mr Teh or have any discussion with him in relation to this matter. Mr Teh gave equivocal evidence on his issue:

I can't remember exactly who were [sic] there, but I'm very sure that Dr Liao would have taken Steve Tong to my office, because I, I don't know Steve Tong personally

...

Well, Mr Tong would have, would have attended, you know, at least once, otherwise I wouldn't have written a letter on his behalf, you know?

Asked if it was possible that Mr Liao, having sent Mr Teh the email seeking advice on the matter, simply attended the meeting without Mr Tong, Mr Teh replied:

I'm sorry, I can't remember the, the event exactly. But you know, at some point of time, Steve Tong would have come and signed that letter. So I would have met him then, you know, at least, yeah.

On balance, the Commission is satisfied that Mr Tong did not attend any meetings with Mr Teh in relation to the response to the NSWEC notice to produce documents.

Such a finding is also consistent with evidence that Wu International was billed for the work done in drafting Mr Tong's cover letter. Teh & Ng tax invoice number 15353 described the work as "Attend meeting held with Leo Liao in regards to general tax consultation". This invoice made no reference to any meeting with Mr Tong or to the NSWEC. Mr Teh's explanation for the work description on that invoice, in circumstances where his corresponding billing instruction described the work as "Letter to Electoral Commission", was that it was a secretarial error. The Commission rejects that explanation.

Bank records confirm that Wu International paid Teh & Ng invoice number 15353. That the company paid for that work is consistent with Mr Tong's evidence (set out below and in later chapters) that Mr Wood and Mr Liao told him, when he objected to the use of his name in connection with the donation he had not made, that he was not to worry but if there was a problem that "the company" would fix it.

Mr Wood accepted that Wu International paid the Teh & Ng invoice, but rejected the proposition that he agreed

to treat the advice from Mr Teh regarding Mr Tong as a company matter for which the company would pay. He said that he paid the invoice because it described the work done as "general tax". He said if the invoice said that it concerned the NSWEC, then Wu International would not have paid it. The Commission rejects that evidence. The Commission is satisfied that the more likely explanation is that the Teh & Ng invoice number 15353 deliberately described the work performed without reference to Mr Tong or the NSWEC in order to mask the nexus that existed between Mr Tong's purported donation and those who controlled Wu International.

Mr Tong's evidence, as to what he did when he received the NSWEC notice dated 14 September 2016, is consistent with contemporaneous correspondence obtained from Mr Tong's computer. That evidence includes an electronic copy of a letter created on 6 October 2016 addressed to Gary Fong. Mr Tong gave evidence that Mr Fong was a friend to whom he wrote expressing his displeasure about the use of his name as the donor of \$5,000 in connection with the 2015 CFOL dinner. The letter to Mr Fong was entitled "Re: Political Donation \$5,000.00 to Labor Party" and stated that:

- Mr Tong knew nothing of the \$5,000 donation in his name until he received the donation invoice from the Labor Party
- he did not make the donation and could not afford to do so
- his name was used for the donation without his knowledge or agreement
- he confronted those in charge of Wu International, being Mr Wood and Mr Liao, after he received the donation invoice
- Mr Wood told Mr Tong that his father, Bobby Wu, used Mr Tong's name to make the donation
- Mr Wood told Mr Tong not to worry and that Mr Tong did not need to do anything other than let the company fix it
- at that time, Mr Tong kept quiet, as he needed his job
- on 25 August 2016, Mr Tong received a letter from the NSWEC requiring him to disclose the \$5,000 donation. He spoke to Mr Liao who told him to not to worry and just complete the disclosure form
- on 14 September 2016, Mr Tong received another letter from the NSWEC requesting him to provide four kinds of documents (as per the s 110A(1)(b) notice)

- when he received the 14 September 2016 letter, he called Mr Liao, who “told me to provide all above four times copies and he will arranged [sic] their Accountant Mr Leon to help fix it”.

The letter to Mr Fong is consistent with other correspondence sent by Mr Tong to Mr Wood in May 2017, in which Mr Tong expressed deep concern about his involvement in the donation matter and demanded that Wu International deal with the matter or else Mr Tong would reveal the truth to the NSWEC. The details of that correspondence are set out in chapter 17.

There is evidence to suggest that Mr Tong’s actions following his receipt of the s 110A(1)(b) notice including, on Mr Wood’s account, Mr Tong’s threat to Mr Liao to “blow up the matter to become an explosive news if Dr Liao didn’t help him”, initiated a series of events that involved: Mr Liao raising Mr Tong’s concerns with Mr Wong, Mr Wong relating those concerns to Ms Murnain, and Ms Murnain seeking advice in relation to those concerns from Mr Robertson of Holding Redlich. The Commission’s findings in relation to that evidence is set out in chapter 18.

The 22 February 2017 notices

On 22 February 2017, the NSWEC issued notices pursuant to s 110A(1)(b) of the EFED Act to Emperor’s Garden Pty Ltd, Harbour City Group Pty Ltd, Mr Liao, Jonathan Yee, May Ho Yee and Valentine Yee to produce by 8 March 2017 copies of donation receipts relating to the 2015 CFOL dinner and personal bank statements for the period from 1 February to 30 April 2015.

Jonathan Yee

The documents produced by Jonathan Yee in response to the s 110A(1)(b) notice included:

- a bank statement for the period from 7 January to 7 July 2015, which did not identify any transaction corresponding to his donations
- two donation receipts purporting to establish that he had made \$5,000 donations to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

Jonathan Yee’s documents in response to the NSWEC notice were produced under cover of a typed letter, dated 6 March 2017, which included the following explanation:

Please allow me to provide a quick explanation for the above mentioned donation amount.

- *\$5000 to the Australian Labor Party was for a purchase of a premium table of 10 seats. Each*

guest paid \$500 each and those guests are my friends for whom I can provide you with details if you require. Donation was made in cash because I was given cash on the night of the event.

- *\$5000 to Country Labor is a personal donation to the Australian Labor Party in support of the Hon. Ernest Wong MLC who is a personal friend and a political mentor to me as I am a Labor member. Donation was made in cash.*

Like the other putative donors, Jonathan Yee admitted that he did not donate any sums of \$5,000 in connection with the 2015 CFOL dinner. The Commission is satisfied that his explanation in the cover letter was patently false.

Jonathan Yee said that, when he received the NSWEC notice, he took steps to obtain copies of donation receipts in relation to the purported donations made by himself, Valentine Yee, May Ho Yee, Emperor’s Garden Pty Ltd and Harbour City Group Pty Ltd. He said he made those requests through Mr Cheah. He said that his brother, mother and Mr Yip told him about receiving notices from the NSWEC requiring them to produce documents, including donation receipts, and that he helped them in responding to those notices.

Jonathan Yee’s evidence is consistent with email records, which show that Mr Cheah emailed Ms Wang on 1 March 2017 and asked her to urgently email to Jonathan Yee copies of receipts for donations made by those five persons in connection with the 2015 CFOL dinner. Ms Wang promptly forwarded that email to Ms Zhao.

The donation receipts produced by Jonathan Yee (and those produced by Emperor’s Garden Pty Ltd, Valentine Yee, May Ho Yee, and Harbour City Group Pty Ltd) in March 2017 were, like those produced by Mr Lin, Mr Shi, Ms Siu and Ms Tam in September 2016, almost, but not quite, identical to the original receipts held at NSW Labor head office. The receipts produced in March 2017 were altered in a slightly different way to those produced in September 2016. The details of those differences are set out below.

Emperor’s Garden Pty Ltd

The documents produced by Emperor’s Garden Pty Ltd in response to the s 110A(1)(b) notice included bank statements that did not identify any relevant transactions and two donation receipts purporting to establish that the business had made \$5,000 donations to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

Jonathan Yee gave evidence that he, and not Valentine Yee, took responsibility for responding to the notice on behalf of Emperor’s Garden Pty Ltd. He said that included

requesting a copy of the Emperor's Garden Pty Ltd donation receipts from Mr Cheah.

Valentine Yee

The documents produced by Valentine Yee in response to the s 110A(1)(b) notice included personal bank statements, which did not identify any relevant transactions and a donation receipt pertaining to his purported \$5,000 donations to NSW Labor.

Valentine Yee gave evidence that, when he received the NSWEC notice, he asked Jonathan Yee to procure a receipt, which said that Valentine had donated \$5,000 to NSW Labor. He said that Jonathan did procure such a receipt, which Valentine then produced to the NSWEC.

May Ho Yee

Like Jonathan Yee, the documents produced by May Ho Yee in response to the s 110A(1)(b) notice issued to her included a bank statement, which did not identify any relevant transactions, and two donation receipts purporting to establish that she had donated \$5,000 to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

May Ho Yee gave evidence that she could not recall receiving the NSWEC notice, but she did remember being asked by the NSWEC to produce some documents. She said that Jonathan Yee and Valentine Yee prepared the necessary documents between themselves. She said that Jonathan Yee obtained the donation receipts via email and that Valentine Yee sent the documents off to the NSWEC.

Jonathan Yee corroborated May Ho Yee, giving evidence that he assisted her in responding to the NSWEC notice to produce, including requesting copies of donation receipts from Mr Cheah.

Mr Yip (Harbour City Group Pty Ltd)

Mr Yip responded to the s 110A(1)(b) notice issued to Harbour City Group Pty Ltd. He produced documents that included:

- personal bank accounts, which did not assist in identifying a relevant transaction corresponding to Harbour City Group Pty Ltd's purported donation
- a donation receipt indicating that he had donated \$5,000 to NSW Labor in connection with the 2015 CFOL dinner
- copies of correspondence from NSWEC in relation to disclosures by major political donors
- an MYOB receipt pertaining to Harbour City Group Pty Ltd's \$5,000 donation to NSW Labor.

Mr Yip produced the required documents under cover of a typed letter, dated 4 March 2017, which sought to explain:

...I just want to brief you that the donation was a purchase of a \$5000 table at the 2015 Chinese Friends of Labor dinner. The table consisted of 10 guests including myself who paid \$500 each. I had reserved the table under my company name in support of Jonathan Yee who had asked me to support this event. I had also filled in a form saying I had made a donation of \$5000 because the table was reserved in my company name. I wasn't aware every paying guest needed to fill in a form to truly represent who was paying guest. I apologise for my ignorance...

Mr Yip gave evidence at a compulsory examination, the transcript of which was tendered as an exhibit in the public inquiry. Mr Yip said that Jonathan Yee helped him to respond to the notice to produce, including obtaining the donation receipt. When asked about the cover letter, Mr Yip said that Jonathan Yee composed and typed that letter and presented it to Mr Yip to sign. Mr Yip admitted that he signed the letter, knowing that the explanation it contained was not true. He did so at his shop. Mr Yip said that he, and not Jonathan Yee, sent the signed cover letter and the attached documents off to the NSWEC.

Jonathan Yee gave evidence that he helped Mr Yip respond to the notice to produce issued to Harbour City Group Pty Ltd. He said that his assistance included obtaining a copy of the donation receipt and suggesting that Mr Yip should explain that, although Mr Yip had signed a form declaring a \$5,000 donation, he had only paid \$500 for a seat at a table that had been reserved in the name of his company. However, when he was shown a copy of the cover letter signed by Mr Yip, Jonathan Yee denied that he wrote that letter.

The available evidence is not of sufficient cogency to permit the Commission to make a positive finding as to who typed the cover letter signed by Mr Yip, which accompanied the documents sent to the NSWEC on behalf of Harbour City Group Pty Ltd.

Mr Liao

In response to the s 110A(1)(b) notice issued to him, Mr Liao produced, under cover of a signed letter, documents including copies of bank statements for the period 1 February to 30 April 2015, which highlighted in yellow eight cash withdrawals of \$800 and two cash withdrawals of \$1,000. Several of those withdrawals were made in hotels. None appeared to relate to his purported donation.

Mr Liao also produced a donation receipt showing that he had donated \$5,000 to Country Labor in connection with the 2015 CFOL dinner. Like Mr Tong, the receipt

that Mr Liao produced was identical to the original receipt from the files at NSW Labor head office. It did not appear to have been altered in any way.

Mr Liao's signed cover letter itemised the documents produced in response to the statutory notice and was similar in form and content to the cover letter that accompanied the documents produced to the NSWEC by Mr Tong in September 2016.

Mr Liao died before he could give evidence to the Commission about this matter. He did, however, participate in an interview with NSWEC investigators on 28 March 2017. Details of that interview are considered in chapter 17. For present purposes, it suffices to note that Mr Liao told the NSWEC that he could not identify any particular transaction on his bank statement that corresponded to his purported \$5,000 donation. He explained that it was a long time ago and he always had a practice of keeping cash on him.

Mr Teh gave evidence at the public inquiry that, in addition to helping Mr Tong, he also provided assistance to Mr Liao in responding to the notice to produce documents that was issued by the NSWEC to Mr Liao. Mr Teh said that Mr Liao approached him for help. He received a copy of Mr Liao's notice and met with Mr Liao to discuss responding to the notice by way of a letter. Mr Teh gave evidence that, coming after Mr Tong's notice, this second notice, to Mr Liao, further led Mr Teh to be suspicious. But he said that he did not want to get involved and did not have any discussion with Mr Liao, Mr Tong, Mr Wood or anyone else about whether or not Mr Liao or Mr Tong had in fact donated sums of \$5,000 to the Labor Party.

Altered receipts

As noted above, other than Mr Mo, who did not produce a donation receipt, and Mr Tong and Mr Liao, who produced true copies of the Country Labor donation receipts issued to them in 2015, the other putative donors all produced donation receipts that were almost, but not quite, identical to the corresponding original receipts obtained from the files at NSW Labor head office.

The altered receipts produced by those other putative donors fall into two categories; those produced in response to notices issued by the NSWEC in September 2016 (first category), and those issued in February 2017 (second category). The altered receipts in the first category include those produced by Mr Lin, Mr Shi, Ms Siu and Ms Tam. Those receipts featured the following differences:

- the NSW Labor and Country Labor receipts produced by these persons included the text of a donor declaration pertaining to the (wrong)

2016–17 reporting year, whereas the declaration on the corresponding original receipts referred to the (correct) 2014–15 reporting year

- the Country Labor receipts produced by these persons featured the (wrong) NSW Labor logo, whereas the corresponding original receipts featured the (correct) Country Labor logo
- the description of the donation on the Country Labor receipts produced by these persons had been edited so that it read "Donation to Chinese Friends of Labor – **Country** Labor Chinese Launch 12 March 2015", whereas the description on the corresponding original receipts read "Donation to Chinese Friends of Labor – **NSW** Labor Chinese Launch 12 March 2015" (emphasis added)
- the Country Labor receipts produced by these persons featured altered transfer details that described the account into which the donation had been deposited as "Country Labor State Campaign", whereas the description of the relevant account on the original receipts was "ALP NSW Country Labor State Campaign".

The altered Country Labor receipts above appear to have had the descriptions of the donation and the account into which it was deposited changed to emphasise the Country Labor character of, and to limit the appearance of NSW Labor connections with, those donations. It is not clear why the wrong NSW Labor logo appears on the altered Country Labor receipts; although, Ms Wang gave evidence that the person who reissued those invoices may have inadvertently used the wrong template.

The fact that the altered NSW Labor and Country Labor receipts all featured the text of the wrong 2016–17 declaration suggests the alterations were made during that later reporting period. Ms Wang gave evidence that the 2016–17 declaration on the altered receipts may have been caused by those receipts having been printed from the MYOB system using the new invoice template for 2016–17 financial year.

The altered receipts in the second category include those produced by Jonathan Yee, Valentine Yee, May Ho Yee, Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd. Those receipts featured the same alterations as the first category of altered receipts, except for one difference. Unlike the first category, the donation description on the Country Labor receipts in the second category was not altered and remained in identical terms to the corresponding original receipts: "Donation to Chinese Friends of Labor – NSW Labor Chinese Launch 12 March 2015".

It appears as if the particular attempt in September 2016 to change the description of the Country Labor donations to emphasise the Country Labor character of those contributions was not repeated for the altered receipts that were produced to the NSWEC in response to the February 2017 notices.

Questions arise as to who altered the donation receipts that were produced by the Emperor's Garden putative donors to the NSWEC and how those changes were made.

Ms Wang gave evidence that the proper procedure for re-issuing donation receipts was to issue a new copy directly out of the MYOB file. She agreed that it would be difficult to make any changes to receipts re-issued in this way because, once a file for a particular financial year is closed in the MYOB system, the data in that file is locked and can no longer be changed. Ms Wang agreed that the underlying data in closed files, including core information such as the invoice number, date, amount and narrative description, could not be changed within the MYOB program.

When shown, side-by-side, an altered Country Labor receipt and the corresponding original receipt from NSW Labor head office files, Ms Wang agreed that the relevant changes could not have been made simply by going into MYOB and printing it out by reference to the same data that existed as at 9 April 2015. She suggested that the narrative description might be changed manually when re-issuing an invoice if the person doing so thought it was necessary to "correct the narrative". Ms Wang accepted that it was possible that the altered receipt may have been issued from the MYOB system as a PDF document and subsequently edited. She said it was not something that she had done.

In relation to the first category of altered receipts, being those produced by Mr Lin, Mr Shi, Ms Siu and Ms Tam in response to notices issued in September 2016, there is evidence that Jonathan Yee sought Mr Wong's help in procuring them. That evidence includes an email sent at 3.02 pm on 25 September 2016 from Jonathan Yee to Mr Wong titled "Tax Invoice from Labor". The email reads:

Hi Ernest,

My friends has [sic] confirmed that they did not receive any invoice from NSW Labor. Please reissue invoices for the following person:

**Teresa Tam*

**Patricia Siu*

**Johnny Cheung*

**Wei Shi*

I would be appreciated if you can get it me so I can print them off prior to midday on 26th Monday.

Cheers,

Jonathan

At 7.45 pm on 25 September 2016, Mr Wong replied to Jonathan Yee's email, "I will go to head office to retrieve tomorrow morning".

Ms Wang and Ms Zhao were both asked if they recalled Mr Wong coming in to NSW Labor head office in September 2016 and asking the finance department to reissue donation invoices in connection with the 2015 CFOL dinner. Ms Wang said she could not recall that happening, but accepted that from time-to-time, after Mr Wong was elected to Parliament, he would contact her at the finance department by telephone, email, and on occasion, in person at head office.

Ms Zhao gave evidence that she could not recall Mr Wong coming to head office in September 2016. However, she gave evidence that Mr Wong did come into head office once in the period after he had retired from Parliament and asked her to provide him with several "replacement invoices" in connection with a Chinese fundraiser. She said Mr Wong provided her with names, she searched the MYOB system and printed the invoices for him. Ms Zhao said that was the only time that Mr Wong asked her to do such a thing. She said that before Ms Wang left NSW Labor, Mr Wong would normally deal directly with Ms Wang.

Jonathan Yee was shown his email to Mr Wong on 25 September 2016. He said that he did not know why he requested the invoices for Mr Lin, Mr Shi, Ms Siu and Ms Tam from Mr Wong, rather than from head office, through Mr Cheah, as he did in March 2017 (see below). Jonathan Yee said that he could not recall who provided him with the reissued invoices for Mr Lin, Mr Shi, Ms Siu and Ms Tam.

When shown a copy of Ms Tam's altered Country Labor invoice, Jonathan Yee could not explain why the description of that donation referred to a "Country Labor Chinese Launch". He said that the 2015 CFOL dinner was not a Country Labor launch; rather, it was a NSW Labor Chinese launch. He said he did not know how that description might have changed.

In relation to the second category of altered receipts, the evidence explored earlier in this chapter supports a finding that Jonathan Yee assisted those putative donors in procuring those receipts and he did so by requesting Mr Cheah to provide them.

Email evidence confirms that, on 1 March 2017, Mr Cheah requested that Ms Wang urgently email to

Jonathan Yee copies of donation receipts for Jonathan Yee, Valentine Yee, May Ho Yee, Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd. Ms Wang promptly forwarded that email to Ms Zhao. Mr Cheah was shown that email, but said he had no recollection of why he emailed Ms Wang on 1 March 2017 urgently asking for receipts for those five individuals. Mr Cheah said that he did not recall Jonathan Yee asking him to do so in the context of the NSWEC investigation.

The Commission is satisfied that the altered receipts were created as part of an attempt to convince the NSWEC that the purported donations of the Emperor's Garden putative donors were genuine. Deliberate steps must have been taken in order to make those alterations. Such changes were not possible within the closed 2014–15 MYOB file. The Commission is satisfied that Jonathan Yee, Mr Wong and Mr Cheah were instrumental in procuring the altered receipts. However, the evidence is not sufficiently cogent to enable the Commission to make any positive findings as to which individual(s) made the alterations to those receipts.

Conduct of a kind that may amount to offences under the EFED Act

Section 110A(7) of the EFED Act provides that a person who provides any document or information, or answers any question, in purported compliance with a requirement made under this section, knowing that the document, information or answer is false or misleading in a material particular, is guilty of an offence. The maximum penalty for such an offence is 400 penalty units or imprisonment for two years, or both.

The Commission is satisfied that the evidence surveyed above supports a finding that each of the 12 putative donors, except May Ho Yee, provided documents in response to NSWEC notices issued under s 110A(1)(b) of the EFED Act, which they knew to be false or misleading. Specifically, they provided one or more documents that they knew were false or misleading, including:

- one or more tax invoices (or for Mr Mo, a letter from NSW Labor) suggesting that he, she or it had made a donation of \$5,000 to either or both of NSW Labor and Country Labor
- in the case of Jonathan Yee, Ms Siu, Ms Tam, Mr Lin and Harbour City Group Pty Ltd, a cover letter that made false statements regarding donations to either or both of NSW Labor and Country Labor.

The evidence in relation to May Ho Yee suggests that, while she was aware that the NSWEC had required her

to produce documents, she was not involved in gathering those documents or sending them to the NSWEC. The available evidence is that Jonathan Yee obtained the donation receipts which falsely suggested that May Ho Yee had donated \$5,000 to each of NSW Labor and Country Labor, and that Valentine Yee sent those documents to the NSWEC in purported compliance with the notice. As reported in the previous chapter, there is evidence that May Ho Yee was not able to read correspondence in English and relied on Valentine Yee to assist her in that regard.

In these circumstances, the Commission is not satisfied that the evidence supports a finding that May Ho Yee knew that the documents that were produced to the NSWEC in response to the notice issued to her were false or misleading. The Commission does find, however, that Valentine Yee provided documents in response to the NSWEC notice issued to May Ho Yee, which he knew to be false or misleading and that Jonathan Yee engaged in conduct that aided and abetted Valentine Yee in doing so.

The s 110A(1)(b) notices that were issued to Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd were issued to "The Proper Officer" of those corporate entities. Those notices are properly understood as having been issued to the legal persons referred to by its proper officer. The Commission accepts the submission of Counsel Assisting that, if substantive offences were committed in relation to the notices to produce issued to the proper officers of Emperor's Garden Pty Ltd and Harbour City Group Pty Ltd, they were committed by the two corporate entities rather than by the officers of those entities who caused for the notices to produce to be responded to. The Commission is satisfied, however, that Jonathan Yee and Mr Yip engaged in conduct that may have aided or abetted the commission of offences by their respective company.

The evidence surveyed in this chapter supports a further finding that all of the putative donors, excepting Jonathan Yee and Mr Liao, were assisted and/or guided by others in responding to the NSWEC notices issued under s 110A(1)(b) of the EFED Act. Specifically, the Commission finds that Jonathan Yee engaged in conduct of a kind that, if proven to the criminal standard of beyond reasonable doubt, a court might find, aided, abetted, counselled or procured each of the other Emperor's Garden putative donors and Harbour City Group Pty Ltd to contravene s 110A(7) of the EFED Act.

Section 74A(2) statements

The Commission is satisfied that Emperor's Garden Pty Ltd, Harbour City Group Pty Ltd, Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam, Mr Tong, Jonathan Yee,

Valentine Yee and Mr Yip are “affected persons” with respect to the matters dealt with in this chapter.

False or misleading document offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the people and companies below for one or more offences of providing a false or misleading document in response to a notice issued by the NSWEC under s 110A(1)(b) of the EFED Act in contravention of s 110A(7) of that Act:

- Emperor’s Garden Pty Ltd, in relation to the two tax invoices produced in response to the s 110A(1)(b) notice issued to it on 22 February 2017, suggesting that it had made a donation of \$5,000 to each of NSW Labor and Country Labor
- Harbour City Group Pty Ltd, in relation to:
 - the tax invoice produced in response to the s 110A(1)(b) notice issued to it on 22 February 2017, suggesting that it had made a donation of \$5,000 to NSW Labor
 - the cover letter produced in response to the s 110A(1)(b) notice issued to it on 22 February 2017 that made false or misleading statements regarding donations to NSW Labor
- Mr Lin, in relation to:
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to him on 14 September 2016, suggesting that he had made a donation of \$5,000 to each of NSW Labor and Country Labor
 - the cover letter produced in response to the s 110A(1)(b) notice issued to him on 14 September 2016 that made false or misleading statements regarding donations to each of NSW Labor and Country Labor
- Mr Mo, in relation to a letter from NSW Labor produced in response to the s 110A(1)(b) notice issued to him on 14 September 2016, suggesting that he had made a donation of \$5,000 to each of NSW Labor and Country Labor
- Mr Shi, in relation to the two tax invoices produced in response to the s 110A(1)(b) notice issued to him on 14 September 2016, suggesting that he had made a donation of \$5,000 to each of NSW Labor and Country Labor
- Ms Siu, in relation to:
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to her on 14 September 2016, suggesting that she had made a donation of \$5,000 to each of NSW Labor and Country Labor
 - the cover letter produced in response to the s 110A(1)(b) notice issued to her on 14 September 2016 that made false or misleading statements regarding donations to each of NSW Labor and Country Labor
- Ms Tam, in relation to:
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to her on 14 September 2016, suggesting that she had made a donation of \$5,000 to each of NSW Labor and Country Labor
 - the cover letter produced in response to the s 110A(1)(b) notice issued to her on 14 September 2016 that made false or misleading statements regarding donations to each of NSW Labor and Country Labor
- Mr Tong, in relation to the tax invoice produced in response to the s 110A(1)(b) notice issued to him on 14 September 2016, suggesting that he had made a donation of \$5,000 to Country Labor
- Jonathan Yee, in relation to:
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to him on 22 February 2017, suggesting that he had made a donation of \$5,000 to each of NSW Labor and Country Labor
 - the cover letter produced in response to the s 110A(1)(b) notice issued to him on 22 February 2017 that made false or misleading statements regarding donations to each of NSW Labor and Country Labor
- Valentine Yee, in relation to:
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to him on 22 February 2017, suggesting that he had made a donation of \$5,000 to each of NSW Labor and Country Labor
 - the two tax invoices produced in response to the s 110A(1)(b) notice issued to May Ho Yee on 22 February 2017, suggesting that she had made a donation of \$5,000 to each of NSW Labor and Country Labor.

As noted in the previous chapter, each of the natural person putative donors who gave evidence in the public inquiry did so on objection pursuant to a declaration under s 38 of the ICAC Act. The answers given by each of them at the public inquiry are not admissible against him or her in criminal proceedings other than proceedings for an offence under the ICAC Act.

Notwithstanding, there remains significant evidence that would be admissible against the putative donors should any criminal proceedings be commenced against them for the offences specified above. That evidence includes the evidence of other putative donors as well as documentary evidence obtained from the NSWEC. In particular, the evidence of Jonathan Yee, who assisted and guided the other Emperor's Garden putative donors in making their false disclosures, would be admissible against those persons. The evidence of Mr Wood and Mr Teh would be admissible against Mr Tong.

Aid, abet, counsel or procure offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the persons below for offences of aiding, abetting, counselling or procuring others to contravene s 110A(7) of the EFED Act:

- Jonathan Yee, in relation to the production of false or misleading documents in purported compliance with notices issued by the NSWEC pursuant to s 110A(1)(b) of the EFED Act to:
 - Emperor's Garden Pty Ltd, on 22 February 2017
 - Harbour City Group Pty Ltd, on 22 February 2017
 - Mr Lin, on 14 September 2016
 - Mr Mo, on 14 September 2016
 - Mr Shi, on 14 September 2016
 - Ms Siu, on 14 September 2016
 - Ms Tam, on 14 September 2016
 - May Ho Yee, on 22 February 2017
 - Valentine Yee, on 22 February 2017
- Mr Yip, in relation to the production of false or misleading documents in purported compliance with notices issued by the NSWEC pursuant to s 110A(1)(b) of the EFED Act to Harbour City Group Pty Ltd on 22 February 2017.

The admissible evidence that would be available to the DPP in relation the above offences would include the NSWEC disclosure records and the evidence of

the other putative donors. In particular, the admissible evidence against Jonathan Yee would include that of Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam, May Ho Yee and Valentine Yee in relation to Jonathan Yee's role in assisting them to respond to the NSWEC statutory notices to produce documents. Similarly, against Mr Yip, the admissible evidence would include the evidence of Jonathan Yee as to Mr Yip's role in responding to the NSWEC notice on behalf of Harbour City Group Pty Ltd.

Chapter 17: NSWEC investigation – information from the putative donors

After receiving documents from the putative donors in response to the statutory notices issued in September 2016 and February 2017 pursuant to s 110A(1)(b) of the EFED Act, the NSWEC sought to obtain further information from the putative donors regarding their purported donations. Between March and June 2017, the NSWEC sought this additional information by two means:

- issuing statutory notices to six of the natural person putative donors pursuant to s 110A(1)(c) of the EFED Act, requiring them to answer questions
- conducting, or seeking to conduct, interviews with, the other four natural person putative donors and Mr Yip for the purpose of taking statements from them.

Much of the information given to the NSWEC in response to those notices and during those interviews was false or misleading. This chapter surveys the evidence in relation those events.

The creation of a false cover story

Jonathan Yee gave evidence that, by early 2017, he was aware that the NSWEC was launching an investigation into this matter. He knew that his staff, mother, brother and neighbour, Mr Yip, were becoming involved in the NSWEC investigation. Jonathan Yee said that, at that stage, he approached Mr Wong and “asked for his suggestion, what should we do”. On Jonathan Yee’s account (but denied by Mr Wong), Mr Wong told him “it was a small matter” and that “all [the putative donors] needed to do is give evidence and, you know, they’ll be off our back”, and “be sure what you guys said, just continue on to say what was said, what was produced to the Electoral Commission”.

Jonathan Yee told the public inquiry that, during a conversation with Mr Wong concerning the NSWEC “looking at the matter ... It’s then that we decided how the story should be” and that he and Mr Wong then hatched the details of the story that was to be provided to the NSWEC. Asked for clarification as to timing, Jonathan Yee said that he and Mr Wong invented the details of the false cover story around the time that the NSWEC started requiring the putative donors to answer questions. Jonathan Yee explained that there was no need for an elaborate cover story prior to that because it was possible that the NSWEC would not notice that anything was wrong.

Between March and June 2017, the NSWEC issued notices pursuant to s 110A(1)(c) of the EFED Act requiring six of the Emperor’s Garden putative donors to answer a series of questions relating to their purported donations of \$5,000 to either or both of NSW Labor and Country Labor. Those six putative donors were (in the order in which they were served) Mr Shi, Ms Siu, Mr Lin, Valentine Yee, May Ho Yee and Mr Mo.

Each of Mr Shi, Ms Siu, Mr Lin and Mr Mo gave evidence to the effect that, when they received the notices from the NSWEC requiring them to answer questions, they took those notices to Jonathan Yee and asked him what should be done. May Ho Yee gave evidence that Valentine Yee took responsibility for answering the questions that the NSWEC put to her. Valentine Yee agreed that he prepared responses for his mother, but said that he did so having had conversations with Jonathan Yee as to what information should be provided to the NSWEC. This body of evidence indicates that Jonathan Yee controlled the responses that were provided to each of those notices, including the substance of the answers that were given to the questions posed therein. The particulars of that evidence are set out later in this chapter.

Jonathan Yee corroborated the evidence of each of Mr Shi, Ms Siu, Mr Lin, Mr Mo, Valentine Yee and May Ho Yee. He said that each of the Emperor's Garden putative donors, who received notices from the NSWEC requiring them to answer questions, brought those notices to his attention. He said that he took possession of those notices and that he showed the questions to Mr Wong. At that stage, on Jonathan Yee's account, Mr Wong suggested the answers that should be given to those questions, including that, when the NSWEC asked:

- the method by which the purported donations were made, the answer to be provided was that the donations were made in cash
- the denominations of any cash contributions, the answer to be provided was that the cash was donated in \$100 notes
- if the donation money was not withdrawn from a bank account, where did the money come from, the answer to be provided was that the cash was "lucky money" received in "red packets" at Chinese New Year
- to whom the donation money was given, the answer to be provided was that they handed their donations to Jonathan Yee
- the reason for the donations, the answer to be provided was that the donations were given in support of Mr Wong himself.

During the public inquiry, Jonathan Yee admitted that he participated in the creation of the cover story and that he was responsible for some details of that fabrication. The particulars of that evidence are set out later in this chapter. He also admitted that he put forward those false ideas to the putative donors as what they should say to the NSWEC and to the Commission. Evidence in relation to attempts to influence the Commission's compulsory examinations and the public inquiry are set out in chapters 23 and 24.

Mr Wong gave evidence rejecting much of Jonathan Yee's account on this issue. Mr Wong accepted that, within a few weeks of Mr Liao informing him in September 2016 that Mr Tong had been required by the NSWEC to produce documents, Jonathan Yee also informed him that the NSWEC wanted production of documents from certain Emperor's Garden employees. But Mr Wong denied having discussions with Jonathan Yee during which they agreed on a story to tell the NSWEC. He denied concocting a false story and asking Jonathan Yee to assist the putative donors to tell that false story to the NSWEC. Specifically, Mr Wong denied telling Jonathan Yee that the putative donors should tell the NSWEC that their donation money was made in \$100 notes and came from "red packets".

Jonathan Yee's evidence on this issue includes admissions as to his own culpability in connection with concocting the false story to be given to the NSWEC. Those admissions concern serious conduct, which a court may find, on proof to the requisite standard, amounts to involvement in a scheme to circumvent requirements or prohibitions of Part 6 of the EFED Act (among other possible offences).

The Commission has reported that it finds Mr Wong to have been an unsatisfactory witness. The Commission prefers Jonathan Yee's evidence over Mr Wong's denials on this issue and finds that Mr Wong was involved with Jonathan Yee in concocting the false cover story, details of which were provided by the Emperor's Garden putative donors to the NSWEC in response to the notices issued to them pursuant to s 110A(1)(c) of the EFED Act. That finding is bolstered by other evidence; in particular, that relating to Mr Wong's active role in respect of false evidence given to the Commission by Mr Tam in a compulsory examination on 12 June 2019.

Statutory notices to provide information

Mr Shi

On 29 March 2017, the NSWEC issued a notice to Mr Shi pursuant to s 110A(1)(c) of the EFED Act, which required him to answer a total of 21 questions relating to its investigation into whether a number of donations made at the 2015 CFOL dinner, including Mr Shi's purported \$10,000 contribution, were made for, and on behalf of, other persons and which may constitute a breach of the EFED Act. Mr Shi's notice was the first s 110A(1)(c) notice issued by the NSWEC in furtherance of its investigation into this matter.

The questions asked of Mr Shi were grouped under six sub-headings:

1. income
2. dependents
3. Labor Party membership
4. Chinese Friends of Labor
5. Chinese community dinner
6. confirm payment to ALP/CLP (Country Labor Party).

Mr Shi provided the NSWEC with a typed document answering those questions. In response to the questions in categories (1) to (5), Mr Shi relevantly stated that he was not a member of the Labor Party or Country Labor, was not involved with CFOL and did not attend the 2015 CFOL dinner. In response to the questions in category (6), regarding his purported donations in connection with the 2015 CFOL dinner, Mr Shi falsely stated that:

- he donated on this occasion because he was asked for support and knows Jonathan Yee and Mr Wong
- he made his donation in cash, which was comprised entirely of \$100 notes
- the source of the cash donation was a side business exporting wine
- he gave the cash donation to Jonathan Yee on the night of the 2015 CFOL dinner, prior to the event.

That the above answers are false is firmly established by Mr Shi's admission that he did not donate any money in connection with the 2015 CFOL dinner. Aspects of the information provided by Mr Shi in response to the NSWEC s 110A(1)(c) notice, in particular that

his donations were made as a gesture of support in connection with Mr Wong and that the money was paid in cash in \$100 notes, are consistent with the false cover story that Jonathan Yee admitted that he and Mr Wong concocted.

Mr Shi gave evidence that he recalled receiving the letter from the NSWEC requiring him to answer questions but he did not know what was in the letter, so he provided it to Jonathan Yee. Mr Shi agreed that Jonathan Yee came up with the answers that were provided to the NSWEC. When shown the typed document setting out those answers, Mr Shi said that he did not type that document. He said that he was shown that document by Jonathan Yee. He admitted that he agreed that Jonathan Yee could answer the questions of the NSWEC on his behalf.

Jonathan Yee corroborated Mr Shi's evidence. Jonathan Yee admitted that, for each of the Emperor's Garden putative donors, he provided them with suggested responses to the questions of the NSWEC. He said that he did so by various means, including typing documents on behalf of those persons. When shown the typed document answering the questions put to Mr Shi, Jonathan Yee agreed that he was the source of the content of those answers. While he could not specifically recall typing that document, he accepted that it was likely that he had done so because it looked like his style and formatting.

Ms Siu

About one month later, on 4 May 2017, the NSWEC issued two further notices pursuant to s 110A(1)(c) of the EFED Act. Those notices were issued to Ms Siu and Mr Lin.

Ms Siu gave evidence at the public inquiry that, prior to receiving the s 110A(1)(c) notice, the NSWEC contacted her and asked her to participate in an interview. She said that she rang the NSWEC and told them that she could not attend the interview on the proposed date. She said that the NSWEC indicated to her that they would send her some questions to answer instead and that it was after that conversation that she received the s 110A(1)(c) notice.

The notice to Ms Siu required her to answer 18 questions relating to her income, bank accounts and her purported \$10,000 donation in connection with the 2015 CFOL dinner. Some of the questions sought further details in relation to the explanation that Ms Siu had offered the NSWEC in her September 2016 cover letter, which had accompanied her response to the notice requiring production of documents; namely, that her donations were made in cash sourced from a \$5,000 bank withdrawal in September 2014 and from lucky money and tips.

There is evidence that an email was sent from Ms Siu's personal account to the NSWEC on 14 May 2017 providing answers to the questions. Like Mr Shi, Ms Siu stated that she was not a member of the Labor Party or Country Labor and did not attend the 2015 CFOL dinner. In light of Ms Siu's admission in the public inquiry, that she did not donate any money in connection with the 2015 CFOL dinner, it is clear that many of Ms Siu's answers to the NSWEC were false, including statements that:

- she decided to donate to NSW Labor and Country Labor when she was asked to do so in February 2015 by Jonathan Yee
- she saved her \$10,000 donation money, which included her \$5,000 bank withdrawal from September 2014, over a period of six months
- the \$5,000 cash withdrawn in September 2014 was intended for travel on a family holiday but was not used because her sister paid for her travel expenses
- she kept the \$5,000 cash that she withdrew in September 2014 at home until she donated it
- she made her donation in cash, which was comprised of \$100 notes
- she gave the cash donation to Jonathan Yee.

As with Mr Shi, aspects of Ms Siu's answers to the NSWEC are consistent with the false cover story that Jonathan Yee admitted that he and Mr Wong concocted, including that her donations were made in cash in \$100 notes. In the previous chapter, it is reported that Ms Siu's September 2016 cover letter to the NSWEC (that accompanied the documents she produced to the NSWEC) stated that her donation was made "in support of Mr Wong (Ernest) who is a family friend of mine". That detail is also consistent with the false cover story.

Ms Siu gave evidence that, when she received the notice from the NSWEC requiring her to answer questions, she took it Jonathan Yee, who said that he would answer the questions for her and offered to do so by email. She recalled logging in to her email account with Jonathan Yee at the Emperor's Garden restaurant and allowing him to type and send the email in response to the notice.

Jonathan Yee was shown the email containing Ms Siu's answers to the NSWEC notice and gave evidence that he typed those answers using Ms Siu's personal account with her consent. He explained that she was logged into her email account on Jonathan Yee's computer at work.

Ms Siu was asked whether Jonathan Yee told her, in advance of sending that email, how he was going to answer the NSWEC's questions. Ms Siu replied that Jonathan Yee showed her a copy of the NSWEC's schedule of questions

with handwritten, suggested answers next to each question. She said that she looked at the document and knew that Jonathan Yee was going to use her email account to give false answers to the NSWEC.

Ms Siu gave evidence that she still possessed the document bearing Jonathan Yee's handwritten suggested answers. She said it was located at her home. In light of that evidence, the Chief Commissioner made an order pursuant to s 35(2) of the ICAC Act requiring Ms Siu to produce that document to the Commission. Ms Siu said she understood the requirement.

Later that day, Ms Siu subsequently admitted that, during the course of a short morning adjournment in the public inquiry, she rang her brother-in-law and asked him to hide the document that the Chief Commissioner had required her to produce. Asked why she had done so, Ms Siu explained that she "didn't want Jonathan Yee to have so many crimes or offences". She admitted that her intention in making the telephone call to her brother-in-law was to prevent the Commission from obtaining the document. Ms Siu admitted that she was wrong to have done so.

The Commission ultimately issued a notice pursuant to s 22 of the ICAC Act to Ms Siu requiring her to produce the document to the Commission forthwith. The document, when produced, bore handwritten suggested answers to each of the 18 questions, which were entirely consistent with the responses emailed to the NSWEC on 14 May 2017. The document bearing handwritten, suggested answers was shown to Jonathan Yee. He admitted that he wrote the suggested answers and gave that document to Ms Siu.

Mr Lin

The notice issued to Mr Lin on 4 May 2017 pursuant to s 110A(1)(c) of the EFED Act required him to answer 15 questions about his income, bank accounts and his purported donation of \$10,000 in connection with the 2015 CFOL dinner. The notice included questions seeking clarification regarding the explanation offered by Mr Lin in the cover letter sent to the NSWEC in September 2016.

Mr Lin sought the assistance of his son in answering the questions. An email from Mr Lin's son to the NSWEC on 17 May 2017 contained Mr Lin's answers. Like Mr Shi and Ms Siu, Mr Lin stated that he was not a member of NSW Labor or Country Labor and had not attended the 2015 CFOL dinner. Mr Lin also gave similar, false answers to questions about his purported donations, including that:

- it took him about one year to save the \$10,000 that he donated
- the donation money included cash received in red packets and lucky money from customers

- he made his donation in cash, which was comprised of \$100 notes
- he handed his donation money to Jonathan Yee
- he donated on this occasion because he was asked to do so by Jonathan Yee and Mr Wong.

In light of Mr Lin's admission in the public inquiry, that he did not donate any money in connection with the 2015 CFOL dinner, it is clear that Mr Lin's answers to the NSWEC above were false. Like Mr Shi and Ms Siu, the details of Mr Lin's false answers are consistent with the false cover story concocted by Jonathan Yee and Mr Wong; in particular, the reference to red packets and lucky money. The previous chapter reports that Mr Lin's September 2016 cover letter to the NSWEC contained a statement that Mr Lin chose to "donate to the Labor Party to Support our Chinese Candidate, Ernest Wong". That detail is also in line with Jonathan Yee and Mr Wong's false cover story.

Mr Lin gave evidence that, after receiving the s 110A(1)(c) notice, he showed it to Jonathan Yee, who asked him to leave the letter with him. Mr Lin said that, a few days later, Jonathan Yee wrote out all the answers for Mr Lin and asked him to send them to the NSWEC. Asked how that occurred, Mr Lin gave evidence that Jonathan Yee gave him a copy of the schedule containing the NSWEC questions, which bore handwritten suggested answers to each question. Mr Lin volunteered a copy of that document to the Commission, which was tendered in evidence. As with Ms Siu, the suggested answers provided by Jonathan Yee were wholly consistent with Mr Lin's answers that were submitted to the NSWEC in purported compliance with the notice.

Mr Lin gave evidence that he knew that the answers suggested by Jonathan Yee were false but said that he submitted them to the NSWEC because he had already signed documents falsely stating that he was the donor of that \$10,000.

Jonathan Yee was shown Mr Lin's document bearing the suggested handwritten answers to the NSWEC's questions. He admitted that he wrote those answers and gave that document to Mr Lin. He said that, while he wrote the suggested answers himself, he did so in the context of having previous discussions with Mr Wong as to the general cover story that should be told to the NSWEC.

Valentine Yee

On 24 May 2017, the NSWEC issued another two notices pursuant to s 110A(1)(c) of the EFED Act, requiring Valentine Yee and May Ho Yee to answer questions regarding their purported donations in

connection with the 2015 CFOL dinner. Valentine Yee was asked 12 questions. He compiled his answers in a table format that he emailed to the NSWEC on 29 May 2017. Valentine Yee stated that he was not a member of NSW Labor or Country Labor. Unlike the other Emperor's Garden putative donors, Valentine Yee indicated that he had attended the 2015 CFOL dinner. Valentine Yee's answers included statements, which he ultimately accepted in the public inquiry were false, that:

- he contributed the total sum of \$5,000 towards the donation to NSW Labor
- his donation was made in cash in \$100 notes
- the donation money came from lucky money packets received from family and friends over a period of approximately one month during Chinese New Year
- he handed the donation to Jonathan Yee
- he donated on this occasion "for Luke Foley's NSW state election campaign and Jonathan Yee and Ernest Wong was part of the campaign team"
- Jonathan Yee and Mr Wong asked him to donate on this occasion.

During the first day of Valentine Yee's evidence at the public inquiry, he maintained that he had made a donation of \$5,000 in connection with the 2015 CFOL dinner and that his answers to the NSWEC s 110A(1)(c) notice were truthful. However, as previously reported, in the course of giving that evidence, Valentine Yee gave answers that he later admitted to be false, which were inconsistent with previous statements, or which were implausible. Valentine Yee took an opportunity to consider the honesty of his evidence and returned to the witness box, saying "I would like to speak the truth".

In evidence that the Commission accepts as truthful, Valentine Yee stated that he had not made any donation in connection with the 2015 CFOL dinner, and that the answers that he provided to the NSWEC in response to the s 110A(1)(c) notice were false. He said that, after receiving that notice, he had discussions with Jonathan Yee and together they came up with the false answers that he provided.

Valentine Yee said that it was Jonathan Yee who suggested that Valentine respond by saying to the NSWEC that:

- the \$5,000 was his money
- the donation was paid in cash in \$100 denominations
- it was saved from lucky money over a period of one month

- he had previously made a political donation of less than \$1,000, which was not truthful
- the reason for the donation was to support Jonathan Yee supporting Mr Wong in his election campaign
- he had been asked to donate by Jonathan Yee and Mr Wong.

Valentine Yee gave evidence that Jonathan Yee indicated to him that Mr Wong was working with Jonathan to achieve a coordinated cover-up in relation to the donation scheme.

Jonathan Yee was shown the NSWEC notice issued to Valentine Yee and the typed table of answers that was returned to the NSWEC. Jonathan Yee gave evidence that the content of the responses was hatched either by Mr Wong alone or by Mr Wong jointly with himself. Jonathan Yee said that he specifically recalled communicating the content of those responses to Valentine Yee by writing those responses by hand on a paper copy of Valentine's NSWEC notice. He said Valentine chose to type the answers into the table format that was submitted to the NSWEC. Jonathan Yee admitted following a similar process with each of the Emperor's Garden putative donors, who brought s 110A(1)(c) notices to his attention.

May Ho Yee

Twelve of the questions asked of May Ho Yee in the schedule to the s 110A(1)(c) notice, issued to her on 24 May 2017, were identical to the 12 questions asked of Valentine Yee. But May Ho Yee was also asked a 13th question about whether she was issued a receipt by the person to whom she gave her donation. The answers provided in response to the notice were almost identical, and in most instances were, in fact replicas, of Valentine Yee's responses. The false information included in May Ho Yee's response included statements that:

- she contributed the total sum of \$10,000 towards the donations to NSW Labor and Country Labor
- her donation was made in cash in \$100 notes
- her donation money came from lucky money packets received from family and friends over a period of approximately one month during Chinese New Year
- she handed the donation to Jonathan Yee
- she donated on this occasion "for Luke Foley's NSW state election campaign and Jonathan Yee and Ernest Wong was part of the campaign team"

- Jonathan Yee and Mr Wong asked her to donate on this occasion.

May Ho Yee's response to the notice did not contain any answer to the additional question (about whether she was issued a receipt by the person to whom she gave her donation).

Valentine Yee initially gave evidence that he had gone through each question in the notice with May Ho Yee and recorded her answers to those questions. Having returned to the witness box to give truthful evidence, Valentine Yee admitted that he had not gone through the questions with his mother and that his previous evidence to that effect was false. He said that he simply copied the table of answers that he had prepared for his own response to the NSWEC notice into a new document for his mother's response. He said he changed only the detail in the first answer, reflecting that his mother purportedly donated sums of \$5,000 to each of NSW Labor and Country Labor, instead of a single sum of \$5,000 to NSW Labor.

May Ho Yee was shown the NSWEC notice asking her to answer questions about the donations to the Labor Party. She said that Valentine Yee took responsibility for answering those questions and that she did not tell him what to say in response to those questions. That is consistent with Valentine Yee's evidence, that he may have discussed the questions with his mother in general terms, but that the answers he gave to those questions were the answers that he had already prepared on his own behalf.

Jonathan Yee gave evidence that he provided Valentine Yee with the answers that should be written on behalf of their mother in response to the NSWEC notice. He said Valentine Yee typed May Ho Yee's response document. Valentine Yee gave evidence that he ultimately sent the answers on behalf of his mother to the NSWEC in response to the notice.

Mr Mo

On 2 June 2017, the NSWEC issued a further notice pursuant to s 110A(1)(c) of the EFED Act. That notice was issued to Mr Mo and required him to answer 13 questions regarding bank statements and his purported donations of \$5,000 to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner. Like most of the other putative donors, Mr Mo stated in his response on 14 June 2017 that he was not a member of NSW Labor or Country Labor and had not attended the 2015 CFOL dinner. He provided answers, which included statements to the effect that:

- he alone contributed the \$10,000 towards the two \$5,000 donations
- the donations were paid in cash in \$100 notes

- the donation money came from cash saved at home over half a year from tips, personal savings and Chinese New Year lucky red packets
- he handed the donation money to Jonathan Yee
- he donated on this occasion because Mr Wong and Jonathan Yee asked him for support.

In light of Mr Mo's admission, that he did not make any donations in connection with the 2015 CFOL dinner, it is clear that many of his answers to the NSWEC notice were false. The details of those false answers are consistent with the cover story that Jonathan Yee said that he concocted with Mr Wong.

Jonathan Yee gave evidence that he assisted Mr Mo respond to the NSWEC notice requiring Mr Mo to answer questions. When shown Mr Mo's response to that notice, Jonathan Yee said that Mr Mo provided him with a copy of the questions. As he had done for Ms Siu, Mr Lin and Valentine Yee, Jonathan Yee admitted that he wrote out suggested answers for Mr Mo on a copy of the notice, and that those suggested answers were based on earlier discussions that he had with Mr Wong as to the story that should be told by the putative donors to the NSWEC.

Mr Mo's version of events is consistent with that of Jonathan Yee. Mr Mo said that, when he received the NSWEC notice requiring him to answer questions, he took the notice to Jonathan Yee, who came up with all of the answers that he should give to the NSWEC, including the detail regarding Chinese New Year lucky red packets. Mr Mo admitted that the answers suggested by Jonathan Yee included false information, which he knew to be the false at the time that he sent the response to the NSWEC.

Conduct of a kind that may amount to offences under the EFED Act

A person who provides any information or answer, in purported compliance with a requirement under s 110A of the EFED Act, knowing that the information or answer is false or misleading in a material particular, may have committed an offence against s 110A(7) of that Act. The maximum penalty for such an offence is 400 penalty units or imprisonment for two years, or both.

The Commission is satisfied that, on the evidence surveyed above, each of Mr Shi, Ms Siu, Mr Lin, Valentine Yee and Mr Mo, have engaged in conduct of a kind that a court may find, on proof to the requisite standard, constitutes an offence against s 110A(7) of the EFED Act. Specifically, the Commission finds that each of those persons provided answers to the NSWEC in

response to notices to them issued under s 110A(1)(c) of the EFED Act, which they knew to be false or misleading.

None of the submissions received on behalf of Mr Shi, Ms Siu, Mr Lin, Valentine Yee or Mr Mo have argued against a finding by the Commission that those persons knowingly provided false answers to the NSWEC in purported compliance with the notices issued to them under s 110A(1)(c) of the EFED Act. Submissions as to whether the Commission should express an opinion that consideration be given to obtaining the advice of the DPP with respect to the prosecution of Mr Shi, Ms Siu, Mr Lin, Valentine Yee or Mr Mo for such conduct are considered later in this chapter.

In relation to the s 110A(1)(c) notice issued to May Ho Yee, the evidence suggests that Jonathan Yee provided Valentine Yee with the answers that were to be provided on behalf of their mother, and that Valentine Yee drafted and submitted the response without consulting May Ho Yee as to the answers that were ultimately provided. As reported previously, there is evidence that May Ho Yee was not able to read correspondence in English and relied on Valentine Yee to assist her in that regard.

In these circumstances, the evidence does not support a finding that May Ho Yee knew that the answers provided to the NSWEC in response to the notice issued to her were false or misleading. The Commission does find, however, that Valentine Yee provided answers in response to the NSWEC notice issued to May Ho Yee, which he knew to be false or misleading, and that Jonathan Yee engaged in conduct that aided and abetted Valentine Yee in doing so.

The Commission is also satisfied on the evidence above that Jonathan Yee and Mr Wong together engaged in conduct which aided, abetted, counselled or procured each of Mr Shi, Ms Siu, Mr Lin, Valentine Yee and Mr Mo to provide false information to the NSWEC in response to notices issued under s 110A(1)(c) of the EFED Act. Together, Jonathan Yee and Mr Wong concocted the false cover story to be provided to the NSWEC. Jonathan Yee then took steps to ensure that the putative donors provided answers to the NSWEC, which were consistent with that false cover story.

Requests to conduct interviews

Between March and June 2017, the NSWEC sought to conduct electronically recorded interviews with Mr Yip and four of the natural person putative donors, being Mr Liao, Ms Tam, Mr Tong and Jonathan Yee. These investigative steps were taken during the same period of time in which the NSWEC issued statutory notices under s 110A(1)(c) of the EFED Act requiring the other putative donors to answer questions.

Mr Yip

On 7 March 2017, Mr Yip participated in an interview with NSWEC investigators for the purpose of preparing a statement in relation to his purported donation in connection with the 2015 CFOL dinner. The interview was conducted the day after Mr Yip hand-delivered documents to the NSWEC in purported compliance with the notice issued to him under s 110A(1)(b) of the EFED Act.

The interview with Mr Yip was electronically recorded and transcribed. At the start of the interview, Mr Yip acknowledged that the information he was providing that day set out the evidence that he would be prepared to give in court as a witness and that it was true to the best of his knowledge. Mr Yip said that he understood that he would be liable to prosecution if he wilfully stated anything that he knew to be false or did not believe to be true.

During the interview, Mr Yip told the NSWEC investigators that he was not a member of the NSW Labor Party. He also told them a version of events that was consistent with the false explanation that had been provided in the letter dated 4 March 2017 under cover of which he had produced documents in response to the notice issued to him pursuant to s 110A(1)(b) of the EFED Act (chapter 16). Relevantly, Mr Yip told the NSWEC during the interview on 7 March 2017 that he:

- paid \$500 for a seat at a table at the 2015 CFOL dinner
- paid his \$500 in cash which he handed to Jonathan Yee
- attended the 2015 CFOL dinner briefly
- sat a table which, Jonathan Yee later explained to him, had been booked in the name of Mr Yip's company, Harbour City Group Pty Ltd.

On 14 August 2017, Mr Yip signed a supplementary witness statement for the NSWEC in relation to this matter, which concerned information Jonathan Yee had provided to the NSWEC touching on Mr Yip. Relevantly, Mr Yip repeated in that statement the false assertion that he had paid \$500 for a seat at a table at the 2015 CFOL dinner.

At the public inquiry, Mr Yip initially gave evidence that was consistent with the false version that he had provided to the NSWEC. However, on 17 March 2020, after Valentine Yee and the other Emperor's Garden putative donors gave evidence admitting that they had not donated any money in connection with the 2015 CFOL dinner, Mr Yip gave evidence at a further compulsory examination, the transcript of which was tendered as an exhibit at the public inquiry.

During that further compulsory examination, Mr Yip admitted that he did not contribute any money in connection with the 2015 CFOL dinner and that the evidence he had previously given to the contrary, to both the NSWEC and the Commission, was untruthful. Specifically, Mr Yip admitted that he had knowingly lied to the NSWEC during the interview on 7 March 2017, and in his statement dated 14 August 2017, when he said that he had paid \$500 for a seat at the 2015 CFOL dinner and that he had attended the event.

Ms Tam

Evidence obtained from the NSWEC includes an unsigned statement by Ms Tam dated 23 March 2017. That statement includes a jurat similar in terms to that read out by Mr Yip in his interview on 7 March 2017. The statement indicated that Ms Tam attended the offices of the NSWEC on 23 March 2017 and had a conversation with investigators, with the assistance of an interpreter, and that the statement was a product of that conversation.

The substance of Ms Tam's unsigned statement was consistent with the false explanation provided to the NSWEC in the letter dated 23 September 2016 under cover of which she produced documents to the NSWEC in purported compliance with her s 110A(1)(b) notice. Relevantly, Ms Tam's unsigned statement included assertions that:

- she and her husband together donated sums of \$5,000 to each of NSW Labor and Country Labor in 2015
- their donations were made in support of Mr Wong
- their two \$5,000 donations were made in cash, from money saved at home, and were given several days apart.

During the public inquiry, Ms Tam was shown a copy of her unsigned statement to the NSWEC. She said that she recalled having a discussion with an officer at the NSWEC. She admitted that she told that person that she and her husband had donated \$5,000 to NSW Labor and \$5,000 to Country Labor. She admitted that what she told the NSWEC on that occasion was a lie.

Mr Liao

On 28 March 2017, the NSWEC conducted an electronically recorded interview with Mr Liao. The transcript records Mr Liao reading onto the record a jurat similar to that which Mr Yip read, to the effect that he was providing information for the purposes of a statement setting out the evidence that he would be prepared to

give in court and which, to the best of his knowledge and belief, was true.

During the interview, Mr Liao told the NSWEC that he did donate \$5,000 to the Labor Party in connection with the 2015 CFOL dinner. Mr Liao told NSWEC investigators that he delivered an envelope, containing \$5,000 in cash and his signed donor declaration form, to staff at the 2015 CFOL dinner on 12 March 2015.

The Commission has not been able to examine Mr Liao to test the evidence that he gave to the NSWEC in March 2017. That is because Mr Liao died on the evening before he was due to participate in a compulsory examination with the Commission in June 2018. Evidence as to the circumstances surrounding Mr Liao's death are presented in chapter 21.

The information that Mr Liao provided to the NSWEC in the interview on 28 March 2017 was considered earlier in this report (chapters 4 and 11). In those chapters, the Commission found that:

- Mr Liao could not have delivered his signed donor declaration form on 12 March 2015 to staff at the 2015 CFOL dinner because that form did not come into existence until after Mr Wong emailed Mr Liao the pre-filled invitation/reservation form on 30 March 2015
- on the available evidence, the most probable explanation is that, like the other putative donors, Mr Liao did not in fact donate any sum of \$5,000 to NSW Labor or Country Labor in connection with the 2015 CFOL dinner.

Mr Teh, the external accountant for Wu International, gave evidence that Mr Liao kept him up-to-date with the NSWEC investigation. Mr Teh volunteered to the Commission a copy of an email that he received from Mr Liao on 21 March 2017. That email forwarded an email from the NSWEC dated 20 March 2017 requesting that Mr Liao participate in an interview on 28 March 2017 and make a statement. Mr Teh said that he did not provide any assistance to Mr Liao in relation to that matter.

Mr Tong

On 28 April 2017, the NSWEC investigator with carriage of this matter sent an email to Mr Tong seeking his assistance in providing a witness statement regarding his purported donation. Mr Tong was asked to contact the investigator to facilitate the taking of the statement.

On 30 April 2017, Mr Tong replied by email stating that he was suffering serious health problems and did not want to be involved in the matter. Mr Tong detailed his health issues evidence of which could be obtained from

a particular hospital. On 1 May 2017, the NSWEC investigator advised Mr Tong that the hospital could not release patient information due to privacy issues and asked Mr Tong to provide a doctor's certificate or similar medical documentation as proof of his condition.

Mr Tong gave evidence that the reason he did not want to provide a statement to the NSWEC was twofold: first, he was very sick and, secondly, he was concerned that he had previously told lies to the NSWEC. This Commission accepts that evidence.

The Commission obtained email records from the accounts of Wu International. Those records include an email from Mr Tong to Mr Wood on 5 May 2017 forwarding, without any accompanying text, the email correspondence from the NSWEC seeking a witness statement from Mr Tong.

The Wu International email records also include two emails sent by Mr Tong on 16 May 2017 to those who controlled Wu International. The first of those emails was entitled "Re: Your Electoral Donation" and was sent at 4.08 pm to Mr Wood and Mr Liao. It began:

Dear Alex and Mr Liao,

For the above matter, I am very upset your deal with company Accountant last year, the matter haven't been solved yet> [sic] The Electoral Commission have further investigate again. However this matter has nothing to do with me, so therefore I would like to say are as follows...

In the email, Mr Tong proceeded to state that:

- Mr Wood and Mr Liao had used Mr Tong's name to donate \$5,000 to "Labor Party candidate Mr Wong" on 12 March 2015
- they had done so without seeking Mr Tong's consent
- on 25 August 2016, Mr Tong received a letter from the NSWEC about the donation and passed it on to Mr Wood and Mr Liao, who undertook to resolve the issue, an undertaking that Mr Tong regarded as a lie
- in late April 2017, Mr Tong received correspondence from the NSWEC seeking a further explanation. Mr Tong ended the email with the following ultimatum:

I am deeply concerned with the matter and how it will progress. As you are well aware that this matter has nothing to do with me and at present, I am not at the best of my health to be able to spend any time dealing with clearly none of my business, I hereby give you a week to have the matter dealt with once and

for all. Failing that I would have to reveal all matter to the Electoral Commission when they are urging me explanations.

The second email sent by Mr Tong on 16 May 2017 was sent only to Mr Wood at 6.23 pm. Much of the text of the first email was repeated in the second email. However, there were two material differences: first, Mr Tong attached hospital discharge reports regarding his medical condition and, secondly, he elaborated on the ultimatum that he had previously made, stating that he would declare the following (to the NSWEC):

1. *I don't know such donation.*
2. *I don't know you or company use my name for this donation.*
3. *I don't agree you use my name to do this donation.*
4. *I haven't pay any money for this donation.*
5. *My present finance situation I don't have ability to do donation.*
6. *You or any people who attend 12/3/2015 dinner party haven't tell me already use my name to do donation.*
7. *Even you use my name to do donation, still haven't tell me that, until I received Labour [sic] Tax Invoice on 9/4/2015, than I ask you and Mr Liao to know you use my name to do donation, and you said this is no any problems, in Australia any people can donation to any you like political Party, this is legal, if have any problem our company will be fix it, no worry.*
8. *To reply Electoral Commission Letter dated 14/9/2016, Mr Liao with me go to Company Accountant Office, I just provide my income certificates, bank turnover as recarried in 6/2/2015 to 26/3/2015. Company Accountant issued the letter reply to Electoral Commission, and haven't provide me a copy of this letter, therefore I don't what the letter how to issued.*

Mr Tong ended his second email with the following:

The above all items are truth, due to present my healthy are very bad, I don't want be trouble and harass all time, I wish you and Mr Wong to fix it asap, many thanks.

The Commission obtained records from Mr Tong's computer, which included a Word document of an early draft of the text that he emailed to Mr Wood and Mr Liao on 16 May 2017. The draft file was created the day beforehand, on 15 May 2017. It was largely consistent

with the emails that Mr Tong sent to Mr Wood and Mr Liao on 16 May 2017. However, it also included the following passage:

On this matter I am terrible involve this problem, why you use my name to do such thing without notice and obtain my agreement, I don't know still have how long can they will let me alone, you and Mr Wong must thinking to solve this problem otherwise I will tell all the truth and I wish to declare [sic] as follows...

Mr Tong confirmed in evidence that his reference to "Mr Wong" in the above passage was a reference to Ernest Wong. Mr Tong was asked why he referred to Mr Wong in that passage. He said that he understood Mr Wong to be involved because:

- the matter concerned a donation to the Labor Party
- Mr Wong represented the Labor Party
- Mr Wong was very active in the Chinese community
- Mr Wong was involved in the fundraising dinner
- his name and photograph being featured (on the invitation/reservation form)
- Mr Wong was very close with the bosses at Wu International: Bobby Wu, Mr Wood and Mr Liao.

Mr Tong said that Mr Wu was a passionate participant in Chinese community organisations and that Mr Wood "always mentions about Mr Wong", which made Mr Tong believe that they were very close.

That Mr Wood did have a close relationship with Mr Wong is confirmed by other evidence, including that Mr Wong arranged a NSW Parliament House security pass for Mr Wood in 2017. Mr Wood gave evidence that he worked as a volunteer for Mr Wong at Parliament House from May to November 2017. He said that Mr Wong was like a teacher to him, training him to become a future leader of the Chinese community in Australia.

There was also evidence that Mr Wood made a political donation to the Labor Party in connection with a CFOL fundraising dinner in April 2016. One month later, in May 2016, Mr Wong provided a recommendation for Mr Wood to become a justice of the peace.

Mr Wong gave evidence that, as at 2015, he knew the Wu family quite well. He said that he was a friend of Mr Wu's and that he had known his son, Mr Wood, since Mr Wood was in high school. Mr Wong said that he engaged Mr Wood as a potential future leader and arranged for him to volunteer at Parliament House to learn about "the system". Mr Wong said that he knew Mr Liao through mutual involvement in Chinese community organisations.

The email records obtained from Wu International also included an email from Mr Liao to Mr Wong on 23 February 2015, about three weeks prior to the 2015 CFOL dinner. In that email, Mr Liao reminded Mr Wong of an invitation that had been extended by Mr Wu to Mr Wong in Guangzhou, China, on 30 January 2015, for Mr Wong to attend a dinner in Sussex Street in Sydney with a Chinese delegation on 27 February 2015. When shown that email, Mr Wong agreed that it was consistent with his recollection that he had met Mr Wu in China and been invited to meet that delegation.

Other evidence establishes that Mr Liao sent an email to Mr Wood and others on 3 August 2015, attaching the minutes of a Wu International meeting. An item recorded on those minutes concerned the inspection of a farm development with Mr Wong on 3 August 2015. Mr Wood gave evidence that the farm property was located at The Oaks, on Sydney's south-western fringe, and was owned by his father. He said that he wanted to develop the farm site and sought Mr Wong's assistance in doing so.

Mr Wong agreed that he attended the farm site at The Oaks in 2015 and gave advice to the Wu family regarding its development. Mr Wong also gave evidence that, after exiting NSW Parliament in 2019, he attended Wu International offices in relation to the farm property and a joint project with a Chinese university with a view to seeing if Wu International would engage Mr Wong to provide legal services.

The Commission is satisfied that Mr Tong's assessment of the closeness of Mr Wong's relationship with those who controlled Wu International, namely Mr Wu, Mr Wood and Mr Liao, is consistent with the other available evidence.

Mr Tong was not cross-examined by senior counsel for Mr Wong on his understanding in May 2016 that Mr Wong was involved in the donation scheme in connection with the 2015 CFOL dinner. The Commission is satisfied that Mr Tong's evidence on that issue is consistent with the weight of evidence set out in part 2 of this report. It is also consistent with Mr Wong's later attempts to control the information that the putative donors, including Mr Tong, might disclose to investigating authorities (see, for example, chapter 22).

Mr Wood was examined during the public inquiry about Mr Tong's emails on 16 May 2017 containing the ultimatum. Notwithstanding his evidence that he considered Mr Tong to be an honest person, Mr Wood said that he believed most of what Mr Tong wrote in the emails of 16 May 2017 were lies. He rejected the proposition that he had used Mr Tong's name to make a donation to the Labor Party. He denied that he told Mr Tong to keep quiet and that the company would sort it out.

Mr Wood said that he did not speak to Mr Tong about the allegations that Mr Tong had made against him. Instead, on his account, Mr Wood spoke to Mr Liao, who said that he would help Mr Tong and asked Mr Wood to forward the email to the accountant, Mr Teh. Mr Wood rejected the proposition that the real reason that he did not speak to Mr Tong about the issues raised in the emails of 16 May 2017 was that the matters stated therein were true and that Mr Wood knew them to be true.

Mr Wood accepted that he might have told, but could not recall telling, Mr Wong that Mr Tong had been asked to attend the NSWEC for an interview. He agreed that he found out about Mr Tong's interview request in May 2017 and that he commenced working for Mr Wong as a volunteer at Parliament House that same month.

On 17 May 2017, the day after Mr Tong emailed his ultimatum to Mr Wood and Mr Liao, Mr Wood forwarded to his accountant, Mr Teh, a copy of Mr Tong's 5 May 2017 email which, in turn, contained the forwarded email correspondence from the NSWEC seeking a witness statement from Mr Tong. Mr Wood did not send to Mr Teh a copy of Mr Tong's emails dated 16 May 2017 containing the ultimatum.

On 2 June 2017, the NSWEC received a typed letter dated 19 May 2017 signed by Mr Tong, which attached hospital discharge reports regarding his medical condition. In the letter, Mr Tong asked that he be exempted from the NSWEC investigation as his health was his main concern. The letter was similar in form to the cover letters that accompanied the documents produced to the NSWEC by Mr Tong in September 2016 and by Mr Liao in March 2017. The NSWEC made no further contact with Mr Tong in relation to this investigation.

Mr Teh gave evidence that he drafted Mr Tong's letter dated 19 May 2017. He said that he did so after receiving the email from Mr Wood on 17 May 2017. Mr Teh said that the email from Mr Wood on 17 May is how he was requested to produce the letter regarding the medical records. He understood that email as being a request by Mr Wood on behalf of Wu International seeking help for one their employees, Mr Tong. The evidence establishes that Mr Tong retired from Wu International (or associated entities) in mid-2016. As such, he was not an employee of Wu International in May 2017.

Mr Teh said there was no separate telephone call or instructions from either Mr Liao or Mr Wood. That aspect of Mr Teh's evidence does not sit comfortably with the fact that Mr Wood's email did not include any instructions to Mr Teh to prepare a letter on behalf of Mr Tong and also did not attach any of Mr Tong's medical records. Mr Teh said that someone delivered Mr Tong's medical records to his office, but he could not recall who did so.

On 23 May 2017, Teh & Ng produced invoice number 16394, which was addressed to Mr Tong, but sent by email to Benjamin Pan at Wu International, in respect of work described as “Assisting to write a letter to the NSW Electoral Commission”. The client code used on the invoice was that which relates to Wu International. Mr Teh gave evidence that the invoice should have been addressed to Wu International and not Mr Tong, as the work had been done for Wu International on Mr Wood’s instructions.

Mr Teh gave evidence that invoice number 16394 was paid in cash. He said that he did not know why it was paid in cash nor by whom. He said that the normal practice of Wu International was to pay its invoices by electronic funds transfer. He could not recall any other occasion when Wu International had paid a bill by way of cash. Mr Teh confirmed that there was no reconciliation of Mr Tong paying the cash.

The Commission is satisfied that the instrumental role played by Mr Wood and Wu International in responding to the NSWEC request for Mr Tong to provide a witness statement, those efforts being directed towards Mr Tong’s exemption from the investigation, is consistent with Mr Tong’s evidence that Mr Wood and Mr Liao told him in 2016 that the company would fix any issues that arose from the use of his name as the donor of money in connection with the 2015 CFOL dinner.

Jonathan Yee

On 20 June 2017, the NSWEC issued a letter to Jonathan Yee formally inviting him to participate in an electronically recorded interview. The nature of the investigation, including specific allegations against Jonathan Yee, was explained in the letter. The proposed date for the interview was 23 June 2017.

Shortly after receiving an email attaching the formal interview request, Jonathan Yee sent a question to the NSWEC investigator with carriage of the investigation:

Just a quick question, if I am assisting in your investigation as indicated in your letter, why is the interview recorded? Can I request the interview NOT to be recorded?

The investigator replied that the interview did need to be recorded.

During the public inquiry, Jonathan Yee gave evidence that he lied to the NSWEC in the interview that was ultimately conducted on 23 June 2017. He admitted that he told the NSWEC that persons who he knew had not donated any money to NSW Labor or Country Labor were the donors of sums of money to those parties. He admitted that he intended to lie to the NSWEC in

advance of the interview and that one of the reasons he requested that the interview not be recorded was because he did not want his lies to be recorded.

The interview with Jonathan Yee on 23 June 2017 was conducted under caution, the effect of which was that he was not obliged to say anything or do anything, as anything that he did say or do would be recorded and may later be used in evidence. Jonathan Yee agreed that he understood the caution. The interview then proceeded over a period of about two hours. During the interview, Jonathan Yee made many statements that were false or misleading. Chief among them were statements to the effect that:

- it was the fault of NSW Labor that Mr Yip’s company, Harbour City Group Pty Ltd, was issued an invoice for purchasing a \$5,000 table at the event when Mr Yip had only purchased one seat at a table for \$500
- in addition to paying \$500 for a seat at a table at the event, Mr Yip also paid a \$5,000 donation, which he paid in cash to Jonathan Yee
- each of Ms Siu, Mr Shi, Ms Tam, Mr Mo, Mr Lin, Valentine Yee and May Ho Yee handed to Jonathan Yee one or more cash donations of \$5,000 to NSW Labor and/or Country Labor
- he recalled that the cash donations handed to him by the Emperor’s Garden putative donors and Mr Yip were in \$100 denominations and were given to him on the night of the 2015 CFOL dinner or shortly beforehand
- he collected the majority of the donation money prior to the event and took it to the dinner where he handed it to someone from the Labor Party
- he personally made a \$5,000 donation and contributed \$500 for a seat at a premium table, but was wrongly issued two \$5,000 invoices, one by each of NSW Labor and Country Labor
- his mother, May Ho Yee, and Emperor’s Garden Pty Ltd, also each made a \$5,000 donation and contributed \$500 for a seat at a premium table, and were also wrongfully issued two \$5,000 invoices, one by each of NSW Labor and Country Labor
- his brother, Valentine Yee, also made a \$5,000 donation and contributed \$500 for a seat at a premium table.

Section 74A(2) statements

The Commission is satisfied that Mr Lin, Mr Mo, Mr Shi, Ms Siu, Ms Tam, Jonathan Yee, Valentine Yee, Mr Yip

and Mr Wong are “affected persons” with respect to the matters dealt with in this chapter.

Offences in relation to notices issued under s 110A(1)(c) of the EFED Act

Counsel Assisting submitted that each of the six putative donors, who were required to answer questions pursuant to notices issued under s 110A(1)(c) of the EFED Act, may have committed one or more offences of providing a false or misleading answer in purported compliance with such a requirement in contravention of s 110A(7) of the EFED Act.

The Commission finds that there is insufficient evidence to establish that May Ho Yee engaged in conduct that may amount to such an offence.

As for the other five putative donors, who were issued notices under s 110A(1)(c) of the EFED Act, namely Mr Lin, Mr Mo, Mr Shi, Ms Siu and Valentine Yee, each of them gave evidence in the public inquiry on objection pursuant to a declaration under s 38 of the ICAC Act. The answers given by each of them at the public inquiry are not admissible against them in criminal proceedings other than proceedings for an offence under the ICAC Act.

Notwithstanding, the Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of those persons for offences against s 110A(7) of the EFED Act. That evidence, which has been detailed above, includes documentary evidence from the NSWEC, the evidence of Jonathan Yee, and copies of the schedules to the s 110A(1)(c) notices issued to Ms Siu and Mr Lin bearing the handwritten suggested answers provided by Jonathan Yee.

The Commission received submissions on behalf of Valentine Yee, Mr Lin and Mr Mo to the effect that the Commission should not state that it is of the opinion that consideration be given to obtaining the advice of the DPP in respect of prosecutions in connection with responses to notices issued under s 110A(1)(c) of the EFED Act.

The substance of the submission made on behalf of Valentine Yee is that his decision to change his evidence and tell the truth at the public inquiry was pivotal in the investigation as it caused other witnesses to change their evidence in the public inquiry. The Commission accepts that Valentine Yee’s changed evidence, which is regarded as truthful, confirmed what might otherwise have been the subject of inferences.

Valentine Yee’s submission notes that his decision to change his evidence occurred in circumstances where Counsel Assisting encouraged a belief and expectation that the Commission’s “Witness Cooperation Policy” would apply in his case. The submission is made that,

in such circumstances, there should be an exercise of discretion in his favour against referral to the DPP for consideration of prosecution.

The Commission has exercised discretion in favour of Valentine Yee in declining to express an opinion that consideration be given to obtaining the advice of the DPP in relation to his prosecution for offences against s 87 of the ICAC Act arising from false evidence that he gave when first appearing before the Commission at the public inquiry (chapter 11). Whether or not similar discretion should be applied in respect of possible offences by Valentine Yee against the EFED Act requires an assessment of the seriousness of such offences. That question is considered below.

The submissions received on behalf of Mr Lin also contend that the Commission should exercise discretion, in light of the Witness Cooperation Policy, not to refer him to the DPP for consideration of prosecution for offences against s 110A(7) of the EFED Act. It is submitted that Mr Lin’s cooperation included his honest evidence at the public inquiry, notwithstanding having given previous false evidence at his compulsory examination, and the fact that he volunteered documentary material relevant to the Commission’s inquiry, namely his copy of the s 110A(1)(c) notice bearing handwritten answers suggested by Jonathan Yee. It is submitted for Mr Lin that his assistance and evidence at the public inquiry are consistent with a genuine change of heart and desire to make amends for his previous acts of lying to the NSWEC and the Commission.

The Commission accepts that the document volunteered by Mr Lin was relevant to, and assisted, its investigation. Notwithstanding that Mr Lin changed his evidence after Valentine Yee gave evidence in the public inquiry recanting his previous evidence, the Commission accepts Mr Lin’s unchallenged evidence that contrition played some part in his decision to tell the truth. Unlike some of the other putative donors, Mr Lin made no admissions to the effect that he changed his evidence because he could no longer get away with telling lies.

Submissions received on behalf of Mr Mo accept that the Commission may make findings on the evidence that Mr Mo was not the source of funds donated to NSW Labor and Country Labor and that he provided false information to the NSWEC about the same. The submission contends, however, that the Commission should not state that it is of the opinion that consideration be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mo for offences of providing false or misleading documents or answers to the NSWEC in contravention of s 110A(7) of the EFED Act because:

- apart from Mr Mo's admissions in relation to that conduct, Jonathan Yee is the only person who may be able to provide cogent proof that Mr Mo knowingly committed those offences
- the Commission is likely to state an opinion consistent with the submissions of Counsel Assisting that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Jonathan Yee for one or more offences as a "principal in the first degree"
- the possibility that Jonathan Yee might be available in such circumstances to give evidence against Mr Mo is fanciful.

The Commission does not accept that submission. It is satisfied that the evidence of Jonathan Yee, in combination with relevant documentary evidence from the NSWEC, would be admissible in any prosecution of Mr Mo for offences of providing false or misleading documents or answers to the NSWEC in contravention of s 110A(7) of the EFED Act. Questions as to whether or not Jonathan Yee and the other putative donors would be available to give evidence against each other in any possible criminal proceedings are not for the Commission to decide. Such questions are matters for the DPP to determine.

The submissions on behalf of Mr Mo, like those for Mr Lin and Valentine Yee, also contend that, in all the circumstances, the Commission should exercise its discretion and refrain from stating that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Mo for offences of providing false or misleading documents or answers to the NSWEC in contravention of s 110A(7) of the EFED Act.

The submission for Mr Mo highlights his unchallenged evidence that he felt pressured to engage in the conduct and did so because of a power imbalance between himself and the Yee family. Mr Mo's submission as to the timing of his approach to the Commission indicating a willingness to tell the truth (this is, before Valentine Yee gave evidence in the public inquiry recanting his previous evidence) is considered in chapter 11 of this report.

The cooperation of Mr Lin, Valentine Yee and Mr Mo during the public inquiry must be weighed against the fact that they all lied to the Commission in compulsory examinations and that the lies that they told on those occasions had the effect of impeding the Commission's investigation.

Consideration of whether or not the Commission should exercise discretion in favour of any of the putative donors in relation to whether or not it should state an opinion that consideration be given to obtaining the advice of the

DPP in relation to their prosecution for offences against s 110A(7) of the EFED Act must also take into account the serious nature of such offences.

Counsel Assisting submitted that conduct of a kind that may amount to offences against Part 6 of the EFED Act, including s 110A(7), are matters of some seriousness. The objects of the EFED Act include to:

- "establish a fair and transparent ... disclosure scheme"
- "facilitate public awareness of political donations"
- "help prevent corruption and undue influence in the government of the State or in local government"
- "create certainty about who is making a political donation, by requiring the donor to be properly identified".

The Commission agrees that the EFED Act sought to promote the integrity of democracy in NSW by facilitating public awareness as to the identity of donors to participants in the political process. The Commission accepts the submission of Counsel Assisting that that objective, and thus democracy itself, was apt to be undermined by conduct of the kind engaged in by each of Mr Lin, Mr Mo, Mr Shi, Ms Siu and Valentine Yee in connection with the notices issued to them pursuant to s 110A(1)(c) of the EFED Act.

In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of the persons below for one or more offences of providing a false or misleading answer in response to a notice issued by the NSWEC under s 110A(1)(c) of the EFED Act in contravention of s 110A(7) of that Act:

- Mr Lin, in relation to answers provided in response to the s 110A(1)(c) notice issued to him on 4 May 2017
- Mr Mo, in relation to answers provided in response to the s 110A(1)(c) notice issued to him on 2 June 2017
- Mr Shi, in relation to answers provided in response to the s 110A(1)(c) notice issued to him on 29 March 2017
- Ms Siu, in relation to answers provided in response to the s 110A(1)(c) notice issued to her on 4 May 2017
- Valentine Yee, in relation to answers provided in response to the s 110A(1)(c) notices issued to him and his mother, May Ho Yee, on 24 May 2017.

Aid, abet, counsel or procure offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Jonathan Yee and Mr Wong for offences of aiding, abetting, counselling or procuring others to contravene s 110A(7) of the EFED Act in relation to the provision of false or misleading answers in purported compliance with notices issued by the NSWEC pursuant to s 110A(1)(c) of the EFED Act to:

- Mr Lin on 4 May 2017
- Mr Mo on 2 June 2017
- Mr Shi on 29 March 2017
- Ms Siu on 4 May 2017
- Valentine Yee on 24 May 2017
- May Ho Yee on 24 May 2017.

The admissible evidence that would be available to the DPP in relation to the above offences would include the relevant NSWEC records, copies of the schedules to the s 110A(1)(c) notices issued to Ms Siu and Mr Lin bearing the handwritten suggested answers provided by Jonathan Yee, and the evidence of Mr Lin, Mr Mo, Mr Shi, Ms Siu, Valentine Yee and May Ho Yee.

Jonathan Yee’s admissions, in relation to his discussions with Mr Wong, in which they concocted the false cover story that the putative donors were to provide the NSWEC in response to the s 110A(1)(c) notices, were given in evidence on objection pursuant to a declaration under s 38 of the ICAC Act. Those admissions would not be admissible against Jonathan Yee in any prosecution for the above offences.

Jonathan Yee’s admissions would, however, be prima facie admissible against Mr Wong. Subject to the DPP’s advice, practical questions may arise as to whether Jonathan Yee and Mr Wong should be tried together for these offences and, if so, whether Jonathan Yee could be compelled as a co-accused person to give evidence against Mr Wong. Such practical matters are for the DPP to consider.

Jonathan Yee’s evidence regarding Mr Wong’s role in concocting the false cover story would, in any event, be relevant and admissible against Mr Wong in any prosecution for a scheme offence contrary to s 96HB of the EFED Act (chapter 14).

Offences in relation to interviews

As for the false statements that were made by Jonathan Yee, Mr Yip and Ms Tam in their voluntary interviews with the NSWEC (or when attending the NSWEC for the purposes of giving a statement), there is no specific offence under the EFED Act in relation to giving a false

or misleading statement to the NSWEC in a voluntary interview.

However, Counsel Assisting submitted that the making of such false statements may have constituted an attempt to pervert the course of justice in contravention of s 319 of the Crimes Act or, alternatively, involved the commission of offences of hindering an investigation in contravention of s 315 of the Crimes Act.

The false or misleading statements made by Jonathan Yee, Mr Yip and Ms Tam in their interviews with the NSWEC could only constitute an attempt to pervert the course of justice if those statements were made with the intention of obstructing, preventing, perverting or defeating the course of justice or the administration of the law. It would not be enough for the prosecution to prove that the accused intended to obstruct, prevent, pervert or defeat the administration of the law by the NSWEC (or by this Commission) given that an investigation by the NSWEC (or this Commission) is not the “course of justice” or “administration of the law” in the relevant sense (see *R v Einfield* (2008) 71 NSWLR 31 at 57).

Counsel Assisting submits, however, that an offence of perverting the course of justice in contravention of s 319 of the Crimes Act may, however, be constituted by conduct intended to deflect an investigation so as to prevent criminal proceedings being commenced or to pervert such proceedings if commenced (see, for example, *Cunneen v Independent Commission Against Corruption* [2014] NSWCA 421 at [87]-[90] per Basten JA, [195] per Ward JA).

Where an accused person has attempted to divert an investigating police officer from the proper exercise of their functions, it is not hard to infer that such conduct constitutes an attempt to interfere with the course of justice. That inference may be available in such circumstances because police officers have, as their sole function in conducting such an investigation, to decide whether there is evidence that a crime has been committed. The same inference cannot be drawn as readily concerning an investigating body such as the NSWEC (or this Commission), where the outcome of such an investigation might not be the institution of criminal proceedings.

While it is easy to infer from the available evidence that Jonathan Yee, Mr Yip and Ms Tam did not want the NSWEC to find out the truth about the donations, which they falsely purported to have made in connection with the 2015 CFOL dinner, the Commission is not satisfied that there is sufficient evidence upon which an inference can be drawn that they did so in order to deflect an investigation so as to prevent criminal proceedings being commenced or to pervert such proceedings if commenced.

Insofar as Jonathan Yee is concerned, the available evidence is equally consistent with an alternate inference that he lied to the NSWEC in his interview because he wanted to enable NSW Labor and Country Labor to keep the \$100k cash or to prevent the NSWEC from suing to recover that money. As for Mr Yip and Ms Tam, the available evidence is more consistent with an inference that, having initially made false disclosures about their purported donations, they continued to tell lies to the NSWEC in their interviews so as to avoid their earlier attempts at deception being exposed.

Section 315 of the Crimes Act relevantly provides that a person commits an offence if they do anything intending in any way to hinder the investigation of a serious indictable offence committed by another person. The scheme offence contrary to s 96HB of the EFED Act is a serious indictable offence. The information in the cover letters to the statutory notices issued by the NSWEC to the putative donors, in the months prior to conducting interviews, indicated the general nature of the allegations or suspicions being investigated (which suspicions and allegations, if true, could amount a scheme offence).

An initial difficulty in proving such offences is the lack of admissible evidence that Jonathan Yee, Mr Yip or Ms Tam understood that “another person” was suspected by investigating authorities of having committed a serious indictable offence. The evidence each gave in the public inquiry was given on objection and cannot be used against him or her in criminal proceedings for offences under the Crimes Act.

At the beginning of the interview with Mr Yip, it was explained to him that the NSWEC was making enquiries into donations of \$50,000 to each of NSW Labor and Country Labor at the 2015 CFOL dinner. It was not explained to Mr Yip that the NSWEC suspected that anyone had engaged in a scheme to circumvent the prohibitions or requirements of Part 6 of the EFED Act.

With respect to Mr Yip and Ms Tam, the evidence indicated that they had limited English-language skills, a very limited understanding of the rules pertaining to political donations and that they lacked knowledge of the purpose of the scheme which Jonathan Yee and Mr Wong engineered in connection with the \$100k cash received from Mr Huang in 2015. In these circumstances, the Commission is not satisfied that the evidence permits inferences to be drawn that Mr Yip or Ms Tam understood, from the terms of the cover letters they had received from the NSWEC with the notices issued to them under s 110A(1)(b) of the EFED Act in February 2017 (Mr Yip) and September 2016 (Ms Tam), that the NSWEC was investigating any person suspected of a serious indictable offence.

Jonathan Yee’s admission during the public inquiry – that Mr Wong asked him to procure “five to ten people” to sign forms falsely stating that they had each donated up to the legal cap of \$5,000 so as to conceal the true source of the donation that Mr Wong had arranged or was intending to arrange – indicates that Jonathan Yee may well have understood at the time of his interview in June 2017 that the NSWEC was investigating persons, including Mr Wong, who were suspected of committing a serious indictable offence. However, Jonathan Yee’s evidence at the public inquiry is not admissible against him in any prosecution for an offence against s 315 of the Crimes Act.

Notwithstanding, the Commission is of the view that there is other sufficient admissible evidence against Jonathan Yee. That evidence includes the letter to Jonathan Yee from the NSWEC dated 20 June 2017, which invited him to participate in the interview and also set out relevant allegations and suspicions. In contrast to Mr Yip and Ms Tam, Jonathan Yee has fluent English-language skills and, given his experience as the convenor of CFOL, might reasonably be expected to have a considerably more sophisticated understanding of the rules pertaining to political donations. Accordingly, he had a much greater capacity to comprehend the nature of the NSWEC investigation from the terms of that letter.

The admissible evidence also includes the transcript of Jonathan Yee’s interview on 23 June 2017. In contrast to the general information about the investigation provided to Mr Yip at the start of his interview, the NSWEC expressly advised Jonathan Yee at the commencement of his interview that it suspected that a number of the \$5,000 donations made in connection with the 2015 CFOL dinner were made by persons other than the individual or entity purporting to make that donation. Jonathan Yee is recorded as confirming that he understood.

The evidence of each of the Emperor’s Garden putative donors and Mr Yip would also be admissible against Jonathan Yee for an offence against s 315 of the Crimes Act. That evidence establishes the falsehood of the statements that he gave to the NSWEC in his interview about the purported donations made by the putative donors. It also establishes Jonathan Yee’s role in procuring those persons to falsely put forward their names as fake donors.

In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Jonathan Yee for one or more offences of hindering an investigation in contravention of s 315 of the Crimes Act in relation to answers provided to the NSWEC in the voluntary interview conducted on 23 June 2017.

The Commission notes that the evidence of Jonathan Yee's false statements to the NSWEC in his interview on 23 June 2017 might also, or alternatively, be relevant to proof that he committed a scheme offence contrary to s 96HB of the EFED Act (chapter 14).

Offence of obstruct or hinder the Commission

Counsel Assisting submitted that Ms Siu's attempt to hide the document bearing Jonathan Yee's handwritten answers may constitute offences of attempting to:

- pervert the course of justice, by trying to conceal evidence that could implicate Jonathan Yee, in contravention of s 319 of the Crimes Act
- hinder an investigation in contravention of s 315 of the Crimes Act, and/or
- obstruct or hinder the Commission in the exercise of its functions in contravention of s 80 of the ICAC Act.

Submissions received on behalf of Ms Siu on this issue contend that her intention to hide the document was "fleeting". On re-examination, after her telephone call to her brother-in-law had been exposed, Ms Siu agreed with the proposition that, when the Commission adjourned for lunch, she understood that she was to travel to her home with her lawyer to pick up the document in order to comply with the Chief Commissioner's direction. The submission is made that, in light of that evidence, Ms Siu could not reasonably be referred to the DPP for advice in relation to prosecution for the offences submitted by Counsel Assisting.

There is little doubt, on the evidence, that Ms Siu did call her brother-in-law in an attempt to prevent the Commission from obtaining a document that was material to its investigation and which she had been expressly directed to produce. The Commission does not accept

Ms Siu's evidence that, within hours of having asked her brother-in-law to hide the relevant document, she genuinely intended during the lunch break to go with her lawyer to her home and produce that same document to the Commission.

The Commission is satisfied that the appropriate offence in relation to which a statement should be made pursuant to s 74A(2) of the ICAC Act concerning Ms Siu's conduct in attempting to hide the relevant document is an offence against s 80 of the ICAC Act. It is a specific statutory offence directed towards conduct of this very kind. Being an offence against that ICAC Act, the admissions that Ms Siu made in the public inquiry regarding her attempts to hide the document would be admissible against her in a criminal prosecution.

Accordingly, that Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Ms Siu for an offence of attempting to wilfully obstruct or hinder the Commission in the exercise of functions under the ICAC Act in contravention of s 80(a)(i) of that Act.

Chapter 18: Ms Murnain's meetings on 16 September 2016

On 14 September 2016, the NSWEC issued statutory notices under s 110A(1)(b) of the EFED Act to six of the putative donors requiring them to produce documents relating to their purported donations in connection with the 2015 CFOL dinner. One of those statutory notices was issued to Mr Tong. The evidence in relation to those notices is set out in chapter 16.

The Commission has reported that Mr Tong was upset about the false use of his name (in connection with the donation matter) by those who controlled Wu International. Soon after Mr Tong received the statutory notice on 14 September 2016, on Mr Wood's account, Mr Tong confronted Mr Liao at the offices of Wu International and threatened to "blow up the matter to become an explosive news if Mr Liao didn't help him".

Mr Tong's threat to Mr Liao initiated a chain of events that began with Mr Liao raising Mr Tong's concerns with Mr Wong and led to Mr Wong relating those concerns to Ms Murnain on 16 September 2016, who, on her account, in turn sought advice from Mr Robertson of Holding Redlich. This chapter sets out the evidence relevant to that chain of events. Submissions regarding findings that are open to the Commission, in light of that evidence, are also considered in this chapter.

The discussions between Ms Murnain and each of Mr Wong and Mr Robertson on 16 September 2016 are also relevant to factual findings made in other chapters of this report, in particular regarding the true source of the \$100k cash (chapter 12) and NSWEC enquiries of NSW Labor, Country Labor and employees of those parties (chapters 19 and 20).

Ms Murnain's conversation with Mr Wong

In the weeks leading up to the public inquiry, Ms Murnain gave evidence in two compulsory examinations held on 29 July and 20 August 2019. The transcript of both has

been tendered in evidence in the public inquiry.

During the first compulsory examination, Ms Murnain did not disclose any information about meetings or conversations that she had on 16 September 2016. She was not specifically asked about such matters. Soon after the first compulsory examination, Ms Murnain approached the Commission, through her lawyers, and sought to return to the Commission to give additional evidence relevant to this investigation. The second compulsory examination followed, on 20 August 2019, during which she explained that:

...I felt sick that I hadn't answered the questions properly and I, I don't want to, I want to do the right thing. I don't want to do the wrong thing and I felt I didn't answer the questions well or I didn't, I just didn't feel like I'd given you everything that I thought you needed to know.

During the compulsory examination on 20 August 2019, Ms Murnain gave evidence, the substance of which she repeated during the public inquiry, that Mr Wong contacted her after 6 pm on Friday, 16 September 2016 and sought to meet her. She explained that Mr Wong:

...asked me to come and see him. He didn't want to speak over the phone. And I said to him I would come and see him at parliament.

Ms Murnain's evidence, that Mr Wong did not want to talk over the telephone, is consistent with other evidence, including that of Mr Tong, Mr Zhan and Mr Clements, of Mr Wong's furtive conduct regarding mobile telephones and face-to-face meetings. That evidence is presented in chapters 22 and 23.

Ms Murnain said that she drove to meet Mr Wong at The Domain, near Parliament House, where they had a conversation ("the Wong conversation"). Evidence in relation to the Wong conversation is considered in chapter 12. It suffices presently to note that:

- call charge records establish that, at 6.06 pm on Friday, 16 September 2016, Mr Wong sent a text message to Ms Murnain asking her to call him. At 6.19 pm, Ms Murnain called Mr Wong and the call lasted 83 seconds. On Ms Murnain's account, corroborated by Mr Wong, he sought to meet her in person on an urgent basis
 - Mr Wong's request to meet Ms Murnain on an urgent basis is consistent with a series of instant messages from Ms Murnain's mobile telephone, which indicate that, at 6.12 pm, she had been on the way to meet her husband on Market Street
 - shortly after exchanging text messages between 6.36 pm and 6.41 pm, Ms Murnain met Mr Wong behind Parliament House on Hospital Road near The Domain, a fact upon which they both agree
 - according to Ms Murnain, Mr Wong was agitated, sweating, quite upset and speaking quickly during their meeting
 - on Ms Murnain's account, during the Wong conversation Mr Wong was "quite distressed" and "blurted out that a donor who had said they had given money to the Labor Party had not actually given money to the Labor Party"
 - Ms Murnain said she clearly understood that Mr Wong was referring to a donation in connection with the NSW state election campaign. She could not recall if he mentioned the amount of the donation, but she knew at that time that \$100,000 in cash had been received in connection with the 2015 CFOL dinner
 - Mr Wong agreed that the essence of what he told Ms Murnain during their meeting on 16 September 2016 was that there was a donor who had not donated the money that they said they had
 - according to Mr Wong, he sought the meeting to discuss with Ms Murnain information he had received the previous day from Mr Liao to the effect that the NSWEC had issued a notice to Mr Tong to produce documents in connection with its investigation into donations made at the 2015 CFOL dinner
 - according to Ms Murnain, but disputed by Mr Wong, she asked, "Who had donated the money?" in response to which, "[Mr Wong] said very quickly, 'Mr Huang'". Mr Wong agreed he mentioned Mr Huang's name during the conversation but said he did so in the context of explaining who had delivered the donation money to NSW Labor head office. He denied that Ms Murnain asked him who the true donor was (as reported in chapter 12, the Commission has accepted Ms Murnain's evidence on that issue)
 - according to Ms Murnain, she asked Mr Wong if he was referring to the Chinese property developer, as she realised the implications of Mr Huang being, as she understood it, a prohibited donor for the purposes of state electoral law
 - on Mr Wong's account, he told Ms Murnain that his friend (Mr Liao) had said that he had loaned the money to the donor (Mr Tong) and that the donor (Mr Tong) had repaid, or would repay, that money (as reported in chapter 12, the Commission has rejected Mr Wong's evidence on that issue)
 - Mr Wong gave evidence that he asked Ms Murnain whether the Labor Party would assist the donor (Mr Tong) by providing a lawyer. He said Ms Murnain refused, citing a conflict of interest. Ms Murnain accepted the possibility that may have occurred
 - on Ms Murnain's account, she was upset by what Mr Wong had said and told him, possibly a few times, that "you need to get the person who says they did not donate the money to come forward and see us, we'll deal with it". She could not recall Mr Wong's response. Mr Wong gave evidence that it was possible that Ms Murnain said that the donor needed to come forward
 - Ms Murnain said she told Mr Wong that "we need to [get] advice off the Governance Director or the lawyers".
- Ms Murnain gave evidence that the Wong conversation ended abruptly and that she then rang Mr Dastyari for advice. The evidence in relation to those communications is set out later in this chapter.
- Call charge records establish that, soon after the Wong conversation, Mr Wong made the following telephone calls to persons involved in schemes the subject of this investigation:
- at 6.55 pm, he called Mr Cheah and the call lasted 33 seconds
 - at 7 pm, he called Jonathon Yee and the call lasted 20 seconds
 - at 7.51 pm, he called Mr Huang and the call lasted 19 seconds.
- Counsel Assisting put to Mr Wong that the reason he contacted those three people soon after his meeting with Ms Murnain was because he had told Ms Murnain that the true source of some, at least, of the donated funds at

the 2015 CFOL dinner, was Mr Huang. While Mr Wong rejected that proposition, he said he had no recollection as to what those telephone calls were about.

It is clear that the evidence establishes that Mr Wong had sought an urgent meeting with Ms Murnain after having been told that the NSWEC had commenced investigations into donations made in connection with the 2015 CFOL dinner and, in particular, in relation to Mr Tong who, on Mr Wood's evidence, had threatened to expose the fraudulent use of his name. Shortly after the Wong conversation, Mr Wong contacted three people who, on other evidence referred to in this report, were closely involved in schemes related to the \$100k cash delivered to NSW Labor head office on 7 April 2015; namely, Mr Cheah, Jonathon Yee and Mr Huang.

Mr Cheah was shown the call charge records referred to above. He said that he had a specific recollection of Mr Wong calling him on 16 September 2016 to say that he was running late to a Subcontinent Friends of Labor dinner at a restaurant in Granville. Mr Cheah denied that Mr Wong ever told him that one or more of the putative donors might not have actually donated the money they said they did.

Given Mr Cheah's involvement in the switcheroo (chapter 10), his conduct in relation to the reconciliation of the \$100k cash (chapter 9) and the findings set out in chapter 14, the Commission takes a sceptical approach to Mr Cheah's evidence as to his stated specific recollection of the telephone call with Mr Wong on 16 September 2016.

That Mr Cheah was the first person to be called by Mr Wong immediately upon the conclusion of the Wong conversation, in circumstances where Mr Wong had disclosed to Ms Murnain that a donor connected with the 2015 CFOL dinner had not in fact donated the money that they said they had, and that Mr Huang had some connection with that donation, gives rise to an obvious inference that that telephone call to Mr Cheah pertained to the subject of the Wong conversation. Such an inference is bolstered by the following facts:

- Ms Murnain, being the general secretary of NSW Labor, was Mr Cheah's boss
- the information that Mr Wong had just told Ms Murnain during the Wong conversation pertained to problems with donations in connection with the 2015 CFOL dinner, being donations that Mr Cheah himself had processed
- the next telephone call that Mr Wong made, within minutes, was to Jonathan Yee who, like Mr Cheah, was intimately involved in the 2015 CFOL dinner and who, in contrast to Mr Cheah, has admitted to his role in an unlawful scheme in relation to the \$100k cash.

The likelihood that Mr Wong called Mr Cheah to discuss his late arrival at a Subcontinent Friends of Labor event is diminished by the lack of evidence that Mr Wong had any particular involvement with, or interest in, the Subcontinent Friends of Labor group. The Commission does not accept Mr Cheah's explanation for the 6.55 pm telephone call with Mr Wong on 16 September 2016.

Jonathan Yee was not examined in the public inquiry about Mr Wong's telephone call to him at 7 pm on 16 September 2016.

It is clear that the NSWEC enquiries of Mr Tong were the impetus for Mr Wong initiating the Wong conversation with Ms Murnain on 16 September 2016. Mr Wong's evidence in relation to those events must be examined in the context of other evidence, and facts as found by the Commission throughout this report, relating to Mr Wong and Mr Tong. In particular, the Commission found:

- in chapter 4, that Mr Wong procured Mr Tong's false donor declaration form, via Mr Liao, on 30 March 2015
- in chapter 10, that Mr Wong furnished the fraudulent donor declaration forms of Mr Tong and Mr Liao to Mr Cheah on 17 April 2015 to effect the switcheroo
- in chapter 22, that Mr Wong sought to procure Mr Tong to provide a false account to investigatory authorities in 2018 in relation to this matter.

In these circumstances, the Commission is satisfied that Mr Wong's concern in wanting to talk with Ms Murnain on 16 September 2016 arose, not from any concern for Mr Tong's welfare, but because the NSWEC investigation threatened to expose both the fact that the \$100k cash had been unlawfully donated as well as the individuals involved in the scheme.

Ms Murnain's communications with Mr Dastyari

As noted above, Ms Murnain gave evidence that she was distressed by the Wong conversation and that she sought advice from then-federal Labor senator Mr Dastyari about it soon afterwards. Ms Murnain's evidence to that effect is consistent with the evidence of Mr Dastyari. However, there are notable tensions between the recollections of Ms Murnain, Mr Dastyari and telephone and WhatsApp (encrypted messaging and voice-over-IP application) records as to the timing, mode and duration of communications that took place between them in the hour or so following the Wong conversation. The relevant evidence is surveyed below.

Ms Murnain's evidence

Ms Murnain gave evidence that, immediately after the Wong conversation, she called Mr Dastyari for advice. She said that she turned to Mr Dastyari for advice because he was both her friend and a previous general secretary of NSW Labor who she knew had previously dealt with Mr Huang and Mr Wong. She said that she did not turn to her predecessor, Mr Clements, citing tensions that existed in their relationship.

Ms Murnain said that she could not be sure that Mr Dastyari was the first person she called after the Wong conversation, as she had a recollection of possibly having called the governance director, Ms Sibraa, but she thought that Ms Sibraa had gone home by that time. On that basis, stating that she did not have telephone records for that period, Ms Murnain said she thought the first person she called was Mr Dastyari. She explained:

...I called him and said, "Are you in the city, can I come and see you at your office?" He said, "Sure," but I think he was going home. So he dropped by the back of the Parliament House. I hopped in the car, drove around the little part of The Domain to the best of my knowledge. It was only a couple of, it would be between five and 10 minutes max and I told him what had happened with Ernest and I didn't know what to do and it was a Friday afternoon. I think everyone else in Sussex Street had well gone by then and he said, "Go and see the lawyers. Go and see Holding Redlich".

Asked if she could recall the words spoken during that conversation, Ms Murnain replied:

I can't remember. All I remember is telling him the, what had happened with Ernest and that Ernest wasn't sure what to do, and that he knew Huang. I remember asking him whether Huang had donated the money. He thought he might know for sure because 2016, well, 2016 obviously I knew who he was by this stage. I knew that he was quite, obviously a property developer. And he said go and, just go and see the, go and see Holding Redlich, go and see your lawyers, go and see Ian Robertson.

Ms Murnain said she was sure that she mentioned Mr Huang's name to Mr Dastyari during that conversation and that she also told him that Mr Wong had alleged there was someone who said that they had donated money but had not donated money. She said Mr Dastyari specifically advised her to talk to Mr Robertson.

Following her discussion with Mr Dastyari, on Ms Murnain's account, he dropped her off, possibly near Parliament House, at which point she called

Mr Robertson for the purpose of arranging an urgent meeting with him. The evidence in relation to that meeting is set out later in this chapter.

Mr Dastyari's evidence

On 22 August 2019, in the lead up to the public inquiry and two days after Ms Murnain's second compulsory examination, Mr Dastyari was served with a summons to give evidence at a compulsory examination before the Commission on 23 August 2019. Mr Dastyari approached the Commission and asked that his examination be brought forward to the afternoon of 22 August 2019 due to other commitments. Arrangements were made for Mr Dastyari to give evidence on the afternoon of 22 August 2019, a few hours after he had been served his summons. The transcript of that compulsory examination was tendered in evidence in the public inquiry.

In the compulsory examination, Mr Dastyari gave evidence, with limited prompting, of having an "out of the ordinary" conversation with Ms Murnain in September 2016 during which Ms Murnain was "incredibly distressed about a conversation she'd had with Ernest", which involved issues of donations and CFOL and the state of Labor Party accounts from the period prior to Ms Murnain becoming general secretary of NSW Labor. He said that he recalled Ms Murnain contacting him and that he drove to meet her around Parliament House. He said:

So she left Ernest's office. I was meant to meet her already but then she messaged me and I came and picked her up in my car and we drove around the city and around town for about an hour, hour and a half I think, from memory. We had a long deep and meaningful conversation. She talked me out of quitting from parliament at that point in time. Terrible advice. I talked to her about sticking through and seeing things through politically. She had an altercation with Ernest where she had felt Ernest had tried to put a proposition or something to her that she was responsible or that she'd agreed to things. It was all very, very vague, and at the time, to be honest, I probably wasn't in the headspace to be concerned about her because I just, you know, resigned from the front bench two weeks earlier, and I just remember her being very, very distressed.

In the compulsory examination, Mr Dastyari said that he did not specifically recall Ms Murnain referring to Mr Huang during their conversation, but he said that "it wouldn't surprise [him] at all if that came up in that conversation". Mr Dastyari said that he believed that he gave Ms Murnain advice to the effect:

You need to talk to Ian Robertson about all of this, and make sure you've, you know, you're talking to Ian and you're going through Ian with all of it.

Mr Dastyari gave largely consistent evidence in the public inquiry. He said that Ms Murnain called him on Friday, 16 September 2016, likely via WhatsApp, and asked him to meet her near Parliament House. Mr Dastyari said that he believed he met Ms Murnain on the corner of King and Elizabeth streets at about 7.47 pm. He said that that recollection was based on his review of messages on his telephone.

There is a degree of internal tension in Mr Dastyari's evidence as to where he picked up Ms Murnain in his car that night. On the one hand, he gave evidence in his compulsory examination and in the public inquiry of his independent recollection that she called him and asked him to meet her near Parliament House and that he drove to meet her around Parliament House. That evidence is consistent with Ms Murnain's account. On the other hand, having reviewed WhatsApp messages on his telephone, Mr Dastyari said in the public inquiry that he believed he met Ms Murnain on the corner of King and Elizabeth streets in Sydney, a location that does not fit the description of "near" or "around" Parliament House. That issue is considered in more detail later in this chapter.

As to the substance of their conversation on 16 September 2016, during the public inquiry, Mr Dastyari said that:

- when Ms Murnain got into his car, she was distressed and told Mr Dastyari that she had had an interaction with Mr Wong that was the cause of her distress. She said that Mr Wong had told her something about a lack of transparency relating to the accounts and finances of CFOL in the period before she became general secretary
- Ms Murnain left Mr Dastyari with the impression that the CFOL accounts for previous years were not an accurate reflection of events that had taken place and she was incredibly distressed by that
- Ms Murnain told Mr Dastyari that Mr Wong had been unclear and "cagey" about the CFOL accounts and that the accounts did not reflect the fundraising activities that had taken place
- having done his best to "piece it together" since his compulsory examination, at which point he had had no knowledge of the line of questioning that he would face, he had formed the belief that Ms Murnain did specifically single out Mr Huang as someone she was concerned about

- Mr Dastyari advised Ms Murnain that she needed to get proper legal advice and she should go and see the party's lawyers, Holding Redlich. He said that "[he] very forcefully told her to go to the lawyers and get legal advice"
- the meeting with Ms Murnain in the car was reasonably lengthy, between 30 and 90 minutes during which they were driving around the CBD. He was left with the impression that Ms Murnain intended to promptly see the lawyers after their discussion ended.

Mr Dastyari's evidence corroborates Ms Murnain's account in relation to some aspects but not others. There is obvious tension between their accounts as to how long their conversation lasted. On Ms Murnain's account, it lasted a few minutes. According to Mr Dastyari, it lasted between 30 and 90 minutes.

On cross-examination by senior counsel for Ms Murnain, Mr Dastyari accepted that his specific recollection of events on 16 September 2016 had been diminished by the passage of time and other events. However, he maintained that he had a strong memory of the fact that Ms Murnain was distressed that day and that the immediate cause of her distress was a meeting she had had with Mr Wong during which Mr Wong had conveyed to her information about lack of transparency regarding CFOL fundraising, donations and disclosures.

Mr Dastyari was cross-examined by senior counsel for Ms Murnain on the question of whether Mr Huang's name was mentioned during their conversation on 16 September 2016. On this issue, Mr Dastyari gave the following evidence:

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

Asked whether it was himself or Ms Murnain who first mentioned Mr Huang in the conversation, Mr Dastyari said that he believed it was Ms Murnain.

The fact that the accounts of Ms Murnain and Mr Dastyari were not identical carries some significance in that it reflects an absence of any attempt between them to coordinate their evidence on events concerning the Wong conversation and Ms Murnain's subsequent meeting with Mr Robertson. That is consistent with Mr Dastyari's evidence that he had had no recent discussions, prior to his compulsory examination, with Ms Murnain about those events. The Commission notes the limited opportunity for any such coordination

in circumstances where Mr Dastyari's compulsory examination took place just hours after he was served his summons.

In submissions received on behalf of Ms Murnain, it was submitted that the essential aspects of Mr Dastyari's evidence corroborated Ms Murnain's, including:

- her serious distress
- the explicit connection between that distress and the Wong conversation
- that Ms Murnain recounted the substance of the Wong conversation "at a high level", including mention of CFOL, related issues of fundraising, donations and disclosure
- Mr Dastyari's advice that she should consult Mr Robertson in order, as he told her, to "get proper advice".

Mr Dastyari's stated belief in his evidence at the public inquiry, that Ms Murnain mentioned Mr Huang, is also consistent with Ms Murnain's account.

WhatsApp and call charge records

The evidence of Ms Murnain and Mr Dastyari as to the timing and mode of communications that took place between them on 16 September 2016 does not sit comfortably with WhatsApp and call charge records. Those objective records relevantly establish that the following sequence of events took place after Ms Murnain's meeting with Mr Wong behind Parliament House at, or shortly after, 6.42 pm on 16 September 2016:

- at 6.55 pm, Mr Wong made a telephone call to Mr Cheah (considered earlier in this chapter). The Wong conversation appears to have concluded by this time
- four minutes later, at 6.59 pm, Ms Murnain made a telephone call to Mr Robertson. The call lasted 35 seconds. At 7.03 pm, she made a further call to Mr Robertson, the call lasted 79 seconds. At the time of both of those calls, Ms Murnain's mobile telephone was in the vicinity of Parliament House
- at 7.08 pm and 7.09 pm, Mr Dastyari twice attempted to make telephone calls to Ms Murnain. The duration of those calls being 0 seconds
- also at 7.08 pm and 7.09 pm, Ms Murnain made two telephone calls to Mr Dastyari. The duration of the first call was 0 seconds, the second was 90 seconds. At the time of the 90-second call, Ms Murnain's mobile telephone was in the

vicinity of David Jones in Sydney (a location about 200 metres from the offices of Holding Redlich)

- at 7.15 pm, Ms Murnain made a telephone call to her husband. The call lasted 48 seconds and the location of Ms Murnain's mobile telephone was Pitt Street
- at 7.17 pm, Ms Murnain made a telephone call to Mr Foley, Labor's state Opposition leader at the time. The call lasted 12 seconds. Given the short duration of the call, it may or may not have been answered. Again, the location of Ms Murnain's mobile telephone was Pitt Street
- at 7.18 pm, Ms Murnain sent a text message to Mr Robertson which read, "I'm at the top of the escalator"
- according to a screenshot of WhatsApp messages on Mr Dastyari's mobile telephone:
 - at 7.18 pm and 7.19 pm, Mr Dastyari received message notifications of three attempted, but missed, WhatsApp voice calls from Ms Murnain
 - between 7.41 pm and 7.47 pm, Ms Murnain and Mr Dastyari exchanged the following WhatsApp messages:
 - 7.41 pm, Mr Dastyari: "Yo. I'll come to you"
 - 7.41 pm, Mr Dastyari: "Crm [sic] Elizabeth and King"
 - 7.44 pm, Ms Murnain: "Here r u"
 - 7.44 pm, Ms Murnain: "Where r u"
 - 7.46 pm, Mr Dastyari: "Lap"
 - 7.47 pm, Mr Dastyari: "Can u cross"

The evidence establishes that Ms Murnain met with Mr Robertson at the offices of Holding Redlich ("the Robertson meeting") shortly after her text message to him at 7.18 pm, indicating that she was "at the top of the escalator". The evidence in relation to that meeting is set out later in this chapter.

Each of Ms Murnain and Mr Dastyari gave evidence that, to the best of their recollection, they only met in person once, not twice, on the evening of 16 September 2016. According to the records above, Mr Dastyari picked Ms Murnain up in his car at or shortly after 7.47 pm that night, *after* the Robertson meeting. The evidence of Ms Murnain and Mr Dastyari that they discussed the Wong conversation while driving around in Mr Dastyari's car *prior* to the Robertson meeting is, therefore, problematic.

The call charge record, which shows that Ms Murnain and Mr Dastyari had a 90-second telephone conversation at 7.09 pm, being 14 minutes after Mr Wong's 6.55 pm call to Mr Cheah in the wake of the Wong conversation and nine minutes before Ms Murnain's 7.18 pm text message to Mr Robertson that she was "at the top of the escalator", at which time Ms Murnain was in the vicinity of David Jones (between Elizabeth and Castlereagh streets), establishes the likelihood that Ms Murnain and Mr Dastyari were not together at the time of that call. This appears to count against the possibility that Mr Dastyari might have driven Ms Murnain from Parliament House to the offices of Holding Redlich.

During the public inquiry, Ms Murnain and Mr Dastyari were each examined on the tension between their evidence and the telephone and WhatsApp records. Regarding the chronology of events, Mr Dastyari conceded he was straining to remember specifics of events held three years prior. He said, in his personal memory, he was sure of an interaction with Ms Murnain in the car and telling her to see the lawyers. But he said his personal memory did not relate to the timing of events.

As to timing of events, Mr Dastyari said he based his evidence on the WhatsApp records on his telephone. He accepted, on cross-examination by senior counsel for Ms Murnain, that either the 90-second telephone call at 7.09 pm or "unrecorded" WhatsApp communications (considered below) may have initiated the sequence of events which led to him to pick Ms Murnain up in his car on 16 September 2016.

Ms Murnain was shown the summary of call charge records detailing the sequence of communications detailed above. She accepted that those records showed that, after the Wong conversation, she made telephone calls to Mr Robertson at 6.59 pm and 7.03 pm, before she made telephone calls to Mr Dastyari at 7.08 pm and 7.09 pm. Notwithstanding, she said her recollection was that she spoke to Mr Dastyari before Mr Robertson.

Having seen the record of her 90-second call to Mr Dastyari at 7.09 pm, at which time her telephone was in the vicinity of the David Jones department store, a block or two from the offices of Holding Redlich, Ms Murnain gave the following evidence:

[Counsel Assisting]: Does that data in any way refresh your memory as to when you had a telephone call, if you had a telephone call with Mr Dastyari after the meeting with Mr Wong?

[Ms Murnain]: It just doesn't. I just, I remember talking to Sam, and I remember him saying, "Go see Ian Robertson," and it is so engrained in my memory.

I mean, I, I just don't know the, I, I mean, I couldn't tell you the, the order of the time of the phone calls, except to say that I know I spoke to Sam before I saw Ian Robertson.

[Q]: But the evidence that you gave earlier in the public inquiry, as I understood it at least, was that that conversation happened in Mr Dastyari's car, is that right?

[A]: Yes. Yep, mmm.

[Q]: Now, having looked at these records, and having thought further about it since last giving evidence, are you sure that that was how that conversation played out, or is it possible that the conversation where Mr Dastyari said, "Go and see Ian Robertson," in fact happened by telephone between your meeting with Mr Wong and your meeting with Mr Ian Robertson?

[A]: It is definitely possible, yes.

[Q]: Now, is it possible on your recollection that you had that discussion with Mr Dastyari after you spoke to Mr Robertson to arrange a meeting with him that evening?

[A]: It's possible but – it's possible I spoke to him multiple times, Sam. It's, it's possible. It's possible.

[Q]: But still your best recollection sitting there now was that your first contact after your meeting with Mr Wong was with Mr Dastyari, correct?

[A]: Yes, yeah.

[Q]: Your recollection earlier in the public inquiry was that that was in his vehicle, but I think you're now saying it's possible that that was on the telephone, is that right?

[A]: That's correct, yeah, mmm.

[Q]: And then you met with Mr Robertson after having the discussion with Mr Dastyari, correct?

[A]: Yes.

Ms Murnain was shown the WhatsApp screenshot from Mr Dastyari's telephone. She said she could not explain those communications. She accepted that she may have met Mr Dastyari after the Robertson meeting, but said her best recollection was that she met Mr Dastyari first, who gave her the advice to go to see Mr Robertson.

Ms Murnain and Mr Dastyari both gave evidence to the effect that she did not tell Mr Dastyari during their conversation that she had just been to see Mr Robertson or that Mr Robertson had just given her any particular advice in relation to the Wong conversation. Mr Dastyari noted that his recollection of their discussion that night was based around the advice he had given her to "go see the lawyers" and that it would not have made any sense for her to have already seen the lawyers at the time that he gave that advice.

On cross-examination by senior counsel for Mr Robertson, Ms Murnain insisted that she spoke with Mr Dastyari who told her to go and see Mr Robertson and that that conversation occurred prior to Ms Murnain in fact going to see Mr Robertson. She said she contacted Mr Robertson to make the arrangements for the meeting with him. She said she was not sure of the sequence of that call to Mr Robertson, but that she thought it was after she had spoken to Mr Dastyari. It was put to Ms Murnain that the Robertson meeting had to have been arranged *before* her telephone call with Mr Dastyari at 7.09 pm. In response, Ms Murnain agreed that the telephone records indicated that order of events. However, she insisted that she spoke to Mr Dastyari and asked him for advice and that he told her to go see the lawyers, which she then did.

That Ms Murnain made three unanswered voice calls to Mr Dastyari via WhatsApp at 7.18 pm and 7.19 pm is established by the message notifications of those missed calls on the screenshot of WhatsApp messages from Mr Dastyari's telephone, and is consistent with Ms Murnain's evidence that she and Mr Dastyari generally communicated by various means, including telephone calls and applications such as WhatsApp. It also lends support to Mr Dastyari's evidence, noted earlier, that Ms Murnain called him on 16 September 2016, likely via WhatsApp, and asked to meet.

On cross-examination by senior counsel for Ms Murnain, Mr Dastyari was asked about the screenshot from his mobile telephone, which showed the WhatsApp messages between Ms Murnain and Mr Dastyari on 16 September 2016, including the notifications of the three missed WhatsApp voice calls at 7.18 pm and 7.19 pm. Mr Dastyari gave evidence that that messaging screen does not, and would not, depict any successful WhatsApp calls that may have been made on that day. Mr Dastyari's evidence on this issue has not been challenged.

A submission has been received on behalf of Ms Murnain that it is impossible to discount the possibility that she and Mr Dastyari had some further discussions, by way of WhatsApp, after the Wong conversation and before the Robertson meeting – that is, conversations separate from their 90-second telephone call at 7.09 pm.

It was further submitted that the likelihood of such communications having taken place was bolstered by evidence that, at 7.41 pm, Mr Dastyari sent a message to Ms Murnain, "Yo. I'll come to you". The submission was made that Mr Dastyari must have known at that time where Ms Murnain was; a fact which suggested that there must have been some earlier communication between them. The Commission accepts that submission and notes, in addition, that Mr Dastyari must have known when he sent that message that Ms Murnain was then ready to meet and be picked up. There is no call charge record or WhatsApp message conveying such information. This suggests that communications are likely to have occurred between Ms Murnain and Mr Dastyari that evening which are not reflected in the limited evidence before the Commission.

It was submitted for Ms Murnain that such communications would be consistent with Ms Murnain's recollection that she had a discussion with Mr Dastyari in which he encouraged her to speak to Mr Robertson.

Ultimately, as noted by Counsel Assisting in his submissions, and highlighted in submissions for both Ms Murnain and Mr Robertson, it is difficult to reconcile all the evidence about the precise sequence of events on the evening of 16 September 2016. While there is little difficulty in finding that the Robertson meeting took place within about half an hour of the Wong conversation, it is not so simple to reconcile the evidence as to the timing and mode of communications between Ms Murnain and Mr Dastyari that evening.

However, it was submitted on behalf of Ms Murnain that such difficulty is natural, when two witnesses, who had manifestly not collaborated, have testified to their recollection of events which occurred "three crowded years" earlier. The submission was made that this should not obscure the essential aspects on which Mr Dastyari's evidence corroborated that of Ms Murnain, namely:

- her serious distress
- the explicit connection between that distress and the Wong conversation
- Mr Dastyari's advice that she should consult Mr Robertson in order, as he told her, to "get proper advice".

The Commission accepts that submission.

Submissions for Mr Robertson as to the findings that the Commission should make in relation to the subject matter of, and what was said at, the Robertson meeting, relied in part on the tension between the evidence of Ms Murnain, Mr Dastyari and the WhatsApp and call charge records identified above. Those submissions are considered later in this chapter.

For present purposes, in relation to Ms Murnain's communications with Mr Dastyari on 16 September 2016, having carefully considered the evidence and weighed the competing submissions, the Commission is satisfied to the requisite standard that:

- as at September 2016, Ms Murnain and Mr Dastyari had a general practice of communicating by various means, including by way of conventional telephone calls and the use of WhatsApp to send messages and make voice calls
- after the Wong conversation, Ms Murnain contacted Mr Dastyari in a distressed state and they had a conversation during which the following information was exchanged:
 - Ms Murnain said she had just met with Mr Wong and that her conversation with Mr Wong was the cause of her distress
 - Ms Murnain recounted the substance of the Wong conversation at a high level and mentioned CFOL and related problems of fundraising, donations and disclosure
 - Ms Murnain mentioned Mr Huang's name in that context
 - Mr Dastyari told Ms Murnain that she should go and see Mr Robertson and/or "the lawyers" at Holding Redlich to get proper advice
- the conversation above took place prior to Ms Murnain attending the offices of Holding Redlich to meet with Mr Robertson, which occurred at about 7.18 pm
- after the Robertson meeting, at about 7.47 pm, Mr Dastyari picked up Ms Murnain in his car near the corner of Elizabeth and King streets in Sydney.

The state of the evidence as to precisely when and where Ms Murnain and Mr Dastyari discussed the Wong conversation on 16 September is less satisfactory. A number of possible scenarios appear open on the evidence.

One possibility is that the discussion between Ms Murnain and Mr Dastyari about the Wong conversation may have occurred by way of a WhatsApp voice call during the

period of time after the Wong conversation and before Ms Murnain's telephone call to Mr Robertson at 6.59 pm. That there was ample time for such a conversation is consistent with evidence that the Wong conversation commenced at, or shortly after, 6.42 pm. Ms Murnain's evidence was that the Wong conversation was short:

[Ms Murnain]: He, he met me on Hospital Road and then we started walking through The Domain. I thought we were going to go get a coffee but we stopped very quickly because he told me about a donor who hadn't given money that was worried about the fact they hadn't given money

...

[Counsel Assisting]: After that conversation came to an end – before I ask that, have we now exhausted your recollection of what you said and what Mr Wong said during the course of the meeting on 16 September, 2016?

[A]: I, I believe so, and then it ended pretty abruptly, pretty quickly.

[Q]: And after it ended, what did you then do?

[A]: I called Sam Dastyari for advice.

[Q]: Was that the first call that you made after the end of the meeting with Mr Wong?

[A]: To the best of my recollection.

On Mr Wong's account, but denied by Ms Murnain, she raised her hands and walked away from Mr Wong after he told her about Mr Huang's involvement with the donation. In any event, the Wong conversation had clearly concluded some time prior to Mr Wong making the telephone call to Mr Cheah at 6.55 pm.

Another possibility is that, in the same window of time, and notwithstanding Ms Murnain's and Mr Dastyari's recollections that they only had one face-to-face meeting that night, Mr Dastyari picked her up in his car near The Domain and they discussed the Wong conversation for several minutes before he dropped her off again at Parliament House. That second scenario would be consistent with:

- Mr Dastyari's recollection, that Ms Murnain contacted him and asked him to meet her near Parliament House, which is where he drove to meet her

- Ms Murnain's evidence that, after the Wong conversation, she called Mr Dastyari, who was at that time leaving his office in the city, and that he picked her up in his car behind Parliament House
- Ms Murnain's evidence that she and Mr Dastyari discussed the Wong conversation while driving around The Domain for "a couple of, it would be between five to 10 minutes max" before he dropped her off, possibly near Parliament House, at which point she called Mr Robertson to arrange an urgent meeting.

That scenario would also be consistent with the call charge records, which show that Ms Murnain was in the vicinity of Parliament House when she called Mr Robertson at 6.59 pm. There is tension between that scenario and the evidence of Ms Murnain and Mr Dastyari to the effect that they could only recall meeting face-to-face once that night. However, as noted in submissions by senior counsel for Ms Murnain, she and Mr Dastyari testified to their recollection of events, which occurred "three crowded years" earlier. In those circumstances, it would not be surprising if they remembered the remarkable discussion about the Wong conversation but not the less remarkable fact that Mr Dastyari picked her up after the Robertson meeting.

In this context, the possibility cannot be discounted that Mr Dastyari's stated belief as to the timing of his discussion with Ms Murnain about the Wong conversation, based on messages indicating that he picked her up at about 7.47 pm, may have been influenced by his reference to WhatsApp records pertaining to a separate, and later, occurrence.

However, in the absence of call logs recording the time and duration of any WhatsApp voice calls that may have occurred between Ms Murnain and Mr Dastyari on 16 September 2016, the evidence before the Commission is not of sufficient cogency to permit any positive findings to be made in relation to precisely when, and how, the discussion between Ms Murnain and Mr Dastyari about the Wong conversation took place.

Notwithstanding, the Commission is satisfied to the requisite standard, on the basis of the evidence surveyed above, that Ms Murnain met with Mr Robertson at his office in the MLC Centre that evening in order to seek advice in relation to what Mr Wong had told her shortly beforehand.

Ms Murnain's meeting with Mr Robertson

There was broad agreement between Ms Murnain and Mr Dastyari as to the content of the discussions between them on 16 September 2016. The difficulties in relation to those discussions arose from tensions in the evidence as to the timing and mode of relevant communications.

The Commission's fact-finding exercise faces challenges of a different kind in relation to the meeting between Ms Murnain and Mr Robertson on 16 September 2016. There is no real dispute as to the occurrence, timing and location of the Robertson meeting. There is, however, a very significant dispute between Ms Murnain and Mr Robertson as to the subject-matter of, and what was said during, that meeting. The relevant evidence is set out below, along with the submissions considered.

Ms Murnain's evidence

Ms Murnain gave evidence that, after her discussion with Mr Dastyari about the Wong conversation, she made a telephone call to Mr Robertson and said that she needed to see him urgently. On her account, Mr Robertson replied, "Of course, I'm still here at the office". She said that she then met him, at about 7.20 pm, at the top of the escalator at the entrance to the MLC Centre on the corner of Castlereagh and King streets, being the building in which Holding Redlich has its offices.

The call charge records establish that Ms Murnain called Mr Robertson at 6.59 pm and 7.03 pm on 16 September 2016. The first call lasted 35 seconds, and the second call lasted 79 seconds. Ms Murnain made both of those calls from the vicinity of Parliament House. The telephone records also establish that Ms Murnain sent a text message to Mr Robertson at 7.18 pm stating, "I'm at the top of the escalator". On Ms Murnain's account, she sent that message because she found the doors to the MLC Centre locked.

Holding Redlich security records confirm that Mr Robertson used his security pass to unlock the office premises on level 65 of the MLC building at 7.19 pm on 16 September 2016. Mr Robertson, who accepted that the evidence suggested that he did meet with Ms Murnain after-hours on Friday, 16 September 2016, gave evidence that the security records were consistent with Ms Murnain coming to his office and with him taking her up in the lift at 7.19 pm.

On Ms Murnain's account, she then met with Mr Robertson in the offices of Holding Redlich. She said there was no one else present. She said that they had a discussion, which lasted approximately 20 minutes.

Ms Murnain's evidence as to the duration of the Robertson meeting is consistent with the WhatsApp records from Mr Dastyari's mobile telephone, which establish that he sent her a message at 7.41 pm, "Yo. I'll come to you", and that he picked her up near the corner of Elizabeth and King Streets, a block from the MLC Centre, at about 7.47 pm. It is also consistent with Cabcharge records produced by Mr Robertson indicating that he arrived home at about 7.54 pm, which he testified was between 15 and 20 minutes by taxi from the MLC Centre.

Ms Murnain was asked during the public inquiry what was said during the Robertson meeting. On this critical issue, she gave the following evidence:

"There's been a massive fuck-up," I would have said or I did say. I was pretty upset. I told Ian Robertson, who was the party's lawyer, that I'd met with Ernest, that, that Ernest had told me that someone who said they donated the money definitely hadn't and that, that Mr Huang had donated that, that money for that donor. I told him that I believed Ernest to be telling the truth. He asked me whether he thought I, whether Ernest was telling the truth or not. I said, "Yes."

...

I explained to him that I had told Ernest to get the person to come forward. He said, "Well, let me ask you in a different way. Did he give you any evidence to suggest that this has happened?" I said, "No, he didn't." I was, the conversation went on for maybe 20 minutes, maybe more. I don't remember everything that was said but obviously I was quite worried, I was worried for the – I explained to Ian that I was worried for the reputation of the party, the office and the staff

...

And, and after I relayed the story about what Ernest had said to me, he asked me again whether, whether there was any evidence that he'd provided. I said, no, he hadn't. He asked me several times, "Do you believe him?" And I said, "I believe so." That was asked a few times. And then at the end of the conversation, Ian told me ... he said to me, "Don't, there is no need to do anything from here. Don't record this meeting, don't, don't put it in your diary. Forget the conversation happened with Ernest and, and I, I won't be, won't be billing you for this either." And that was it. And, "Don't tell anyone about it." So I literally didn't tell anyone about it.

Asked if she was sure of the matters in relation to which she had given evidence, Ms Murnain confirmed that she was sure.

On cross-examination by senior counsel for Mr Robertson, Ms Murnain gave further evidence that:

I also said that we should return the money and he said, and I don't know if I said this at the last two examinations, but [Mr Robertson] said, "We don't have to do that just yet."

She rejected the proposition that she was making that evidence up.

Ms Murnain gave evidence that she was sure that Mr Robertson did not take any notes during the Robertson meeting. That is consistent with Mr Robertson's evidence (considered below) that, despite conducting searches, he could find no file note or other record of what occurred during that meeting.

Ms Murnain also gave evidence that:

- as at 2016, as general secretary of NSW Labor, she frequently met with Mr Robertson to obtain legal advice on issues affecting NSW Labor and Country Labor, but that it was exceptional to meet him on a Friday night after-hours and she believed that the only occasion on which she had ever done so was on 16 September 2016 in relation to the Wong conversation
- she knew that the information Mr Wong had given her was significant in that it suggested that there may have been some illegality regarding donations
- despite the significance of the Mr Wong's allegation, she had no further discussions with Mr Robertson after the Robertson meeting about the subject matter of that meeting and she took no further steps in relation to the information that Mr Wong had given her on 16 September 2016
- being concerned about the implications for the Labor Party if Mr Wong's information became public, she decided to follow Mr Robertson's advice to keep it quiet, forget about it and not tell anyone about her meeting with Mr Wong
- in particular, she did not:
 - tell Mr Dastyari about the advice that Mr Robertson had given her, explaining that Mr Robertson had told her not to talk about it
 - raise with Mr Robertson, when NSW Labor and Country Labor received notices from the NSWEC in December 2016, her concerns about the Wong conversation and the advice he had given her. On Ms Murnain's evidence, "he was

aware of what I'd told him" (the evidence in relation to those notices is set out in chapter 19)

- disclose what Mr Wong had told her on 16 September 2016 to Ms Sibraa, the NSW Labor governance director, or anyone else within the ALP, explaining that she took that course, "because I was following the advice religiously".

Asked why she took that approach, Ms Murnain's evidence was:

...I was following the advice, and I was scared, but I also, when, I mean, Ernest hadn't given me a name [of the fake donor] when he told me this information, as to who we needed to look out for. And I, I didn't share it with anyone else.

Asked why she was scared, Ms Murnain's evidence was:

For the Labor Party. We'd been through a lot that year. There were multiple court cases ongoing. There were by-elections current. I was scared for the office, and the reputation of the party. And doing my best to make sure that I followed that advice. And I obviously recognise now that's something I shouldn't have done. And I should have made different decisions.

On cross-examination by senior counsel for Mr Robertson, Ms Murnain agreed that, at the time of the Robertson meeting, Mr Robertson had always given her frank legal advice and that he was a person who she regarded as being honest and respected. She agreed that he was older than her and that, in her role as general secretary of NSW Labor, she placed a great deal of trust and confidence in him. In relation to the advice that she said Mr Robertson gave her on 16 September 2016, she said, "the advice I got in 2016 didn't sit right, but no, I thought, I thought Ian was a very honest person". She said she did not seek a second opinion because Mr Robertson "was the best" and she trusted him.

On further cross-examination, Ms Murnain insisted that the only reason she met Mr Robertson after 7 pm on Friday, 16 September 2016, was because of the Wong conversation and that she told Mr Robertson in the meeting that there were significant issues with the 2015 CFOL dinner.

Ms Murnain rejected the proposition that she had fabricated her evidence about the events of 16 September 2016 after reviewing her records and text messages and that she did so in order to "throw Mr Robertson under the bus". The fact that Ms Murnain's evidence was to some extent in tension with certain telephone records (in particular, those relating to the timing of her discussion with Mr Dastyari) lends support to Ms Murnain's

rejection of that proposition. Ms Murnain also rejected the suggestion that her tears in the witness box were fake tears.

Mr Robertson's evidence

The substance of Ms Murnain's evidence regarding the Robertson meeting was put to Mr Robertson in a compulsory examination on 22 August 2019, two days after Ms Murnain first raised allegations concerning the Robertson meeting and the same day of Mr Dastyari's compulsory examination. The transcript of Mr Robertson's compulsory examination has been tendered in evidence in the public inquiry. Mr Robertson also gave oral evidence in the public inquiry and produced a statement that was tendered as an exhibit in the public inquiry. The evidence he gave on each occasion was consistent.

Mr Robertson has been the national managing partner of Holding Redlich since 2015. He gave evidence that he established the Sydney office of that firm in 1994. He said that he had advised the Labor Party since 2008 and was the principal partner responsible for legal work for NSW Labor. He said that he had been the personal legal adviser to former prime minister Bob Hawke for 28 years.

Consistent with Ms Murnain's evidence, Mr Robertson agreed that he had regular contact with her in her tenure as general secretary of NSW Labor, giving legal advice to NSW Labor. He said that, during that time, he very rarely had meetings in person with Ms Murnain. He said that he could not recall ever meeting her on a Friday evening and agreed that it would be unusual, absent some urgent matter, that he meet a client on a Friday after business hours.

He said that, as a matter of practice, he would expect a file note to be kept of all in-person meetings in which legal advice had been requested or given and that he would record that note himself if there was no junior solicitor present. He said that such a record may be made by way of email.

In relation to the events of 16 September 2016, Mr Robertson's evidence was that he had no independent recollection of meeting Ms Murnain that evening. He said that he believed, based on a review of contemporaneous records, that a meeting between him and Ms Murnain had occurred on the evening of 16 September 2016, even though he had no independent recollection of it.

The records that Mr Robertson reviewed in order to form that belief, other than the 7.18 pm text message produced in evidence by Ms Murnain, included the Holding Redlich security and Cabcharge records (considered earlier), which establish that:

- Mr Robertson used his security pass to unlock the office premises on level 65 of the MLC building at 7.19 pm on 16 September 2016
- he arrived home, which he testified was about 15-20 minutes by taxi from the MLC Centre, at about 7.54 pm.

In his written statement, Mr Robertson said it was his practice, in 2016, and remained his practice in 2019, to delete SMS messages shortly after receipt and that, accordingly, he no longer had any record of the SMS message sent to him by Ms Murnain at 7.18 pm on 16 September 2016 stating, "I'm at the top of the escalator".

Mr Robertson said that he had searched for, but could not find, any file note or other record of what had occurred during the Robertson meeting.

The details of Ms Murnain's account of the Robertson meeting were put to Mr Robertson. He said that he had no recollection of Ms Murnain ever saying to him "there's been a massive fuck up" or that Mr Wong had told her that someone who said they had donated money had not in fact done so. He denied asking Ms Murnain if Mr Wong gave her evidence in relation to such an allegation. He said that he did not recall Ms Murnain mentioning Mr Huang in such a context and does not think it is possible that she did so. He denied telling Ms Murnain that there was no need to do anything, to forget the conversation with Mr Wong, not to tell anyone about it, not to put it in her diary, and that he would not charge her for the meeting.

Mr Robertson also rejected the proposition that he may have made a somewhat more qualified statement to Ms Murnain on 16 September 2016, such as, "There is no reason for action at this stage". He did not accept that he could have said to Ms Murnain, "We don't have to do anything just yet". Mr Robertson firmly stated in evidence that, if Ms Murnain had raised with him issues about fake donors and Mr Huang, then he would have remembered it. He categorically denied telling Ms Murnain in any way that such matters should be covered up.

Mr Robertson's lack of independent recollection of the Robertson meeting serves to limit the assistance of his evidence regarding that meeting to the Commission's fact-finding function. Mr Robertson accepted that his evidence regarding the subject matter of that meeting was "speculation as to what was likely discussed from surrounding events and materials that [he has] examined", rather than evidence of what Mr Robertson saw, heard or otherwise perceived at the time.

The Commission accepts the submission of Counsel Assisting that, at most, such "speculation" from Mr Robertson may assist the Commission in drawing

inferences from other evidence rather than constituting probative evidence in and of itself. Mr Robertson's stated belief as to the subject matter of the Robertson meeting is considered below.

Mr Robertson produced to the Commission as annexures to his statement a collection of contemporaneous records, including emails and billing records, relating to advice matters that he had been working on for NSW Labor around the time of the Robertson meeting on 16 September 2016. Two such matters related to advice:

- given the day before the Robertson meeting, on 15 September 2016, in relation to the position of Mr Dastyari, who had recently resigned from the federal Labor front bench amid controversy associated with, among other things, payment of \$5,000 by the Yuhu Group towards his legal bills ("the Dastyari Advice")
- given the day after the Robertson meeting, on 17 September 2016, concerning whether Nick Lalich, member of Parliament, had breached NSW electoral laws by accepting a gift from a property developer to pay for overseas travel ("the Lalich Advice").

Mr Robertson said in his written statement that, having reviewed the contemporaneous records, his belief was that when he met with Ms Murnain on the evening of Friday, 16 September 2016, they discussed the Lalich Advice and the Dastyari Advice.

In his oral evidence in the public inquiry, Mr Robertson conceded that "it would seem unlikely" that any advice in relation to the position of Mr Dastyari, who had already resigned from the federal Labor front bench, could be described as so urgent that Ms Murnain would need an "unusual" meeting with Mr Robertson after-hours on Friday, 16 September 2016.

Consistent with the lack of urgency of the Dastyari Advice, as at 16 September 2016, is the fact that Mr Robertson's advice on the matter had been given to Ms Murnain via email at 5.38 pm on 15 September 2016, the day before the Robertson meeting. There was evidence that Mr Robertson emailed to Ms Murnain on Saturday, 17 September 2016, a supplementary advice relating to consideration of the Labor Party's "Code of Conduct for Fundraising" by Mr Robertson's colleagues in Victoria. There is nothing to suggest, however, that that supplementary advice was, or could have been, the subject of the after-hours meeting with Ms Murnain on 16 September 2016.

The submissions made on behalf of Mr Robertson do not contend that the Commission should find that the subject matter of the Robertson meeting concerned the Dastyari

Advice (a position to be contrasted with the Lalich Advice, considered below). In the face of Mr Robertson's concession in oral evidence, and the absence of any submission to the contrary, the Commission is satisfied that issues relating to the Dastyari Advice did not prompt the convening of the Robertson meeting.

In relation to the Lalich Advice, the contemporaneous records tendered in evidence concerning that matter, and upon which Mr Robertson's stated belief was based, include:

- telephone call itemisation records showing that Mr Robertson called Sarah Butler, a Holding Redlich solicitor who assisted him with NSW Labor matters, at 4.45 pm on 16 September 2016, a call which lasted 18 minutes and 33 seconds
- an email sent by Ms Murnain to Mr Robertson at 4.48 pm on 16 September 2016, setting out the definition of a "property developer" under the EFED Act
- telephone call itemisation records showing that Mr Robertson called Ms Murnain at 4.49 pm on 16 September 2016, a call which lasted 13 minutes and 45 seconds. Mr Robertson gave evidence that he believed he joined Ms Murnain to his call to Ms Butler in a three-way teleconference and that Ms Murnain provided instructions requesting urgent advice concerning a trip made by Mr Lalich
- instant message records from Ms Murnain's mobile telephone, which indicate that she sent two messages at 4.56 pm on 16 September 2016 to Mr Foley, who was then leader of the NSW Opposition, being "Can I call you later?" and "On phone to lawyers re Lalich"
- telephone call itemisation records showing that Mr Robertson called Ms Butler again at 5.04 pm on 16 September 2016, a call which lasted one minute and 36 seconds. Mr Robertson's evidence was that he believed that they discussed the advice requested by Ms Murnain
- call charge records which indicate that, also at 5.04 pm on 16 September 2016, Ms Murnain called Mr Foley, and the call lasted seven minutes and 19 seconds
- instant message records from Ms Murnain's mobile telephone, including the following messages on 16 September 2016:
 - a message at 5.33 pm sent to Mr Foley and Chris Willis, Mr Foley's chief of staff, "A foundation paid for it"

- a message at 6.09 pm to Mr Willis, "Can I call you later?"
- a reply from Mr Willis, "Yep. Jenny's done a company search. Will give you the results"

- an email from Ms Butler to Mr Robertson sent at 7.04 pm on 16 September 2016 containing a draft advice in relation to the Lalich matter
- an email from Mr Robertson to Ms Butler at 8.05 pm on 16 September 2016 saying that no further work needed to be done on the draft Lalich Advice that evening
- an email from Mr Robertson to Ms Butler, copied to Mr Willis, at 11.50 am on Saturday, 17 September 2016, containing the settled Lalich Advice. The email referred to discussions with Ms Murnain "yesterday afternoon and evening"
- an email from Mr Robertson to his personal assistant at 1.25 pm on 17 September 2016 requesting that she record "10 units of time on the ALP General file ... on Friday – telephone conversations and meeting with Ms K Murnain concerning political donation issues"
- an article published in the *Daily Telegraph* on 20 September 2016 with the headline, "Nick Lalich: NSW Labor MP referred to Electoral Commission over trip to China"
- billing records which indicate that, on 30 September 2016, Mr Robertson authorised that the NSW Labor account be billed for legal work including one hour on 16 September 2016 in relation to "telephone discussions and meeting with Ms K Murnain concerning political donation issues".

On cross-examination by senior counsel for Mr Robertson, it was put to Ms Murnain that she sought urgent advice from Mr Robertson regarding Mr Lalich on Friday, 16 September 2016, and that it was likely that she received advice from Mr Robertson in relation to that matter during the Robertson meeting that evening. In response, she gave evidence that members of Parliament, including Mr Lalich, regularly required legal advice to be sought and such matters were always urgent and Mr Foley's office was always involved. On her evidence, the Lalich matter was:

...run-of-the-mill, day-to-day stuff that we dealt with and [did not] warrant a person to person meeting with a partner of a law firm to deal with it.

The subject matter of the Robertson meeting

The Commission received submissions from Counsel Assisting as to what findings are open to the Commission on the evidence in relation to the Robertson meeting. Submissions in response were received from each of Ms Murnain and Mr Robertson, as were cross-party submissions on this issue.

There were two main limbs to the submissions received on behalf of Mr Robertson on this issue. The first limb contended that the Commission should find that the subject matter of the Robertson meeting was, as Mr Robertson said he believed, the Lalich Advice.

That submission relied heavily on the contemporaneous records identified above. It argued that the Lalich Advice was a singularly urgent matter and, in support, referred to:

- Mr Robertson's evidence that Ms Murnain had requested the Lalich Advice on an urgent basis
- the email and telephone records showing that the office of the state Opposition leader was involved in that advice, which, on Mr Robertson's evidence, was "extremely unusual"
- the statutory declaration of the Holding Redlich IT services manager that the only email sent or copied to Mr Willis, Mr Foley's chief of staff, by partners or staff of the firm between January 2015 and November 2018 was the email from Mr Robertson at 11.50 am on 17 September 2016 enclosing the final Lalich Advice.

The first limb of Mr Robertson's submissions also highlighted the email sent by Mr Robertson to his personal assistant at 1.25 pm on 17 September 2016 asking her to record an hour of time on the ALP file for 16 September 2016 in relation to "telephone conversations and meeting" with Ms Murnain regarding "political donation issues". It was submitted that this record indicated that Mr Robertson did in fact bill NSW Labor for the Robertson meeting, which was said to undermine Ms Murnain's evidence that Mr Robertson told her during the Robertson meeting that he would not do so.

It was submitted for Mr Robertson that the changes that he made to the draft Lalich Advice, which he had received by email from Ms Butler at 7.04 pm (about 15 minutes prior to the Robertson meeting), in settling the final Lalich Advice, which was emailed by Mr Robertson to Ms Murnain the following day, were material changes. On that basis, it was submitted that those material changes supported the likelihood that Ms Murnain provided further instructions to Mr Robertson regarding the Lalich matter during the Robertson meeting.

Consideration of that submission requires an analysis of the substance of the changes that were made by Mr Robertson in settling the draft advice. The changes relied on by Mr Robertson included:

- three changes to the first paragraph (emphasis added):
 - changing the phrase, "Further to our telephone conversation yesterday afternoon..." to read, "Further to our telephone conversations yesterday afternoon **and evening...**"
 - deleting Mr Lalich's name and replacing it with a generic reference to "a State MP"
 - expanding the phrase, "...paid for by the Managing Director of ABC Tissues, Henry Ngai" to read, "...paid for by the Managing Director of ABC Tissues, Henry Ngai **or an entity associated with him**"
- rephrasing the following passage in the fourth paragraph (emphasis added):

We understand that the ALP (NSW) is conducting due diligence in relation to the status of ABC Tissues as a property developer and Mr Ngai as a close associate of a property developer, including ABC Tissues if relevant.

to read

*We understand that the ALP (NSW) is conducting due diligence in relation to the status of ABC Tissues **and other companies of which Mr Ngai is a director to ascertain whether any of them are property developers within the meaning of the EFED Act.***

During the public inquiry, it was put to Mr Robertson that, in circumstances where the draft advice in relation to Mr Lalich had been prepared by Ms Butler prior to the Robertson meeting, it was unlikely that Mr Robertson would have needed to meet with Ms Murnain at the unusual time of 7.20 pm on a Friday evening in relation to that matter. His answer, which was not directly responsive to the question, was that he would not have wanted to meet with Ms Murnain, but that the office of the leader of the Opposition was handling media enquiries in relation to the matter and that it was unusual for him to have been advising in matters involving that office. There is, however, no suggestion on the evidence of any need for such a further meeting with, or instructions to be obtained from, NSW Labor in relation to the Lalich matter before the advice could be signed off the following day.

To the extent that any of the changes that Mr Robertson made to the draft advice could be described as “material”, they primarily involve rephrasing passages to reflect the definition of a “property developer” in the EFED Act, the text of which Ms Murnain had emailed to Mr Robertson at 4.48 pm on 16 September 2016, hours before the Wong conversation and just prior to her participation in the teleconference with Mr Robertson and Ms Butler at 4.49 pm. The Commission regards Mr Robertson's changes to the draft advice to be minor changes. There is nothing in them to suggest that Ms Murnain provided any further instructions in relation to the Lalich matter during the Robertson meeting.

The second limb of the submissions received on behalf of Mr Robertson in relation to this issue contended that the Commission should reject the evidence of Ms Murnain regarding the subject matter of, and what was said during, the Robertson meeting. It was submitted that Ms Murnain's evidence was not credible or reliable and formed no adequate basis for making findings consistent with the serious and “inherently implausible” allegations that she had made against Mr Robertson. In this context, Mr Robertson's submission focused on two issues:

- first, it cast doubt over Ms Murnain's credibility in light of admissions that she had made in her second compulsory examination that she had:
 - given false or misleading evidence in her first compulsory examination (regarding what she knew at the time of that examination about who delivered the \$100k cash to NSW Labor head office in April 2015)
 - made a false declaration to the NSWEC in respect of similar information in response to statutory notices issued in December 2016 (chapter 19)
- secondly, it challenged the credibility of Ms Murnain's evidence on the basis of discrepancies between Ms Murnain, Mr Dastyari and the telephone and WhatsApp records as to the sequence and timing of events on 16 September 2016.

In relation to discrepancies in the evidence regarding the sequence of events, Mr Robertson had submitted that Ms Murnain's evidence is “significantly compromised by demonstrable error as to the sequence of events”, such that the Commission cannot be persuaded by her evidence as to the subject matter of, or what was discussed at, the Robertson meeting. It was submitted that her evidence was overlaid by self-interest and conscious consideration of what should have been or could have been said, “such that her evidence of what she

alleged that she remembered was only an impression on which plausible details were constructed”.

The evidence relied on by Mr Robertson to support the above submission is the evidence of communications, including telephone call charge records and WhatsApp messages from Mr Dastyari's telephone, considered in detail earlier in this chapter. The thrust of the submission was that, in the face of that body of evidence, Ms Murnain gave false evidence in the public inquiry as to the sequence of events when she insisted that she met Mr Dastyari on 16 September 2016, who advised her to seek advice from Mr Robertson, which she then did.

The Commission's analysis of, and findings in relation to, the discrepancies and gaps in the evidence regarding the timing and mode of communications between Ms Murnain and Mr Dastyari on 16 September 2016 has been set out above. The evidence before the Commission is not a complete record of all communications between the relevant parties and, as noted previously, gaps in the evidence are likely, especially in relation to the occurrence, timing and duration of WhatsApp voice calls between Ms Murnain and Mr Dastyari.

As previously noted, the Commission accepts that discrepancies regarding timing and sequence may in fact arise from witnesses who are giving evidence about events that took place three years prior. Indeed, suspicion may arise as to the probative value of Ms Murnain's account if there were no such inconsistencies, especially in relation to matters of sequencing. In these circumstances, and having closely considered Ms Murnain's evidence, the Commission does not accept this aspect of Mr Robertson's submission.

The broader issue of Ms Murnain's credibility, including her admissions that she gave false evidence to the Commission and made a false declaration to the NSWEC, is important. Consideration of Ms Murnain's credibility is a particularly important consideration in the exercise of the Commission's fact-finding function in relation to those parts of Ms Murnain's evidence that are uncorroborated by other evidence. This issue is considered further below.

Counsel Assisting submitted that the Commission would not conclude that the convening of the Robertson meeting was prompted by the advice that Mr Robertson was working on concerning Mr Lalich. Although the evidence suggests that that advice had some degree of urgency, the Commission would not – having regard to the surrounding circumstances known to the Commission – accept that that matter was sufficient to prompt Ms Murnain to take the “unusual” course of arranging a meeting with Mr Robertson on a Friday evening.

That submission of Counsel Assisting is bolstered by the objective evidence that, on 16 September 2016, and the

days surrounding it, Ms Murnain had been communicating about the Lalich matter by way of telephone and email. There is no evidence before the Commission of any trigger that would have caused Ms Murnain to seek an urgent in-person meeting with Mr Robertson after 7 pm on a Friday in relation to the Lalich matter. To the contrary, the draft advice written by Ms Butler had already been prepared by that time. The Commission is satisfied that the Robertson meeting was not prompted by the advice that Mr Robertson was working on concerning Mr Lalich.

To the contrary, the succession and close timing of the steps taken by Ms Murnain on the evening of 16 September 2016 suggest, as Counsel Assisting submitted, that the reason why Ms Murnain unusually sought a meeting with Mr Robertson on the evening of 16 September 2016 was to discuss with him what she had been told shortly beforehand by Mr Wong. That submission has force in circumstances where the information that Mr Wong had told Ms Murnain (the substance of which has been corroborated by Mr Wong and, at a high level, Mr Dastyari) had potentially wide-reaching implications for her and the political parties which she represented.

That submission is also consistent with the Commission's finding earlier in this chapter that, after discussing the Wong conversation with Mr Dastyari, Ms Murnain met with Mr Robertson at the offices of Holding Redlich in order to seek advice in relation to what Mr Wong had told her.

On the basis of the evidence set out above, and having considered the relevant submissions, the Commission is satisfied to the required standard that:

- the Wong conversation was what prompted Ms Murnain to arrange the Robertson meeting
- during the Robertson meeting, Ms Murnain sought advice from Mr Robertson in relation to Mr Wong's information.

The Commission accepts the submission of Counsel Assisting that, in seeking such advice, it is inconceivable that Ms Murnain would not mention to Mr Robertson at least the following matters. That:

- she had recently spoken to Mr Wong
- Mr Wong had told her that there was (or possibly was or could have been) at least one person who did not donate the money that they said that they had
- Mr Huang had some actual or possible connection with that donation.

Accordingly, the Commission finds that Ms Murnain mentioned each of these three matters when seeking

advice from Mr Robertson during her meeting with him on 16 September 2016. Findings as to what advice, if any, Mr Robertson gave to Ms Murnain in response are set out below.

What advice was given in the Robertson Meeting?

Counsel Assisting submitted that the evidence falls short of being of sufficient cogency as would permit the Commission to conclude that Mr Robertson gave the advice that Ms Murnain said she was given by Mr Robertson. In this regard, Counsel Assisting submitted that:

...it would be extraordinary (indeed, scandalous) for a practitioner of Mr Robertson's standing and experience to advise someone to, in effect, encourage Ms Murnain to conceal (both internally and externally) evidence of potential wrongdoing. Strong evidence would be required before the Commission would regard itself as persuaded that such advice was in fact given. Evidence of that kind is not before the Commission.

It is more plausible that Mr Robertson may have said something like "Well, we don't have to do that yet. Has Ernest given you any real evidence?". However, the Commission would not find that Mr Robertson said something to that effect in circumstances where he denied doing so and where there is insufficient evidence available to the Commission to permit it to reject or accept that denial. The evidential inadequacy in this regard may be compared with the position in relation to the question of the subject matter of what was said by Ms Murnain to Mr Robertson during their meeting on 16 September 2016. On that question, there is circumstantial evidence pointing to the acceptance of aspects of Ms Murnain's account as true.

Submissions were received in reply on behalf of Ms Murnain that her evidence about the fact and content of the advice that Mr Robertson gave during the Robertson meeting was strong and cogent; in that, it was clear, logical and convincing. It was submitted, in the face of Mr Robertson's lack of independent recollection, that Ms Murnain's sworn account was the only version of what Mr Robertson said during their meeting.

The submission for Ms Murnain was that her evidence regarding the advice she says Mr Robertson gave her was logical on the following three bases.

First, it was submitted, Mr Robertson gave evidence that his task as a solicitor for NSW Labor was to provide legal advice to the party about what it could and should do.

The context and purpose of the Robertson meeting would necessarily and obviously have demanded that he give advice to Ms Murnain in response to the communication by her of the fact and content of the Wong conversation. The possibility that he did not do so is highly unlikely.

Secondly, it was submitted, the idea that Ms Murnain, highly distressed by the Wong conversation as she was, and having urgently procured and attended the Robertson meeting in order to obtain advice about it, would have gone away from that meeting without any such advice, and then never again raised the matter with Mr Robertson, can confidently be excluded as highly implausible.

The Commission accepts the submissions summarised in the two paragraphs above and is satisfied that Mr Robertson must have provided Ms Murnain with some advice in response to the communication by her during the Robertson meeting of the fact and content of the Wong conversation.

Thirdly, it was submitted for Ms Murnain, once it is accepted that Mr Robertson must have given some advice to Ms Murnain, her evidence is the only plausible account of the content of that advice. In support of this third limb of the submission, it was argued that Ms Murnain's account of the advice given by Mr Robertson was consistent with the fact that no file note of the Robertson meeting could be found. It was also submitted that it explained the subsequent conduct of both Ms Murnain and Mr Robertson.

In respect of Ms Murnain's subsequent conduct, it was submitted that, having been highly distressed by, and sought an urgent meeting to obtain legal advice in relation to, the Wong conversation, she thereafter took no steps in relation to the Wong conversation. The submission was that such conduct could only be explained by Ms Murnain doing as Mr Robertson had advised. Difficulties with that submission are considered below.

In relation to Mr Robertson's subsequent conduct, it was submitted that Ms Murnain's account of the advice given by Mr Robertson explained his conduct in connection with the NSWEC notices issued to NSW Labor in December 2016, the NSWEC interview of Mr Cheah in June 2017, and the Commission's execution of a search warrant at the offices of NSW Labor in December 2018. The thrust of the submission was that, fixed with knowledge of the Wong conversation imparted to him by Ms Murnain in the Robertson meeting, Mr Robertson said and did nothing at each of those later stages in respect of the Wong information. That conduct, it was submitted, was consistent with Mr Robertson doing as he advised Ms Murnain to do.

Cross-party submissions on this issue were received on behalf of Mr Robertson. They contend in substance that Mr Robertson's subsequent conduct are instances where Mr Robertson exhibited ignorance of the information that Ms Murnain says she imparted to him and that such conduct is consistent with Mr Robertson's general denial that Ms Murnain ever imparted any such information to him.

However, in light of the Commission's finding, that Ms Murnain did in fact relay to Mr Robertson on 16 September 2016 the substance of the information she was told by Mr Wong that night, questions do arise as to Mr Robertson's subsequent conduct in relation to this matter. Those questions are considered in chapters 19 and 20.

In reaching conclusions on the issue as to whether Mr Robertson gave Ms Murnain the particular advice that she alleges, the following matters must be brought into account:

- the standard of proof that applies to the fact-finding function of the Commission is the civil standard of proof, namely, reasonable satisfaction on the balance of probabilities as opposed to the standard of proof that applies to criminal proceedings, namely, proof beyond reasonable doubt
- a finding of serious conduct in relation to proceedings before the Commission, such as fraud or conduct that could amount to serious impropriety or criminal act, is a most serious matter
- in making such findings there is a relationship between the degree of persuasion of the mind according to the balance of probabilities and the gravity of the fact to be established, a matter that bears upon the application of the standard of proof in a particular case: *Rejfeck v McElroy* (1965) 112 CLR 517, 521
- in making such findings the principle stated by the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362 applies:

Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be

produced by inexact proofs, indefinite testimony, or indirect inferences.

The circumstantial evidence, which supports the Commission's finding that Ms Murnain told Mr Robertson the substance of the Wong conversation, does not lend support to that part of her account as to the advice that she said Mr Robertson provided in response. As submitted by Counsel Assisting, the examination of the response made, or the advice given, by Mr Robertson depends essentially on Ms Murnain's evidence as to the communications between them.

Evidence as to verbal statements allegedly made by a person several years before, in the absence of corroborative evidence, is evidence that demands the exercise of caution by the relevant tribunal of fact. The reasons for that include the possibility of faulty recollection and/or fading memory for detail over time, and whether the narrator of past conversations has a particular cause or interest to advance along with other possible factors.

In resolving this part of the disputed evidence, consideration of Ms Murnain's credibility (honesty and reliability) is critical. In this respect, the fact that Ms Murnain did not disclose to the Commission in her first compulsory examination on 29 July 2019 the fact or substance of the Wong conversation or the Robertson meeting is problematic. She must have known that those events would be relevant to the Commission's investigation. On cross-examination by senior counsel for Mr Robertson on this issue, Ms Murnain's answer was that those events were not at the forefront of her mind at the time that she was giving evidence in her first compulsory examination.

The Commission finds Ms Murnain's explanation to be unsatisfactory. Although the Commission accepts that Ms Murnain did return to the Commission of her own volition to correct the record on this issue in her second compulsory examination on 20 August 2019, the fact that she did not disclose the Wong conversation and the Robertson meeting on the first occasion, and offered an unsatisfactory explanation for doing so, casts a degree of doubt on her credibility as a witness. In circumstances where her evidence is not corroborated by circumstantial or other evidence, and where it pertains to matters of grave seriousness, the Commission is bound to approach her evidence with caution.

The degree of caution that the Commission must take to the assessment of Ms Murnain's evidence as to the advice she received from Mr Robertson on 16 September 2016 is necessarily elevated by the fact that she admitted in her second compulsory examination on 20 August 2019 that she had given false or misleading evidence in her first compulsory examination and that she had made a

false declaration to the NSWEC in response to statutory notices issued in December 2016.

It is clear on the evidence, having regard to circumstances discussed in the paragraphs that follow, that Ms Murnain did not disclose to the governance director or any other senior officers of NSW Labor the Wong conversation or the substance of the advice that she said she received from Mr Robertson in relation to that matter. Difficulties in relation to Ms Murnain's credibility arise from this fact.


In particular, Ms Murnain's failure to disclose the Wong conversation and the alleged Robertson advice to officers of the ALP is difficult to comprehend in circumstances where Ms Murnain was experienced in political matters and would have appreciated that the advice Mr Robertson gave her was given to her in her capacity as general secretary of NSW Labor. In these circumstances, NSW Labor was the relevant client who had not only an interest, but also an entitlement, to consider information and legal advice on a matter that potentially had far-reaching implications for the party.

Ms Murnain's evidence, as to why she did not disclose the Wong conversation and Mr Robertson's advice to the officers of NSW Labor, was that she was following Mr Robertson's advice "religiously". The submissions for Ms Murnain, that her subsequent conduct is explained by the advice that she said she received from Mr Robertson, are set out above.

Therein lies a further difficulty in accepting Ms Murnain's evidence on this particular issue. The advice that Ms Murnain said that she received from Mr Robertson would, if accepted, have the effect of not only explaining but, at least in part, absolving or excusing aspects of her later conduct in respect of her failure to disclose the Wong conversation in the course of investigations into this matter by the NSWEC and this Commission. In all the circumstances, the Commission cannot rule out the real possibility that self-interest may have played some part in Ms Murnain's evidence as to the advice that she said she received from Mr Robertson.

It is, of course, open to the Commission to accept a witness' evidence on some parts of their evidence and not on other parts. This is the case with Ms Murnain. Accordingly, the Commission finds that:

- Mr Robertson did provide Ms Murnain with some advice in response to the communication by her during the Robertson meeting of the fact and content of the Wong conversation, but
- the evidence falls short of being of sufficient cogency as would permit the Commission to conclude that Mr Robertson gave the advice that Ms Murnain said she was given by Mr Robertson.



The position therefore is that the Commission cannot, on the evidence, make any positive findings as to the content of the advice Mr Robertson gave Ms Murnain in the Robertson meeting on 16 September 2016.

Section 74A(2) statements

The Commission is of the opinion that substantial allegations have been made against each of Ms Murnain and Mr Robertson in the course of, or in connection with, this investigation. The substance of those allegations is set out in this chapter. Accordingly, the Commission is satisfied that Ms Murnain and Mr Robertson are “affected persons” with respect to the matters dealt with in this chapter.

However, in all the circumstances, the Commission is not of the opinion that consideration should be given to either obtaining the advice of the DPP with respect to their prosecution for any criminal offences or the taking of any action against them for disciplinary offences.

Chapter 19: The NSWEC investigation – notices to NSW Labor and Country Labor

On 6 December 2016, 11 weeks after Ms Murnain's meetings with Mr Wong and Mr Robertson on 16 September, the NSWEC issued statutory notices to NSW Labor and Country Labor requiring the two parties to produce documents and provide information relating to the \$100k cash received in connection with the 2015 CFOL dinner. Certain documents and information provided to the NSWEC in response to those notices were, objectively, false or misleading.

The public inquiry examined how that occurred and who was involved. This chapter surveys the evidence relevant to, and sets out findings in relation to, those events.

The notices to NSW Labor and Country Labor

On 6 December 2016, the NSWEC sent letters to NSW Labor and Country Labor serving on each party two notices, issued under s 110A(1)(a) and s 110A(1)(b) of the EFED Act, requiring production of certain information and documents ("the NSW Labor/Country Labor Notices").

The cover letters to each of NSW Labor and Country Labor were in similar terms and advised the parties that the information and documents required to be produced related to cash political donations made in connection with the 2015 CFOL dinner. The cover letters identified that the NSWEC was investigating:

...whether a number of donations made by individuals, were made for and on behalf of other person/s, which may constitute a breach of the EFED Act.

The substance of that allegation was also clearly set out on the face of each of the NSW Labor/Country Labor Notices, in the context of a statement to the effect that an officer of the NSWEC suspected that such conduct was in contravention of s 96HB of the EFED Act (the scheme offence provision). The notices advised the

parties that it was an offence to provide any document or information or answer to any question in purported compliance with a requirement of the notices, knowing that the document or information or answer was false or misleading in a material particular.

On 20 December 2016, Ms Sibraa, the governance director of NSW Labor, emailed to the NSWEC responses to the NSW Labor/Country Labor Notices. The substance of the NSW Labor response contained in the text in Table 3 on page 182.

The responses by NSW Labor and Country Labor were substantially to the same effect. Those responses are problematic in two important respects.

First, both stated that Mr Cheah was the person who "handed" the donations "to the [ALP/CLP]" on 9 April 2015. During the public inquiry, senior counsel for NSW Labor described that response as "self-evident nonsense". Given that Mr Cheah was an employee of NSW Labor, it makes little sense for Mr Cheah to be identified as the person who "handed" the donations to NSW Labor and Country Labor. This is particularly so in circumstances where each of the NSW Labor/Country Labor Notices made it clear that the NSWEC was investigating:

...whether a number of donations made by individuals, were made for and on behalf of other person/s, which may constitute a breach of the EFED Act.

The evidence as to how this answer came to be provided is set out below.

Secondly, the donation declaration forms and invoices comprising "attachment 3" to the responses of each of NSW Labor and Country Labor implied that the 12 putative donors had donated sums of \$5,000 to either or both of NSW Labor and Country Labor and that those donations constituted the \$100k cash deposited into the accounts of NSW Labor and Country Labor on 9 April 2015. The evidence surveyed in part 2 of this report

Table 3: Substance of NSW Labor response to NSWEC NSW Labor/Country Labor Notices

<i>Please provide the name/s of the persons who handed the donations to the ALP on 9 April 2015</i>	<i>Kenrick Cheah</i>
<i>Please advise as to what form the donations were provided to the ALP on 9 April 2015 (i.e. cash, cheque, EFT, or by any other means)</i>	<i>Cash</i>
<i>Please advise if the person/s who handed the donations to the ALP on 9 April 2015 (a per point 1 above) were issued with a formal receipt from the ALP for that transaction</i>	<i>No – Kenrick Cheah is an employee of the ALP and attended the dinner</i>
<i>Please advise if the person/s who handed the donations to the ALP on 9 April 2015 also supplied the ALP with a breakdown of the names and addresses of the individuals whose donations made up the donations.</i>	<i>Yes</i>
<i>Please advise the name/s of the persons who deposited the donation into the ALP NSW State Campaign Account ... on 9 April 2015</i>	<i>Jenny Zhao – Accounts Assistant</i>
<i>Please provide a copy of the receipt issued by the ALP to the person/s who handed the donations to the ALP on 9 April 2015</i>	<i>N/A</i>
<i>Please provide a copy of the deposit slip of the transaction from 9 April 2015 whereby the donations were deposited into the ALP NSW State Campaign Account...</i>	<i>See attachment 1: Deposit slip copy</i> <i>See attachment 2: Copy of Bank Statement</i>
<i>Please provide a copy of any and all documentation that was provided either to or by the persons who handed the donations to the ALP on 9 April 2015.</i>	<i>See attachment 3: Copies of donation declaration forms and invoices</i>

clearly establishes that the 12 putative donors were not the true source of the \$100k cash.

The Commission is satisfied that the documents produced by NSW Labor and Country Labor constituting “attachment 3” to each of the parties’ respective responses were false or misleading. The question arises as to whether those documents were produced in circumstances where it was known to the person producing them that they were false or misleading. That question is considered later in this chapter.

How were the responses to the NSW Labor/Country Labor Notices prepared?

Relevant to this question, the evidence received in the public inquiry included NSW Labor email records, Holding Redlich billing records and oral evidence from a number of witnesses.

Documentary evidence establishes that, at 10.34 am on 8 December 2016, the NSW Labor/Country Labor Notices were received by Ms Sibraa, who was the inaugural governance director of NSW Labor, and had performed that role from September 2016. In that role, Ms Sibraa was responsible for governance matters pertaining to both NSW Labor and Country Labor. At the time of the 2015 CFOL dinner, NSW Labor (and Country Labor) did not have a governance director. Ms Sibraa had no direct involvement in the events surrounding the receipt and banking of the \$100k cash in April 2015.

At 11.28 am on 8 December 2016, Ms Sibraa forwarded the NSW Labor/Country Labor Notices to Ms Wang, copying in Ms Murnain. At 11.45 am, Ms Murnain forwarded the notices to Mr Robertson and Ms Butler of Holding Redlich. Billing records indicate that, on 9 December 2016, Ms Butler spent up to 30 minutes reviewing and considering the NSW Labor/Country Labor Notices.

Ms Sibraa gave evidence that she took responsibility for responding to the NSW Labor/Country Labor Notices as part of her job. She did not recall being specifically tasked to do so. In preparing the responses, she had interactions within the office with Ms Murnain, Ms Wang, Ms Zhao and Mr Cheah, in addition to liaising with Mr Robertson and Ms Butler from Holding Redlich.

Ms Murnain gave evidence that, when she read the NSW Labor/Country Labor Notices, she understood that the NSWEC suspected that certain political donations were made on behalf of others in contravention of the law. She said she was concerned about the allegations and had reason, based on her meeting with Mr Wong on 16 September 2016, to share the NSWEC's suspicion about donations in connection with the 2015 CFOL dinner being made on behalf of other persons.

It is Ms Murnain's evidence that, in those circumstances, she delegated responsibility for preparing the responses to the notices to Ms Sibraa in her capacity as governance director. Ms Murnain said that she also asked Ms Sibraa to obtain legal advice from Holding Redlich in relation to the draft responses before they were sent to the NSWEC. Ms Sibraa gave evidence confirming that Ms Murnain directed her to seek legal advice in relation to the responses prior to them being sent to the NSWEC "to ensure that the lawyers signed off on it".

On Ms Murnain's account, she recused herself from involvement in the preparation of the responses to the NSW Labor/Country Labor Notices. She denied that one of the reasons that she did so was because she had information from her meeting with Mr Wong on 16 September 2016 that might assist the NSWEC and was concerned that providing that information might cause damage to the party. Ms Murnain maintained that she recused herself because the governance director should prepare the responses as a matter of office process.

Ms Sibraa and Ms Murnain gave consistent evidence to the effect that Ms Murnain did not tell Ms Sibraa about the information provided by Mr Wong on 16 September 2016, to the effect that there was a donor from 2015 who had not donated the money that they had declared that they had, which Ms Murnain understood related to the 2015 CFOL dinner, and that Mr Huang was the true source of that donation. While Ms Murnain accepted that she had kept that information from Ms Sibraa, she rejected the proposition that she had quarantined Mr Wong's allegations from those who were preparing the responses to the notices.

Ms Murnain's evidence on this issue is that she had told Mr Robertson about Mr Wong's allegations on 16 September 2016 and had asked Ms Sibraa to have the draft responses checked by Holding Redlich. In doing so,

Ms Murnain said that she effectively imposed a responsibility on Mr Robertson to determine what should be disclosed to the NSWEC in relation to what she had told him of her meeting with Mr Wong.

On Ms Murnain's account, she was acting in accordance with the advice that Mr Robertson gave her on 16 September 2016, to the effect that she not take any action in relation to, or talk with anyone about, the allegation raised by Mr Wong. Mr Robertson firmly denied giving Ms Murnain such advice. Evidence regarding Holding Redlich's review of the draft responses to the NSW Labor/Country Labor Notices is considered below.

In preparing responses to the NSW Labor/Country Labor Notices, Ms Sibraa said that she asked for, and was provided, information by others. She first spoke with Ms Wang and requested the financial documents that were required to be produced. She said that, within a short time, Ms Wang delivered to her a bundle of donation disclosure documents and invoices consistent with 10 donations of \$5,000 having been made to each of NSW Labor and Country Labor in connection with the 2015 CFOL dinner. Ms Sibraa said that the bundle of documents that she was provided by the finance department had been removed, and were delivered to her separately, from the lever arch folder that contained the relevant hardcopy records.

On Ms Sibraa's evidence, having reviewed the forms and invoices carefully to see if there was anything to the concerns of the NSWEC regarding a scheme to circumvent the EFED Act, she saw nothing in the forms that led her to have the same suspicions. Ms Sibraa said she relied on the forms as reassurance that nothing sinister had happened, as they generally seemed to fit the proposition that there were a series of donors who collectively donated \$100,000 in cash. She said that it looked to her, from the paperwork, that they were proper donations and not fraudulent donations.

Ms Sibraa gave evidence that she did not notice, in reviewing the documents provided to her by the finance department, that the handwritten \$5,000 figure on each of the 20 donation declaration forms appeared to be identical. She said she was focusing more on the signatures at the time. Ms Sibraa said she also did not notice that the black-and-white donor declaration form of Ms Tam, for example, relating to her Country Labor donation, appeared to be a photocopy of the original donor declaration form relating to Ms Tam's NSW Labor donation. If she had noticed that, Ms Sibraa said she may have enquired whether staff had confirmed Ms Tam's intention to donate \$5,000 to each of NSW Labor and Country Labor in circumstances where the reservation form made no reference to Country Labor.

When shown the complete set of relevant records from the lever arch folder, Ms Sibraa accepted that there were in fact donor declaration records relating to 12, rather than 10, donations of \$5,000 to Country Labor (events surrounding the switcheroo, which explains the additional two donor declaration forms, are set out in chapter 10). Ms Sibraa gave evidence that, prior to the public inquiry, she did not know that there may have been records of 12 Country Labor donations, rather than 10, in that folder. She said that, if she had been provided with more than 20 donation declaration forms by the finance department, she would have sought further explanation.

Ms Wang gave evidence confirming that Ms Sibraa forwarded copies of the NSW Labor/Country Labor Notices to her via email on 8 December 2016. She agreed that Ms Sibraa asked her to locate records, including invoices and donation declaration forms, for the purpose of responding to those notices. Ms Wang gave evidence that she first checked the MYOB system to confirm which donors were on the record as having contributed to the \$100k cash. She then located hardcopies of the donation declarations and related invoices for each of those 20 transactions and provided copies of those documents to Ms Sibraa.

The process adopted by Ms Wang in selecting the documents to be provided to Ms Sibraa effectively prevented any review by Ms Sibraa of records pertaining to the deleted transactions associated with the purported Country Labor donations by Harbour City Group Pty Ltd and Valentine Yee and which were the subject of the switcheroo. No such records were provided to the NSWEC.

During the public inquiry, Ms Sibraa was asked how it came to pass that the responses to the NSW Labor/Country Labor Notices identified Mr Cheah, an employee of NSW Labor, as the person who “handed” the donations “to the [ALP/CLP]” on 9 April 2015. Ms Sibraa explained that she took a literal interpretation of the question that was asked: “Please provide the name/s of the persons who handed the donations to the ALP on 9 April 2015”.

She said she understood that question to be directed towards finding out who physically handed the money to the finance department on 9 April 2015 rather than ascertaining who, external to the party, delivered the money to the party or was the true source of those funds. Ms Sibraa said that she took that literal approach to the question notwithstanding that she understood the NSWEC to be investigating a scheme involving fake donors.

Ms Sibraa gave evidence that she spoke to Ms Zhao, or possibly Ms Wang, and asked which person brought the \$100k cash to the finance department on the day that it was banked. She did not ask the finance department

to identify the person or persons, external to party, who delivered the money to the party from the street. In answer to her enquiry, Ms Sibraa was told that Mr Cheah gave the money to the finance department on 9 April 2015.

Ms Sibraa then had a discussion with Mr Cheah. Ms Sibraa gave evidence that she told Mr Cheah about the NSW Labor/Country Labor Notices and that Ms Zhao had identified him as the person who handed the \$100k cash to the finance department on 9 April 2015. On Ms Sibraa’s account, Mr Cheah confirmed that he had the \$100k cash at his home, after it had been collected from donors following the 2015 CFOL dinner, and that he brought it in to the finance department to bank on 9 April 2015.

Ms Sibraa gave evidence that Mr Cheah told her during that conversation that the donation money came from pledges made at the dinner, which he had collected and brought it in. Ms Sibraa said that Mr Cheah mentioned Mr Wong and she understood that Mr Wong may have been involved in collecting some of the money.

Ms Sibraa’s evidence is that Mr Cheah did not tell her anything about Mr Huang, Mr Clements or the fact that the \$100k cash had been in NSW Labor head office prior to Mr Cheah taking it home. These aspects of Ms Sibraa’s account are disputed by Mr Cheah.

Mr Cheah told the public inquiry that he had two discussions with Ms Sibraa about the 2015 CFOL dinner. On Mr Cheah’s account, during the first conversation, Ms Sibraa “basically wanted to know what happened” because she was not working for NSW Labor at the time of the 2015 CFOL dinner. Mr Cheah said he was quite clear that he told Ms Sibraa on that occasion that Mr Huang had come in with a bag of donations and met Mr Clements, a short time after which Mr Clements gave Mr Cheah the money and forms and asked him to reconcile the forms with the money and provide both to the finance department for processing.

Mr Cheah gave evidence that, during his second discussion with Ms Sibraa about the 2015 CFOL dinner, she read him specific questions from the NSW Labor/Country Labor Notices. Mr Cheah said that she asked him, “Who brought the donations into this office”, in response to which Mr Cheah replied that Mr Huang had done so. Mr Cheah denied that he told Ms Sibraa that he had done so himself. Mr Cheah gave evidence that the answers provided in response to the notices (to the effect that Mr Cheah handed the money to NSW Labor/Country Labor) were inconsistent with what he told Ms Sibraa. Mr Cheah specifically rejected Ms Sibraa’s evidence that he did not say anything to her about Mr Huang. He said he was clear in his mind that he told Ms Sibraa about the money passing from Mr Huang to Mr Clements to Mr Cheah to the finance department.

Mr Cheah's account includes the assertion that he told Ms Sibraa that the donor declaration forms were given to him by Mr Clements together with the \$100k cash. The Commission has found that those forms were in fact delivered at a later time. However, it remains plausible that Mr Cheah might have asserted to Ms Sibraa that he was given the forms with the \$100k cash – notwithstanding that that assertion would have been false. Mr Cheah did make that same false assertion to the NSWEC in his interview in June 2017 (considered later in this chapter).

Submissions have been made for Mr Cheah citing the conversation with Ms Sibraa as the first of several consistent statements given by Mr Cheah to investigating authorities regarding the delivery of the \$100k cash by Mr Huang to Mr Clements.

Opposing submissions were received on behalf of Mr Clements to the effect that Ms Sibraa's account should be accepted and a finding should be made that Mr Cheah gave false evidence on this issue. The submission follows that, if Mr Cheah did not tell Ms Sibraa of Mr Huang delivering the \$100k cash to Mr Clements, then Mr Cheah's statement to Ms Sibraa would be inconsistent with his later statement to the NSWEC in which he did convey that information.

The accounts of Ms Sibraa and Mr Cheah on this issue are in direct opposition and cannot be reconciled. There is no objective evidence in support of either account. In chapter 8, the Commission made an assessment of Mr Cheah as a witness and accepted the submission of Counsel Assisting that his evidence should be approached with a degree of caution.

Mr Cheah's evidence that he told Ms Sibraa that Mr Huang had delivered the \$100k cash to NSW Labor head office is not corroborated by any reliable surrounding evidence and is of insufficient cogency to enable the Commission to make any finding adverse to Ms Sibraa. In these circumstances, the Commission prefers Ms Sibraa's account and finds that Mr Cheah did not tell her in December 2016 that Mr Huang had delivered the \$100k cash to Mr Clements.

Ms Sibraa gave evidence that, having spoken with finance department personnel and Mr Cheah, she thought it was accurate to respond to the NSW Labor/Country Labor Notices by stating that Mr Cheah, an employee of NSW Labor, had "handed" the donation money to (the finance department of) NSW Labor and Country Labor.

Ms Sibraa's literal approach to that particular question from the NSWEC was consistent with the answer provided to the question, "Please provide a copy of the receipt issued by the ALP to the person/s who handed the donations to the ALP on 9 April 2015". The response to that question

was, "N/A". Ms Sibraa explained that response by reference to Mr Cheah being an employee of NSW Labor, and not a donor, so no receipt was issued to him.

Ms Sibraa's literal approach to the above questions is, however, in tension with the fact that 20 donation declaration forms from, and invoices issued to, the 12 putative donors were produced in response to the requirement to:

Please provide a copy of any and all documentation that was provided either to or by the persons who handed the donations to the ALP on 9 April 2015.

Ms Sibraa accepted that, applying her literal reading that it was Mr Cheah who handed the money to the parties, the NSWEC was not asking for documents that may have been handed to, or by, the individual donors. But she said she understood that Mr Cheah had provided the donation declaration forms to the finance department with the \$100k cash and that is why they were produced. She acknowledged that, on her literal reading, the NSWEC was not asking for copies of donation invoices issued to individual donors, but said she "just include[d] all the documentation".

On 16 December 2016, having prepared draft responses to the NSW Labor/Country Labor Notices, Ms Sibraa emailed them to Mr Robertson and Ms Butler at Holding Redlich for review. In the email, Ms Sibraa wrote:

Can you please have a look at [the draft response and attached documents] and let me know your thoughts. The letter states the Commission is investigating whether a number of donations made by individuals were made for and behalf of other person/s.

Ms Sibraa gave evidence that she was not asking for a "tick and flick review". To the contrary, she was asking Mr Robertson and Ms Butler to read the draft responses and ensure that they were satisfied that the responses adequately answered the questions that the NSWEC was asking.

Holding Redlich billing records indicate that, on 16 December 2016, Mr Robertson spent up to 90 minutes on various work for NSW Labor, described as "Letter from NSW Electoral Commission; Drafting letter to Senator Cameron; Emails and Telephone discussion with K Murnain". When shown that billing record, Mr Robertson gave evidence that, on 16 December 2016, he spent between 24 and 30 minutes reviewing Ms Sibraa's draft response to the NSW Labor/Country Labor Notices.

At 8.13 am on 19 December 2016, Mr Robertson forwarded Ms Sibraa's email of 16 December 2016 to Ms Butler and stated, "The attached looks ok to me.

If you agree, would you please inform Julie that we think it can be sent to the Commission”. At 8.20 am, Ms Butler replied to Mr Robertson, stating:

I have just printed the documents out and will review them now. If there are no issues, I will let Julie know they can go to the Commission.

At 3.27 pm, Ms Butler emailed Ms Sibraa advising that, “We have considered the attached documents and we think that they are fine to be sent to the Commission”. Ms Butler and Mr Robertson made no changes to the draft responses. Holding Redlich billing records for 19 December 2016 indicate that Mr Robertson spent up to 30 minutes on work reviewing “Chinese Friends of Labor documents to be produced to NSW Electoral Commission”, and Ms Butler spent up to 72 minutes on a “telephone attendance upon Ms J Sibraa”.

On 20 December 2016, Ms Sibraa emailed the NSWEC the responses to the NSW Labor/Country Labor Notices, which included cover letters dated 19 December 2016, signed by Ms Murnain as the general secretary of the parties. Having done so, Ms Sibraa forwarded copies of those emails to Ms Murnain, Mr Robertson and Ms Butler.

During the public inquiry, Mr Robertson agreed that, with the benefit of hindsight, the question in the NSWEC notices, “Please provide the name/s of the persons who handed the donations to the [ALP/CLP] on 9 April 2015”, was directed towards finding out who, external to the Labor Party, brought the donations into the Labor Party. While he said that “the word ‘handed’ may have confused people”, Mr Robertson stated:

I agree with you that I think that is what was the information that was being sought and therefore the response is incorrect and I regret not having picked that up or looked at, or analysing these answers or those documents in greater detail.

Mr Robertson agreed that, with the benefit of hindsight, there were problems with some of the answers, which were non-responsive to questions, provided in response to the NSW Labor/Country Labor Notices. But he said that he did not believe that was “in any way deliberate or wilful on the part of the person [Ms Sibraa] that prepared the draft answers”.

Mr Robertson gave evidence that he approached his review of the draft responses in a cursory manner because, in contrast to other matters, no legal advice was being sought. He accepted that, had he had his time again, he would not have dealt with the NSW Labor/Country Labor Notices in that manner but would have given them much more care and attention.

Mr Robertson’s evidence regarding his cursory approach to, and review of, the draft responses to the NSW Labor/Country Labor Notices must be weighed in the context of the Commission’s finding that Ms Murnain told Mr Robertson on 16 September 2016 the substance of what Mr Wong had told her earlier that evening (chapter 18).

There can be little doubt that Mr Robertson was aware at the time that he reviewed the NSW Labor/Country Labor Notices that there may have been problems with past donations to NSW Labor. But the key question is whether or not Mr Robertson knew that those problems pertained to the same subject matter as the NSW Labor/Country Labor Notices.

Ms Murnain’s evidence is that, at the meeting with Mr Wong on 16 September 2016, Mr Wong told her that, “a donor to the Labor Party in 2015, from the state election from 2015, had not given the funds that he had said or she had said”, and that Mr Huang was the true source of that particular donation. Mr Wong and Ms Murnain gave consistent evidence that Mr Wong did not disclose to Ms Murnain on 16 September 2016 the identity of the purported donor. Ms Murnain could not recall whether Mr Wong told her the amount of the donation but understood that it was a large amount.

Ms Murnain’s evidence is that she inferred that the donation that was the subject of Mr Wong’s information on 16 September 2016 was connected with the \$100k cash received in connection with 2015 CFOL dinner. The Commission is satisfied that such an inference is reasonable in circumstances where the donation that was the subject of Mr Wong’s information was said to have been made in connection with the 2015 NSW State Election and Mr Wong was the patron of CFOL and the driving force behind the 2015 CFOL dinner, which was hosted for the purpose of raising funds for that election.

The Commission accepts that Ms Murnain understood, during or soon after her conversation with Mr Wong on 16 September 2016, that the information he communicated to her pertained to a donation made in connection with the 2015 CFOL dinner. The question arises as to whether she communicated that understanding to Mr Robertson during their meeting later that evening.

In her compulsory examination on 20 August 2019, Ms Murnain gave evidence that, having “explained to [Mr Robertson] what Ernest told me” and that “it could have happened and I believed him”, her conversation with Mr Robertson continued for about 20 minutes during which she drew to his attention her concerns about “what had happened in 2015” including “the fundraising dinner and the money that came in for the fundraising dinner”.

During the public inquiry, senior counsel for Mr Robertson put to Ms Murnain that, in her compulsory examination of 20 August 2019, when she recounted seeing Mr Robertson in the evening of 16 September 2016, she didn't make mention of the 2015 CFOL dinner. Ms Murnain rejected that proposition and restated her evidence that she did mention the 2015 CFOL dinner to Mr Robertson, saying "I told him there were significant issues with the dinner back then and I remembered that".

As has been reported, Mr Robertson's evidence was that he had no recollection of the meeting with Ms Murnain on 16 September 2016. He did, however, accept that the meeting took place.

The Commission is satisfied that, on 16 September 2016, Ms Murnain did raise with Mr Robertson concerns about the 2015 CFOL dinner in the context of Mr Wong's allegation that there was:

... a donor to the Labor Party in 2015, from the state election from 2015, [who] had not given the funds that he had said or she had said.

However, there is no evidence that Mr Wong told Ms Murnain, or that Ms Murnain informed Mr Robertson, of the identity of the purported donor or the amount of the relevant donation.

While Mr Robertson, like Ms Murnain, had reason to suspect that the information provided by Mr Wong on 16 September 2016 might have related in some way (by virtue of it pertaining to a donation said to have been made for, or on behalf of, another person) to the subject of the NSW Labor/Country Labor Notices, the evidence suggests that he lacked sufficient particulars to enable him to draw a conclusion to that effect. Mr Robertson's cursory approach to reviewing the draft responses, including the 20 donation declaration forms (which, the Commission has found, were on their face suspicious) is hard to fathom in light of the suspicions that he had reason to hold.

However, on balance, the Commission is not satisfied that the evidence permits a finding that Mr Robertson counselled the making of false or misleading statements in response to the NSW Labor/Country Labor Notices.

Conduct of a kind that may amount to offences under the EFED Act

Section 110A(7) of the EFED Act provides that:

A person who provides any document or information, or answers any question, in purported compliance with a requirement made under this section [s 110A], knowing that the document, information or answer is

false or misleading in a material particular, is guilty of an offence.

Maximum penalty: 400 penalty units or imprisonment for 2 years, or both.

The Commission has found that the documents and information provided to the NSWEC on 20 December 2016 in response to the NSW Labor/Country Labor Notices were false and/or misleading. In light of that finding, the question arises as to whether those documents and that information were produced in circumstances where it was known to the person producing them that they were false or misleading.

Who, relevantly, was the person that produced the false and/or misleading documents and information in purported compliance with the requirements of the notices? Key facts relevant to this question include that:

- the NSW Labor/Country Labor Notices were issued to NSW Labor and Country Labor and directed to "The Proper Officer" of the respective parties
- NSW Labor is an unincorporated association constituted by affiliated trade unions and individual members who agree to be bound by certain rules
- Country Labor was a "Party Unit" of NSW Labor constituted by trade unions affiliated with NSW Labor and individual members of NSW Labor who lived in a country area
- Ms Sibraa, governance director of NSW Labor and Country Labor, prepared the responses to the NSW Labor/Country Labor Notices, relying on information and documents provided to her by others and the review of that material by the parties' solicitors at Holding Redlich
- Ms Murnain, general secretary of NSW Labor and Country Labor, recused herself from the process of preparing the responses to the NSW Labor/Country Labor Notices, but signed the letters dated 19 December 2016 under cover of which the responses to the notices were provided to the NSWEC.

The Commission is satisfied that NSW Labor and Country Labor cannot themselves be regarded, for the purposes of an offence under s 110A(7) of the EFED Act, as the "person/s" who produced the false and/or misleading documents and information in purported compliance with the requirements of the NSW Labor/Country Labor Notices, for the following reasons:

- while s 110A(7) of the EFED Act states that a "person" may be liable for an offence against that

section, it does not expressly state that a political party may be so liable

- the term “person”, which is used in s 110A(7), is not defined in the EFED Act
- the *Interpretation Act 1987* (NSW) provides that “person” includes an individual, a corporation and a body corporate or politic. It does not include an unincorporated association
- the objects of the EFED Act include to promote compliance by parties, elected members, candidates, groups, agents, third-party campaigners and donors with the requirements of the election funding, expenditure and disclosure scheme (s 4A(e))
- section 4 of the EFED Act includes definitions of each of the various entities specified in s 4A(e), including a “party”, which is defined as a:

body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or a local council of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part

- NSW Labor is, and Country Labor was, each clearly a “party” for the purposes of the EFED Act.
- there are two instances in the EFED Act in which the offence provisions of the Act expressly state that a “party” may be liable: s 41 (concerning failure to comply with a requirement for the appointment of party agents) and s 96(1) (concerning failure to keep a record of details of reportable political donations). Both are offences of strict liability. Lacking any mens rea element, no particular knowledge or state of mind is required in order to commit those two offences
- in contrast, an offence against s 110A(7) of the EFED Act requires the “person” who provides the false or misleading information or documents to do so *knowing* that the information or documents are false or misleading in a material particular
- the EFED Act provides no indication as to how “knowledge” of an individual (as to the false or misleading character of certain information or documents) is to be attributed to “parties”, including unincorporated associations
- at common law, companies may be liable for criminal offences on two bases, as noted by Ipp JA in *Presidential Security Services of Australia Pty Ltd v Brilley* [2008] NSWCA 204 at [145]-[146]:

...once a company is capable of committing a particular offence, it may be found guilty of that offence on one of two bases, namely, on the grounds of vicarious responsibility or on the basis that the person who committed the actus reus and had the requisite mens rea was the directing mind and embodiment of the company in the Tesco Supermarkets Ltd v Natrass [1972] AC 153 sense.

- at common law, a company will not attract criminal liability on the basis of vicarious liability for a criminal offence that has mens rea as an element (*Tesco Supermarkets Ltd v Natrass* [1972] AC 153)
- NSW Labor is, and Country Labor was, not a company. As unincorporated associations, they possess/ed no legal personality separate from those trade unions and members who constitute/d the organisations and have/had no “directing mind and will” for the purposes of attributing any particular state of mind.

The Commission accepts the submission by senior counsel on behalf of NSW Labor and Country Labor that, in the absence of an express statutory provision in the EFED Act, it cannot be implied that a political party as an unincorporated association can have criminal liability for the actions of others by incorporating common law principles, in relation to attributing knowledge to corporations, into the EFED Act. There is no such express provision in the EFED Act.

Accordingly, the Commission is satisfied that s 110A(7) of the EFED Act is an offence provision directed towards natural persons and not political parties.

Ms Sibraa and Ms Murnain are the only two natural persons who might reasonably be said to have “provide[d]” the documents and information to the NSWEC in purported compliance with the requirements of the NSW Labor/Country Labor Notices. Ms Sibraa prepared the responses, relying on the assistance of others. Ms Murnain executed the responses by signing the cover letters under which they were communicated to the NSWEC.

With regard to Ms Sibraa, based on the evidence surveyed earlier in this chapter, the Commission is satisfied that she did not know that the documents and information provided to the NSWEC on 19 December 2016 in response to the NSW Labor/Country Labor Notices were false and/or misleading in a material particular.

With regard to Ms Murnain, the evidence establishes that she was aware, at the time that she executed the responses to the NSW Labor/Country Labor Notices, of

the allegations that had been made by Mr Wong during her conversation with him on the evening of 16 September 2016. The substance of those allegations was that there was a donor from 2015 who had not donated the money that they had declared that they had, which Ms Murnain understood related to the 2015 CFOL dinner, and that Mr Huang was the true source of that donation.

In these circumstances, the question arises as to whether the evidence supports a finding that Ms Murnain provided the NSWEC with documents or information, or answers to questions, in purported compliance with the NSW Labor/Country Labor Notices, knowing that those documents, information or answers were false or misleading in a material particular.

None of the questions put in the NSW Labor/Country Labor Notices squarely required the provision of any information that was communicated to Ms Murnain by Mr Wong on 16 September 2016. There was no requirement that Ms Murnain provide all of the information that she had in relation to the suspicions that were set out in the notices.

Senior counsel for Ms Murnain has submitted that knowledge is an essential element of an offence under s 110A(7) of the EFED Act and that the type of knowledge that is required is actual knowledge. The Commission accepts that submission. Section 110A(7) of the EFED Act uses the word “knowing” and nothing else to describe the requisite state of mind. That is to be contrasted with other offence provisions in the EFED Act, for example s 54, which also expressly include the absence of a reasonable belief as to a state of affairs:

54 False statements

A person who, in any application or statement made or furnished under this Part [Part 2 applies to the registration of candidates, groups, third-party campaigners and agents for state elections and local government elections], makes a statement that is false or misleading in a material particular, knowing it to be false or not reasonably believing it to be true, is guilty of an offence and liable to a penalty not exceeding 100 penalty units. (emphasis added)

The Commission is satisfied that actual knowledge, and not recklessness or some lesser mental state, is the fault element of an offence under s 110A(7) of the EFED Act.

Earlier in this chapter, the Commission found that Mr Robertson had reason to suspect that the information provided by Mr Wong, and communicated to Mr Robertson by Ms Murnain, on 16 September 2016, might have related in some way (by virtue of it pertaining to a donation said to have been made for or on behalf of another person) to the subject of the NSW

Labor/Country Labor Notices. However, as previously noted, the evidence suggests that Mr Robertson lacked sufficient particulars to enable him to draw a conclusion to that effect.

Ms Murnain similarly lacked particulars from Mr Wong as to the identity of the purported donor who was the subject of his allegation or the amount of that donation. Notwithstanding the absence of those details, it was Ms Murnain's evidence that she inferred that the particular donation that was the subject of Mr Wong's information on 16 September 2016 was connected with the \$100k cash received in connection with the 2015 CFOL dinner.

During the public inquiry, Ms Murnain agreed with the proposition that Mr Wong had given her information on 16 September 2016 “suggesting that there may be illegality in connection with donations”. As noted above, on Ms Murnain's account, she told Mr Robertson on 16 September 2016 that what Mr Wong had told her that evening “could have happened and I believed him”.

Ms Murnain also accepted the proposition that, when she read the NSW Labor/Country Labor Notices, she had reason, based on her meeting with Mr Wong on 16 September 2016, to share the NSWEC's suspicion about donations in connection with the 2015 CFOL dinner being made for, or on behalf of, other persons.

Ms Murnain was cross-examined by senior counsel for Mr Robertson on the issue of whether or not, as at December 2016, she believed that Mr Huang was the true source of the \$100k cash. In that context, Ms Murnain gave evidence that:

I had competing evidence. So I had competing evidence with others who said they had donated. I'd had Ernest advise me one person hasn't given the money and that Mr Huang was in effect the true source and I brought it to Ian Robertson's attention in September...

The evidence surveyed above comfortably establishes that Ms Murnain was in possession of information from Mr Wong, which gave her reason to suspect that donations in connection with the 2015 CFOL dinner may have been made for, or on behalf of, other persons. The evidence also suggests that she believed that Mr Wong's allegations may have been true. However, the Commission is not satisfied that the evidence establishes that Ms Murnain knew, as a matter of fact as opposed to belief, that the substance of Mr Wong's allegations were true.

During the public inquiry, Ms Murnain was examined on her evidence that she had directed Ms Sibraa to seek legal advice in relation to the responses prior to them being sent to the NSWEC:

[The Commissioner]: *Can I just ask you this. When you received the Electoral Commission questions in relation to this matter, I think you said when you delegated it you gave some instruction that the drafting of the responses should be done either in coordination with the lawyers or to send the responses to the lawyers, something along those lines.*

[Ms Murnain]: *Yes.*

[Q]: *What did you in fact say to them about that?*

[A]: *Can you, can you check this response with Ian at Holding Redlich.*

[Q]: *Check— -?*

[A]: *Check the response with Ian at Holding Redlich.*

[Q]: *And why did you give that instruction?*

[A]: *Because I, I told him the information that I'd been given, and despite the fact I'd had no evidence to suggest that what Ernest was saying was true, I suspected that because of the Electoral Commission's investigation that the lawyers would be able to provide Julie with the assurance that how we were responding was correct.*

[Q]: *So do I understand by that answer that you were in effect imposing a responsibility on Mr Robertson to determine what should be disclosed in relation to what you say you had said to him— -?*

[A]: *Yes.*

As noted earlier in this chapter, Ms Sibraa corroborated the fact that Ms Murnain did provide instructions to have the draft responses reviewed by the party's lawyers prior to being submitted to the NSWEC.

The Commission is satisfied that Mr Murnain gave those instructions to Ms Sibraa conscious of the fact that Mr Robertson knew about the fact and content of Mr Wong's allegations. Email evidence suggests that Ms Murnain knew, at the time that she executed the responses, that Mr Robertson had reviewed and approved them. The Commission accepts the submission made on behalf of Ms Murnain that knowledge of such matters:

...must have borne on and influenced her state of mind as to whether the responses were false or misleading in a material particular, such that a conclusion that she had actual knowledge of those matters is impossible.

The Commission is not satisfied that the evidence supports a finding that Ms Murnain possessed actual knowledge that the responses to the NSW Labor/Country Labor Notices were false and/or misleading.

Accordingly, the Commission finds that neither Ms Murnain nor any other person engaged in conduct of a kind that a court might find (on proof to the requisite standard) amounts to an offence against s 110A(7) of the EFED Act in connection with the responses to the NSW Labor/Country Labor Notices.

Chapter 20: The NSWEC investigation – interviews with NSW Labor personnel

Six months after receiving responses to the NSW Labor/Country Labor Notices in December 2016, and soon after receiving the final response on 14 June 2017 to the last tranche of statutory notices issued to the putative donors, the NSWEC issued statutory notices pursuant to s 110A(1)(d) of the EFED Act to Mr Cheah (in June 2017) and Ms Wang (in July 2017). Those notices required Mr Cheah and Ms Wang to attend the offices of the NSWEC and answer questions.

During his interview, Mr Cheah told the NSWEC that Mr Huang had delivered the \$100k cash to Mr Clements at NSW Labor head office. The public inquiry heard that, several weeks after Mr Cheah's interview, Mr Wong sought out a meeting with Mr Clements to discuss what Mr Cheah had told the NSWEC during his interview. A week after that, Mr Wong also met with Ms Wang and they too discussed the NSWEC investigation. That meeting occurred on the same day that Ms Wang was interviewed by NSWEC investigators. This chapter examines evidence relevant to these events and sets out related findings.

In July 2017, the NSWEC also conducted an interview with Ms Zhao, who was unable to recall details of relevant events and could not provide any further insight into the origin of the \$100k cash donation.

Interview with Mr Cheah

At 11.41 am on 20 June 2017, a senior investigator from the NSWEC sent an email to Mr Cheah attaching a notice issued under s 110A(1)(d) of the EFED Act ("the Cheah Notice"), which required Mr Cheah to attend the offices of the NSWEC on 22 June 2017 to participate in an electronically recorded interview. The cover letter enclosing the Cheah Notice explained that Mr Cheah would be required to answer questions "in relation to cash political donations made at [the 2015 CFOL dinner]" and that:

The Commission is investigating whether a number of donations made by individuals, were made for and on behalf of other person/s, which may constitute a breach of the EFED Act.

The Cheah Notice itself identified the "Suspect Conduct" in the following terms:

The Commission's Funding, Disclosure and Compliance ('FDC') conducted an audit of political donations made to Australian Labor Party, NSW Branch and Country Labor for the reporting period ending 30 June 2015. The audit revealed a number of cash donations totalling \$100,000 were received and deposited on 9 April 2015 into the two respective party's state campaign accounts.

The Commission has been informed that Mr Kenrick Cheah delivered the \$100,000 cash donation to the Labor Party.

The Cheah Notice stated that Mr Cheah was entitled to have a legal practitioner or support person present during the interview.

At 11.57 am on 20 June 2017, Mr Cheah forwarded the NSWEC email and the Cheah Notice to Ms Sibraa. Four minutes later, at 12.01 pm, Ms Sibraa forwarded the email and the Cheah Notice to Mr Robertson and Ms Butler at Holding Redlich. Ms Sibraa's email contained no text or instructions. During the public inquiry, Ms Sibraa gave evidence that she arranged through Holding Redlich to have a lawyer accompany Mr Cheah to the NSWEC interview.

On 22 June 2017, Mr Cheah attended the offices of the NSWEC and participated in an electronically recorded interview with investigators. Mr Cheah was legally represented during the interview by Ms Butler of Holding Redlich. At the start of the interview, Mr Cheah acknowledged that the statements he would make in the interview would accurately set out the evidence that he

would be willing to give in court as a witness. He said that he understood that he would be liable to prosecution if he wilfully stated in the interview anything that he knew was not, or did not believe to be, true.

The transcript of Mr Cheah's interview featured numbered questions and answers. At Q76, it was put to Mr Cheah that the NSWEC had been told that Mr Cheah was the person who conveyed the \$100k cash to the Labor Party. At Q79, he was asked to explain how that came to pass. In response, Mr Cheah said:

O.K. Um, so the money was money from either the night from people who couldn't attend or didn't attend or, yeah, who, who wanted to support but would attend, but couldn't make it, right. So to my knowledge, someone went to collect the money. Ah Mr Wong [sic] went to collect the money from all these individuals um, with the sheets, the, ah, ah, disclosure forms, so that it's all legal. Um, he came to our office um, and he gave it our former General Secretary, the money and the forms. Um, who after they had their meeting, he gave it to me and said, "Here's blah amount of money. The forms are in there. Can you check the forms to make sure they're all filled out correctly and they're all legal so that we can bank the money?"

At Q80, Mr Cheah was asked to clarify what he meant by "disclosure forms" in the answer above. He explained that he was referring to:

...our internal party disclosure forms where people sign to say, you know, if it's a State Election they're not a builder, a developer or a tobacco or an alcohol related...

Mr Cheah clearly understood that "developers" were among persons prohibited from donating in connection with NSW state elections.

In response to Q169, Mr Cheah explained that he received the \$100k cash from Mr Clements one or two days before the money was banked on 9 April 2015. In answer to Q185 and Q186, Mr Cheah confirmed that it was "Mr Huang, who I mentioned earlier...Xiangmo Huang", that delivered the \$100k cash to Mr Clements. It is clear that the reference to "Mr Wong" in the transcript of the answer to Q79 was a transcription error and should have referred instead to Mr Huang.

At the interview, Mr Cheah described Mr Huang as a very wealthy businessman associated with the Yuhu Group, whose offices were located in North Sydney. At Q207, Mr Cheah was asked, "do you know what type of business [the Yuhu Group] is?". He replied, "No. He doesn't talk to me. I don't talk to him". The interview ended at that point.

Evidence heard in the public inquiry suggests, contrary to his answer to Q207, that Mr Cheah was in fact aware at the time of the NSWEC interview that Mr Huang and the Yuhu Group were involved in the business of property development. On 1 September 2016, Mr Cheah sent an email titled "Interesting articles" to a NSW Labor colleague who, on Mr Cheah's evidence, had asked Mr Cheah for information about Mr Huang. The email included links to three *Sydney Morning Herald* online news articles published between February and August 2016.

The first article identified by Mr Cheah in the email was titled "Chinese-Australian community should get more action for political donations, warns Huang Xiangmo" and described Mr Huang in the second sentence as "chairman of property developer Yuhu Group". The second article was titled "Chinese interests play increasing role in Australian political donations" and described Mr Huang as "the Chief" of the Yuhu Group, a "Chinese agriculture, property development and infrastructure company". The third article, titled "Chinese 'King of the Mountain' brush with corruption scandal" clearly identified Mr Huang as a property developer in the first sentence.

Notwithstanding that Mr Cheah gave evidence at the public inquiry that he knew in 2017, and may have known in late 2016, that Mr Huang was associated with a property development company, he did not accept the proposition that was put to him that he read the news articles that he sent to his colleague on 1 September 2016. Mr Cheah repeatedly stated that it was possible that he sent the links to the articles without having read the articles. The Commission rejects that evidence and is satisfied that, in order for Mr Cheah to have determined that the articles were relevant to his colleague's enquiry and, indeed, "interesting", he must have reviewed them to ascertain their subject matter.

Mr Cheah told the NSWEC on 22 June 2017 that the offices of Mr Huang's Yuhu Group were located in North Sydney. In circumstances where Mr Cheah knew that relatively obscure fact, and where he had emailed the three "interesting articles" on 1 September 2016, the Commission is satisfied that, at least as at 22 June 2017, Mr Cheah knew the widely published fact that the Yuhu Group was a business involved in property development. The Commission finds that Mr Cheah's answer to Q207 was false.

On Mr Cheah's evidence to the NSWEC, the question arises as to why he told the NSWEC that he did not know the nature of the business of the Yuhu Group. If Mr Cheah genuinely believed that the \$100k cash was donated by the 12 putative donors, and that Mr Huang had merely collected those funds from the individual donors and delivered them to NSW Labor head office, why was there any need for Mr Cheah to deny knowledge of the nature of the Yuhu Group's business?

Having considered the evidence, the Commission finds that Mr Cheah did so because he harboured suspicions, at least at the time of the NSWEC interview, that the 12 putative donors were not in fact the true source of the \$100k cash. That Mr Cheah held such suspicions is consistent with other findings of the Commission. As previously reported, the Commission has:

- rejected Mr Cheah's evidence that Mr Huang delivered donor declaration forms to Mr Clements at the same time that he delivered the \$100k cash
- found that Mr Cheah held the \$100k cash between 7 and 9 April 2015 while waiting for the separate delivery of the donor declaration forms.

That Mr Cheah suspected at the time of his interview that the 12 putative donors were not the true source of the \$100k cash is also consistent with Mr Cheah's evidence that:

- "Mr Huang bringing the money in [was] unusual"
- he thought that something might be awry with the \$100k cash when the NSWEC was investigating the matter
- he did not want to ask Mr Wong if there was substance to the suspicions of the NSWEC because:

If I had asked questions like that, that would just draw me in deeper, if something had gone untoward, which I didn't want to have anything, I didn't want to be a party to.

In these circumstances, the Commission is satisfied that Mr Cheah's false statement to the NSWEC, as to his knowledge of the nature of the Yuhu Group's business, was made in an attempt to distance himself from possible consequences that might flow if the NSWEC were to find out that Mr Huang, whom Mr Cheah understood to be associated with a property development company, and thereby potentially a prohibited donor under the EFED Act, was the true source of that money.

The role of Holding Redlich

As noted above, Ms Butler of Holding Redlich represented Mr Cheah at his interview with the NSWEC on 22 June 2017. At the conclusion of the interview, Ms Butler was given an opportunity to ask questions. She declined to do so.

Mr Cheah gave evidence that he did not report back to senior office holders at NSW Labor head office after his interview with NSWEC. Mr Cheah explained, "Holding Redlich sent a lawyer to accompany me, so I assume they got their information from her".

Mr Cheah's evidence on this issue is broadly consistent with that of Ms Sibraa, who stated that she had a general conversation with Mr Cheah after the NSWEC interview, during which she asked him how it went and he said that it went okay. Ms Sibraa gave evidence that she did not enquire further of Mr Cheah.

Ms Sibraa gave evidence that, after Mr Cheah's interview, she had a "very general" conversation with Ms Butler about how the interview went. Ms Sibraa said that she could not recall the detail of that conversation, but thought her "takeaway was that it was nothing other than what we [NSW Labor and Country Labor] had already provided the [NSWEC]".

On 11 July 2017, Ms Butler sent an email to Ms Sibraa, copied to Mr Robertson, titled "NSWEC Transcript – Confidential". The email referred to a discussion the previous day and attached a copy of the transcript of Mr Cheah's interview with the NSWEC on 22 June 2017. Ms Sibraa agreed that she was sent a copy of the transcript of Mr Cheah's interview but said that she did not think that she read the transcript, explaining:

...I had concerns about, obviously there's an investigation under way. I had concerns about what I was supposed to know or, so that is, that's the predominant reason I didn't read the transcript was because I wasn't sure I was even supposed to have it. So I was very cautious about making too many inquiries because as the investigation was clearly continuing.

Ms Sibraa gave evidence that the first time she became aware that Mr Cheah had told the NSWEC during the interview that Mr Huang had delivered the \$100k cash to NSW Labor head office was when she read media reports to that effect during the pendency of the Commission's public inquiry.

Mr Robertson gave evidence to the Commission that he received a copy of the transcript of Mr Cheah's interview with the NSWEC on 22 June 2017 after that transcript had been received by his office. Although Mr Robertson said that he read the transcript, he denied having any specific recollection of reading the answer to Q79 in which Mr Cheah told the NSWEC that the \$100k cash was delivered to the general secretary at NSW Labor head office by Mr Huang (erroneously transcribed as Mr Wong).

Mr Robertson said he "didn't review [the transcript] with any thoroughness". He said that he did not recall coming away from reviewing it with the view that Mr Cheah had told the NSWEC that either Mr Huang (or Mr Wong) had delivered money to Mr Clements.

Mr Robertson rejected the proposition, put on cross-examination by senior counsel for NSW Labor and

Country Labor, that, if he had read the answer to Q79 as a competent and diligent lawyer, he would have advised the Labor Party that there was a problem in relation to representations that had been made in response to the NSW Labor/Country Labor Notices in December 2016. Mr Robertson did not accept that it was his responsibility to carefully review Mr Cheah's transcript.

Mr Robertson was questioned regarding his understanding of obligations he may have had, given his prior involvement in settling the responses to the NSW Labor/Country Labor Notices, to inform NSW Labor and Country Labor of significant matters arising from Mr Cheah's interview, which might be in tension with those responses. Mr Robertson gave evidence that, even if he had realised that there was a discrepancy, he was not sure that it would have been proper to inform NSW Labor of such matters. He suggested that, if he had realised a discrepancy, he may have needed to contact the NSWEC to ask if they were comfortable with that information being conveyed to NSW Labor.

In this context, Mr Robertson was reminded that one of his staff, Ms Butler, had been present during Mr Cheah's interview. Mr Robertson replied, "Yes but not for the purposes of representing NSW Labor, for the purpose of assisting the witness". That answer, however, does not sit comfortably with the following email evidence.

At 12.01 pm on 20 June 2017, Ms Sibraa sent an email forwarding the Cheah Notice to Mr Robertson and Ms Butler. At 12.15 pm, 14 minutes later, Mr Robertson replied in the following terms:

Hi Julie

Thank you for this.

If you think it is desirable that Kenrick be accompanied by a lawyer, Sarah Butler or Bede Haines would be able to do so.

I think there would be merit in him being accompanied by a lawyer so that, in particular, we have a clear idea of the direction of the Commission's investigation.

Kind regards,

Ian.

At 12.20 pm, Ms Sibraa replied to Mr Robertson's email, thanking him for his response and stating, "I agree that would be advisable".

When shown the 20 June 2017 email exchange during the public inquiry, Mr Robertson confirmed that his reference to "we" in the sentence, "...so that, in particular, we have a clear idea...", was a reference to NSW Labor and its legal advisers. He said that he could not recall thinking at

the time that Mr Cheah should be accompanied to the interview in order to identify a clear idea of the direction of the NSWEC investigation. He did, however, accept that that is what the email says.

On cross-examination by senior counsel for NSW Labor and Country Labor, Mr Robertson agreed that the email of 20 June 2017 appeared to show that he was actively promoting the idea that Mr Cheah should be accompanied by a lawyer from Holding Redlich, as part of the work that his office was doing for the Labor Party at the time, in order to understand where the NSWEC was going with its investigation. However, he rejected the proposition that that was in fact what he was doing at the time.

Having been shown the 20 June 2017 email exchange, Mr Robertson was asked whether he ultimately had any discussion with Ms Butler, after Mr Cheah's interview, in order to ask her what direction the NSWEC investigation was going. He stated that he did not do so.

Mr Robertson's cursory approach to reviewing the transcript of Mr Cheah's interview with the NSWEC, including his failure to notice that Mr Cheah had told the NSWEC that Mr Huang had delivered the \$100k cash to Mr Clements at NSW Labor head office, is difficult to comprehend in circumstances where:

- it was clear from the terms of the Cheah Notice and the related cover letter, which were forwarded to Mr Robertson, that the NSWEC was investigating a serious matter involving donations in 2015 in connection with the \$100k cash, which were suspected of being made for, or on behalf of, other person/s in breach of the EFED Act
- he had reviewed and settled the responses to the NSW Labor/Country Labor Notices in December 2016, those notices clearly having been issued in connection with the same NSWEC investigation and stating on their face that an officer of the NSWEC suspected that such conduct was in contravention of s 96HB of the EFED Act (the scheme offence provision, which carried a penalty of up to 10 years imprisonment)
- as the Commission has found, he was fixed with knowledge of the allegations made by Mr Wong to Ms Murnain on 16 September 2016, Ms Murnain having communicated to Mr Robertson that evening that Mr Wong had told her that there was at least one person from 2015 who did not donate the money that they had said that they had, and that Mr Huang had some actual or possible connection with that donation.

The available evidence combines to suggest that neither Mr Robertson, nor any senior officer holder of NSW Labor, was aware (at least, in July 2017) that Mr Cheah had told the NSWEC on 22 June 2017 that Mr Huang had delivered the \$100k cash to Mr Clements at NSW Labor head office a day or two before that money was banked on 9 April 2015 – a fact that was inconsistent with statements made in responses to the NSW Labor/Country Labor Notices to the effect that, Mr Cheah, an employee of NSW Labor, had handed the \$100k cash to NSW Labor/Country Labor. This appears to be so notwithstanding that:

- two days prior to Mr Cheah’s interview, Mr Robertson and Ms Sibraa agreed that:

...there would be merit in him being accompanied by a lawyer so that, in particular, we have a clear idea of the direction of the Commission’s investigation
- Mr Robertson and Ms Sibraa were furnished with, and Mr Robertson reviewed, the transcript of Mr Cheah’s interview, which set out the information he had provided to the NSWEC.

The NSWEC offer of indemnity to Mr Cheah

On 12 September 2017, seven weeks after Mr Cheah’s interview, the Hon Keith Mason AC QC, NSWEC Chair, wrote a letter to Mr Cheah offering him what was, in effect, an indemnity from prosecution in return for providing information regarding a suspected scheme to circumvent the operation of the EFED Act in relation to political donations received in connection with the 2015 CFOL dinner (“the Cheah Indemnity Letter”), which stated:

The NSW Electoral Commission (“the Commission”) suspects that the CFL’s fundraiser [2015 CFOL dinner] was used by certain persons as a means to circumvent the operation of laws which govern the making of political donations in New South Wales; in particular (but without limitation), those laws which prohibit the making of political donations by property developers. It is an offence to enter into or collude in such a scheme, which offence is punishable upon conviction by a sentence of imprisonment of up to ten years: s 96HB(1), Election Funding, Expenditure and Disclosures Act 1981.

The Commission considers that, due to your significant involvement in the CFL’s fundraiser of 12 March 2015, you may be in possession of information of significant value for the Commission’s on-going investigation of

certain persons for serious offences in connection with the CFL fundraising function.

The letter set out the terms of an offer not to use information provided by Mr Cheah against him in any criminal prosecution, except in respect of the falsity of information given by him, on the condition that, first, he provide a full and frank statement in relation to the suspected scheme and, secondly, that he give truthful evidence in any related proceedings should he be required to do so.

Mr Cheah declined the offer of indemnity set out in the Cheah Indemnity Letter and did not provide any statement to the NSWEC in relation to the matters under investigation.

Ms Sibraa gave evidence that Mr Cheah told her about the offer of indemnity from the NSWEC. On Ms Sibraa’s account, it was at that stage that she “asked him a question about what was going on” in response to which “he mentioned that he had, he maybe had gotten the money from Mr Clements”. Ms Sibraa said at that point she advised Mr Cheah, “Well, you have to just tell the truth”.

Ms Sibraa stated that this conversation with Mr Cheah, in relation to the Cheah Indemnity Letter, was the first time that he mentioned to her Mr Clements’ name in connection with the \$100k cash coming in to the office. Mr Cheah’s contrasting account is presented in chapter 19.

The Cheah Indemnity Letter was shown to Mr Robertson during the public inquiry. He said that he was provided a copy of the letter by NSW Labor in 2017 and that he read it. He agreed that the letter set out matters of significance to each of Mr Cheah, NSW Labor and the NSWEC.

Mr Robertson gave evidence that it did not occur to him, having read the Cheah Indemnity Letter, to go back and review the transcript of Mr Cheah’s interview with the NSWEC on 22 June 2017 in order to find out what might have occurred during that interview to give the NSWEC Chair reason to offer Mr Cheah indemnity from prosecution in return for coming forward with information about the suspected scheme to circumvent the operation of the EFED Act.

On cross-examination by senior counsel for NSW Labor and Country Labor, Mr Robertson rejected the proposition that a competent and diligent lawyer ought to have taken those steps. To the contrary, Mr Robertson stated that it would not have been proper to do so because, on reading the letter, he formed the view that there was a conflict of interest between Mr Cheah and NSW Labor, and that Mr Cheah should seek independent legal advice. He said he did not believe Holding Redlich

advised Mr Cheah in relation to the Cheah Indemnity Letter.

Mr Wong’s meeting with Mr Clements

During the public inquiry, Mr Cheah gave evidence that, in the weeks following his interview with NSWEC investigators on 22 June 2017, he had a discussion with Mr Wong during the course of which he informed Mr Wong that he had participated in the interview and identified for Mr Wong the “lines of questioning” that were being pursued by the NSWEC. Mr Cheah said that Mr Wong expressed some surprise as to the fact that Mr Cheah had been interviewed but did not appear to be particularly surprised about the lines of questioning.

Mr Cheah said that he told Mr Wong about his interview because Jonathan Yee was a mutual friend of theirs and was the subject of some of the questions in the interview. Mr Cheah also accepted that the NSWEC’s investigation was a matter of concern among some people, including himself and Mr Wong, who were involved in the 2015 CFOL dinner.

Mr Cheah was asked whether he also told Mr Wong in that conversation about the answers that he gave to the questions asked of him during the NSWEC interview. He replied, “I might have given some of the answers that I gave”. Mr Cheah was asked if that included telling Mr Wong about receiving the \$100k cash from Mr Clements. He replied, “I might have. It’s possible”.

Mr Wong gave the following evidence on this issue:

[Counsel Assisting]: Do you agree that Mr Cheah told you that he had told the Electoral Commission that he saw Mr Clements give him an ALDI bag containing \$100,000?

[Mr Wong]: I cannot tell you exactly what he did tell me but I cannot give you the exact day when he, he told me that.

[The Commissioner]: Well, what did he tell you?

[Mr Wong]: Just saying that, look, I saw Mr Huang coming in, gave me an ALDI bag of \$10,000, oh, of \$100,000. Oh, Jamie, Jamie took it to him, he counted it and then he sort of like bank it. I didn’t even know when he banked it though. I only found out from the media later on, yeah.

[Counsel Assisting]: And Mr Cheah told you that he had told that information to the Electoral Commission, correct?

[Mr Wong]: I don’t think he mentioned that at all but he just telling me that was what happened.

Mr Clements gave evidence to the Commission that, on 19 July 2017, being four weeks after Mr Cheah’s interview with the NSWEC, Mr Wong contacted Mr Clements via the messaging application, WhatsApp, and arranged to meet at the Starbucks café near the Capitol Theatre in Haymarket, Sydney (“the Starbucks meeting”).

On Mr Clements’ account, at the end of Starbucks meeting, Mr Wong told him that the NSWEC was investigating the 2015 CFOL dinner and that Mr Cheah had told the NSWEC in relation to that investigation that Mr Huang had handed Mr Clements an Aldi bag (or an “Audi” bag, as Mr Clements heard it) full of cash. Mr Clements said that Mr Wong asked him whether he knew anything about that. In response, Mr Clements said:

I sat there thinking, no and my mind was blown and I’m sitting there thinking how could this be? Like how, how, how, you know, why would Kenrick say that?

Mr Clements also stated that Mr Wong said during the conversation words to the effect of, “I left the dinner early. I don’t know who took the money home from the dinner”.

Mr Clements said that this was the first time that he became aware that there was anything awry or suspicious in connection with the 2015 CFOL dinner. Given the Commission’s previously reported finding that Mr Huang delivered the \$100k cash to Mr Clements on 7 April 2015, the Commission does not accept this aspect of Mr Clements’ evidence.

The fact of the Starbucks meeting is corroborated by an entry from Mr Wong’s parliamentary Microsoft Outlook calendar titled “jamie”. The entry pertained to a meeting scheduled for 5.30 pm on 19 July 2017. Mr Wong was recorded as the required attendee.

Mr Wong gave evidence confirming the Starbucks meeting, accepting that the Outlook entry was consistent with his recollection that he met Mr Clements at Starbucks in Haymarket in mid-2017. Mr Wong agreed that the subject matter of the meeting concerned the NSWEC investigation of donations in connection with the 2015 CFOL dinner.

Mr Wong gave evidence that, at the meeting, he asked whether Mr Clements was aware of the NSWEC investigation and Mr Cheah’s account, that Mr Huang had delivered a bag of money to (NSW Labor) head office. According to Mr Wong, he also asked if

Mr Clements could assist with providing legal advice to any of the people involved.

On cross-examination by senior counsel for Mr Wong, Mr Clements rejected a number of propositions, including that:

- Mr Wong expressed concern during the meeting that the donors needed legal advice, Mr Clements stating that that was not the context of the conversation
- Mr Wong said to Mr Clements during the meeting words to the effect, “You will remember that Mr Huang delivered the money to you at head office”
- Mr Clements said to Mr Wong during the meeting words to the effect, “the statutory declarations are more than two years ago therefore there won’t be any trouble”
- during the meeting, Mr Wong made no mention of
 - Mr Cheah
 - an Aldi (or Audi) bag
 - the fact that Mr Wong had left the dinner early
 - that Mr Wong did not know who took the money home after the dinner.

Mr Clements also gave evidence that, following the Starbucks meeting, he checked his telephone, which confirmed his recollection of Mr Huang coming to NSW Labor head office in 2015 with his executive assistant, Mr Xu. Mr Clements’ evidence is that he had no recollection of being given a bag of money during that meeting and could not understand why Mr Cheah had told the NSWEC such a thing.

Mr Clements said that, a week after the Starbucks meeting, he contacted Mr Xu and arranged a meeting. At that meeting, Mr Clements said that he relayed to Mr Xu the information that Mr Wong had given him about Mr Cheah saying that Mr Huang had handed Mr Clements an Aldi (or Audi) bag of cash at head office. Mr Clements said that he asked Mr Xu if that was possible. Mr Clements said that Mr Xu responded by laughing and saying there was no way that that had happened.

Mr Xu was examined in relation to Mr Clements’ evidence on this issue. Mr Xu generally corroborated Mr Clements’ account. He agreed that they met in late 2017 in the circumstances described by Mr Clements. Mr Xu said that he responded to Mr Clements’ question (about whether it was possible that Mr Huang had delivered cash in an Aldi (or Audi) bag to NSW Labor head office) in the following way:

[Counsel Assisting]: And what did you say to him in response, if anything?

[Mr Xu]: I said to me, it sounds to me very unlikely that Mr Huang could walk into the office by himself, and the, the bag was also quite unusual. I said to him, I, I, I wouldn’t know how he can get access to an Audi car bag. I, I said to him, “It sounds like a rumour to me.”

On close examination of the evidence, the Commission is satisfied to the requisite standard, that:

- after his interview with the NSWEC on 22 June 2017, Mr Cheah told Mr Wong the substance of what he had told the NSWEC in the interview, namely that Mr Huang had delivered the \$100k cash to Mr Clements
- at the Starbucks meeting on 19 July 2017, Mr Wong relayed to Mr Clements the substance of what Mr Cheah had told him of the information that Mr Cheah had given the NSWEC in his interview about Mr Huang delivering the \$100k cash to Mr Clements
- Mr Clements, in turn, relayed the substance of that information to Mr Xu in a subsequent meeting.

In light of the Commission’s finding, that Mr Huang delivered the \$100k cash to Mr Clements on 7 April 2015, the Commission rejects Mr Clements’ evidence that he had no recollection of being given a bag of money during the meeting with Mr Huang that day. The Commission accepts that Mr Clements may have been surprised by what Mr Wong had told him and, in particular, the fact that Mr Cheah had told the NSWEC what had occurred on 7 April 2015.

The Starbucks meeting was the first of many meetings that Mr Wong sought out over the next two years to discuss investigations into the \$100k cash with persons who were associated with that scheme and with whom investigative agencies were interested in talking. Mr Wong’s second such meeting, with Ms Wang, is considered below. Other such meetings are the subject of chapters 22, 23 and 24.

Later in this report, the Commission considers whether such meetings form part of a course of conduct on Mr Wong’s part directed towards preventing investigating authorities from discovering the truth about the true source of the \$100k cash.

Interview with Ms Wang

Evidence tendered in the public inquiry included a signed statement, dated 3 August 2017, provided by Ms Wang to the NSWEC (“the Wang Statement”). Ms Wang was employed by NSW Labor from May 2009 until she resigned on 7 June 2017, and performed the role of financial controller for most of that time. The Wang Statement set out the following information:

- on 10 July 2017, about a month after she resigned from NSW Labor, Ms Wang had a telephone conversation with a NSWEC investigator after which she checked records to find out where she was on 9 April 2015 (being the day that the \$100k cash was banked)
- on 19 July 2017, Ms Wang checked her residential letter box to find that she had been issued a notice by the NSWEC pursuant to s 110A(1)(d) of the EFED Act
- the notice required Ms Wang to attend the NSWEC on 18 July 2017 (the day prior to Ms Wang checking her letter box), to answer questions in relation to donations received in connection with the 2015 CFOL dinner
- having missed the interview date, Ms Wang telephoned the NSWEC to make alternative arrangements
- on 24 July 2017, Ms Wang met with NSWEC investigators and answered questions in relation to the \$100k cash, stating that:

I now know that I was on holidays from Tuesday 31 March 2015 until Thursday 9 April 2015. It was the Easter weekend, I did not return to work until the 14 April. During this holiday I was on a cruise. In my absence, Jenny Zhao takes on the responsibility of Financial Controller.

The first I became aware of these particular donations was whilst completing the disclosure for the reporting period [ending 30 June 2015].

There is no question that Ms Wang’s statement to the NSWEC was factually inaccurate in a number of respects.

First, the email evidence surveyed in chapter 9 clearly establishes that Ms Wang had returned from holidays and was working from home on 9 April 2015. Her statement to the NSWEC, that she was on holidays and, by inference, on a cruise when the \$100k cash was received and banked, was wrong.

Secondly, the email records establish that Ms Wang was alerted by Ms Zhao at 10.21 am on 9 April 2015 that

Mr Cheah had delivered \$100,000 to Ms Zhao. The email records further show that Ms Wang directed Ms Zhao, at 11.39 am, to bank the money that same day if it was all in cash. At 4.54 pm, Ms Zhao emailed Mr Cheah, copied to Ms Wang, confirming that she had banked \$50,000 into the accounts of each of NSW Labor and Country Labor “as advised”. Ms Wang’s statement to the NSWEC, that she first became aware of the \$100k cash donation when she completed the party disclosures for the 2014–15 reporting period, was wrong.

Thirdly, Ms Wang’s email, at 11.39am on 9 April 2015, also indicated that, if Mr Cheah’s \$100,000 was not all cash, then Ms Zhao should wait for Ms Wang to come in to the office the following day (that being Friday, 10 April 2015). That evidence demonstrates that Ms Wang’s statement to the NSWEC that, “[i]t was the Easter weekend, I did not return to work until the 14 April”, was also wrong. The fact is that the Easter weekend in 2015 fell between Easter Good Friday, 3 April, and Easter Monday, 6 April 2015. It did not come after the banking of the \$100k cash on 9 April 2015.

On 9 July 2019, Ms Wang appeared before the Commission at a compulsory examination during which she gave evidence that she was on leave at the time the \$100k cash was handed to Ms Zhao, “so that’s why my memory was blank when (not transcribable) otherwise I would have remembered there was a big amount of cash coming in”. In that examination, she explained that the records she checked around the time of the NSWEC interview were leave records from the NSW Labor payroll system, which she thought she may have obtained by contacting Ms Zhao who provided them to her. The substance of that evidence from the compulsory examination was explored with Ms Wang in the public inquiry.

During the public inquiry, Ms Wang initially gave evidence that she “wasn’t around at the time” of the issuing of invoices dated 9 April 2015 and said that she was “on leave at the time when the money was banked”. She denied that she became aware before it was deposited that the \$100k cash had been delivered to NSW Labor head office. She said that her knowledge of that matter “should be afterwards, when [she] came back from [her] holiday”.

Ms Wang was then shown the email evidence of her communications with Ms Zhao and others on 9 April 2015. Confronted with that evidence, Ms Wang conceded that she was working from home on 9 April 2015, she knew about the \$100k cash on the day that it had been received, and was intimately involved in what took place that day in the sense that she instructed Ms Zhao to bank that money. Ms Wang accepted that her statement to the NSWEC to the contrary was wrong. However, she

denied that she knew that her statement was false at the time that she made it.

Towards the end of Ms Wang's evidence in the public inquiry, she responded to propositions put to her by Counsel Assisting in the following way:

[Counsel Assisting]: What I'm suggesting is that both before the Electoral Commission and before this Commission in the private hearing, you were deliberately seeking to distance yourself from your intimate involvement of what happened on 9 April, 2015. Do you agree?

[Ms Wang]: No, I don't. I didn't do that deliberately.

[Q]: And the reason you did that is that you knew that there was significant cause for suspicion as to what occurred in connection with the \$100,000 that was banked on that date. Do you agree?

[A]: No.

The Commission's findings in relation to Ms Wang's conduct with respect to her statement to the NSWEC must also take into account the following contextual evidence.

As noted above, Ms Wang said in her statement to the NSWEC that she checked her residential letter box on 19 July 2017 to find that she had been issued a notice by the NSWEC requiring her to attend the NSWEC offices and answer questions. This event appears to have occurred on the same day that Mr Wong and Mr Clements met at Starbucks in Haymarket to discuss the NSWEC investigation. Beyond the coincidence of timing, there is no evidence before the Commission to suggest that those two events were linked. There is, however, evidence that Mr Wong met with Ms Wang five days after the Starbucks meeting with Mr Clements and that they too discussed the NSWEC investigation.

Records from Mr Wong's parliamentary Outlook calendar include an entry titled "maggie" relating to a meeting scheduled for 1.30 pm on 4 July 2017 at 60 Margaret Street, Sydney. Like Mr Wong's "jamie" meeting entry discussed above, his "maggie" meeting entry listed Mr Wong as the required attendee. This meeting was scheduled to take place on the very day that Ms Wang met NSWEC investigators to answer questions in relation to the \$100k cash.

During the public inquiry, Ms Wang gave evidence that, in July 2017, she received a telephone call or message "out of the blue" from Mr Wong who wanted to meet her. Ms Wang said that Mr Wong did not tell her why he wanted to meet. On Ms Wang's account, she told Mr Wong that she was coming in to the city for a training course and offered to meet him during the lunch break. She said that he met her in the lobby of the building where she was having her training course and they had coffee together in the lunch break.

Ms Wang gave evidence that, during the meeting, Mr Wong referred to the NSWEC investigation into the \$100k cash. On Ms Wang's account:

He said words to the effect that this, this investigation is going on, I need to be careful of what I say and I said words to the effect to him is, I can only tell what I know of.

Ms Wang said she understood Mr Wong to be telling her to be careful what she said to the NSWEC in connection with the investigation.

Ms Wang said that Mr Wong also said, "in the Chinese community, receiving cash is common, people use cash a lot, because they have this, you know, pocket money or whatever". Ms Wang said she understood Mr Wong to be referring to the Chinese practice of giving red packets and lucky money. In chapter 17, the Commission found that red packets and lucky money were aspects of the false cover story concocted by Mr Wong and Jonathan Yee, the details of which were provided by the Emperor's Garden putative donors to the NSWEC in response to notices issued to them.

Ms Wang was asked why Mr Wong would be telling her about such things:

[Counsel Assisting]: But I'm just trying to understand the context in which he's raising the question of lucky packets and cash payments.

[Ms Wang]: Oh, like I said earlier, both him and, and I, and I know the background of this investigation. He would assume that I know the Electoral Commission is questioning about this cash donation.

[Q]: But why is he telling you anything about that matter?

[A]: Because I believe he knew that I was one of them being interviewed by the Electoral Commission.

- [Q]: Did you tell him that?
- [A]: No.
- [Q]: Do you have any idea how he would have known that?
- [A]: I don't know.
- [Q]: Is it clear that it was him that contacted you first, or is it possible that you would have made contact with him?
- [A]: No. Like has to be him.
- [Q]: So it was definitely him?
- [A]: Yep.
- [Q]: And before that contact by phone or text, when was the last time you'd had any contact with Mr Ernest Wong?
- [A]: That's the only one.

Asked whether she met Mr Wong before or after she received her notice to attend the NSWEC to answer questions, Ms Wang said that she met Mr Wong during the lunch break of the training course and that she attended the NSWEC offices for the interview when the training finished in the afternoon. She said the meeting with Mr Wong and her attendance at the NSWEC were likely on the same day. That would be consistent with Mr Wong's Outlook calendar "maggie" meeting entry.

Ms Wang accepted, in retrospect, that it was apparent that Mr Wong was trying to influence what she might say to the NSWEC. However, she said that "back then I really didn't think that seriously" and gave it only "ten seconds thought". She agreed that she did not tell the NSWEC later that afternoon, or subsequently the Commission, about her meeting with Mr Wong or the fact that he told her to be careful about what she told the NSWEC. Ms Wang explained that she did not do so because she was not asked about those matters by the NSWEC or during her compulsory examination.

Mr Wong accepted that he met Ms Wang on 24 July 2017 and that they discussed the NSWEC investigation into the \$100k cash. However, he denied that he arranged the meeting for the purpose of discussing the investigation. On Mr Wong's account, he arranged the meeting merely as a "catch-up" and to ask her if she was interested in doing accountancy work for companies if such opportunities arose.

Mr Wong said that he did not know that Ms Wang had been required to attend the NSWEC. On his account,

it was Ms Wang who mentioned to him that she was being required to provide information to the NSWEC. He denied that he told Ms Wang to be careful with what she said to the NSWEC. He also rejected the proposition that he was trying to pressure Ms Wang not to say anything to the NSWEC that might implicate him.

Having weighed the evidence above, the Commission accepts Ms Wang's account of what was said during the meeting with Mr Wong on 24 July 2017. Accordingly, the Commission finds that:

- Mr Wong's meeting with Ms Wang on 24 July 2017 was not merely a "catch-up" and was not arranged by him to discuss employment opportunities
- rather, Mr Wong arranged the meeting with Ms Wang on 24 July 2017 in order to discuss the NSWEC investigation
- as at 24 July 2017, Mr Wong knew that Ms Wang was being required to provide information to the NSWEC in connection with its investigation into the \$100k cash (although there is insufficient evidence to support findings as to how Mr Wong acquired that knowledge)
- the meeting between Mr Wong and Ms Wang took place the same afternoon that she attended the NSWEC on 24 July 2017 to answer questions in relation to the \$100k cash
- Mr Wong told Ms Wang at least three things during the meeting on 24 July 2017, namely he:
 - told her about the NSWEC investigation into the \$100k cash
 - advised that she should be careful what she said to the NSWEC
 - suggested to her that the \$100k cash could be explained, at least in part, by reference to a widespread practice among Chinese people of using cash obtained from gifts of red packets or lucky money.

It is clear that Ms Wang's meeting with Mr Wong, in which he warned her to be careful what she told the NSWEC about the \$100k cash, occurred just hours before she attended the NSWEC to answer questions about that very matter. The Commission must consider the likelihood arising from that fact that the information that Ms Wang gave to the NSWEC on 24 July 2017, which formed the basis of her statement, may have been influenced by Mr Wong's warning.

Should the Commission accept Ms Wang's evidence that she did not take Mr Wong's warning seriously and only gave it "ten seconds thought"? Or did Ms Wang follow

Mr Wong's advice that afternoon and take a careful approach to what she said to the NSWEC regarding the \$100k cash?

Counsel Assisting submitted that it is not believable that Ms Wang simply forgot about her intimate involvement in the banking of the \$100k cash on 9 April 2015 when giving evidence to the NSWEC and this Commission. Counsel Assisting submitted that Ms Wang's evidence is more consistent with a deliberate attempt by Ms Wang to mislead the NSWEC and this Commission into thinking that Ms Wang could not have had any involvement with the events of 9 April 2015 being investigated because Ms Wang was not doing any work for the benefit of NSW Labor or Country Labor on that date.

Submissions in reply were received on behalf of Ms Wang. Those submissions contend that:

- the emails between Ms Wang and Ms Zhao on 9 April 2015 occurred more than two years before Ms Wang's interview with the NSWEC
- Ms Wang did not see or physically handle the \$100k cash
- Ms Wang regularly received emails regarding donations in the course of her role as financial controller
- when she gave evidence to the NSWEC in July 2017 she no longer had access to those emails.

The Commission accepts that those statements accurately reflect the evidence. Ms Wang resigned from NSW Labor on 7 June 2017, seven weeks before she gave evidence to the NSWEC. She lacked access to her NSW Labor emails at the time that she gave that evidence.

The submission is then made on Ms Wang's behalf that, on the basis of those facts, and to the extent that her evidence to the NSWEC was false or misleading, it resulted from the fact that she had no independent recollection of learning of the \$100k cash prior to completing the party disclosures for the reporting period. The submission is made that, when answering questions of the NSWEC, Ms Wang relied on her leave records to reconstruct her recollection, which unfortunately misled her to believe that she was on a cruise on 9 April 2015 and, therefore, to deduce that she did not learn of the \$100k cash until completing the party disclosures for the reporting year.

The Commission has obtained Ms Wang's leave records from NSW Labor. Those records show that Ms Wang applied for leave, and was paid leave loading, for the period from 31 March to 9 April 2015 inclusive. The Commission accepts that Ms Wang was technically on leave on

9 April 2015 notwithstanding that she decided to, and did, work from home that day. There is, however, no support in the leave records for Ms Wang's false statement to the NSWEC that she returned to work on 14 April 2015.

The key question is whether the evidence supports a finding that, when Ms Wang gave evidence to the NSWEC and this Commission, she lacked independent recollection of learning of the \$100k cash prior to completing the party disclosures for the reporting period.

The evidence clearly establishes that the receipt of \$100,000 in cash was an extraordinary event at NSW Labor head office. Ms Wang's evidence was that it was "exceedingly unusual" to receive \$100,000 in cash and that it hadn't happened before that point in time or since. Ms Zhao gave evidence to similar effect. Ms Murnain and Mr Clements also gave evidence that the receipt of such a large sum of cash was out of the ordinary and neither was aware of it having occurred on any other occasion.

The Commission considers it unlikely that Ms Wang would simply forget her active role in the banking of what appears to be the largest sum of cash that was received at NSW Labor head office in her tenure as financial controller.

The evidence also establishes that Ms Wang was well aware, throughout the period leading up to her interview on 24 July 2017, of the significance to the NSWEC's investigation of the \$100k cash, and the circumstances surrounding its delivery and banking.

Ms Wang gave evidence that, at the time of her meeting with Mr Wong on 24 July 2017, both she and Mr Wong "[knew] the background of this investigation". As demonstrated by the evidence surveyed in chapter 19, in December 2016, Ms Sibraa forwarded to Ms Wang copies of the NSW Labor/Country Labor Notices and asked her to locate records for the purposes of responding to those notices. Ms Wang gave evidence that she gathered material for that purpose. That material included invoices and donor declaration forms and deposit slips pertaining to the banking of the \$100k cash on 9 April 2015.

In December 2016, Ms Wang was the financial controller of NSW Labor. She had access to all of her emails at that time, including the emails which establish that she was the person who directed Ms Zhao to bank the \$100k cash on 9 April 2015.

In circumstances where Ms Wang knew that the NSWEC was seeking to trace the delivery and banking of the \$100k cash, and where she admitted to having undertaken searches of electronic records at her disposal, including the MYOB system, for the purposes of responding to the NSW Labor/Country Labor Notices, the Commission considers that it would be extraordinary

if she did not check email records to ascertain what had occurred in connection with the receipt and banking of the \$100k cash. Having considered the evidence, the Commission is satisfied on the balance of probabilities to the requisite standard that she must have done so.

The Commission finds that Ms Wang knew, in December 2016, that she was working from home on 9 April 2015 and that she had directed Ms Zhao to bank the \$100k cash that day. The Commission rejects the submission that Ms Wang had no independent recollection of that matter from July 2017.

The Commission is satisfied that Ms Wang had not forgotten about her active role in relation to the receipt and banking of the \$100k cash on 9 April 2015 when she participated in the interview with the NSWEC in the afternoon of 24 July 2017. To the contrary, the Commission finds that she retained that knowledge and followed the advice that Mr Wong gave her in their meeting hours beforehand; namely, to be careful about what she told the NSWEC in relation to its investigation into the \$100k cash.

Accordingly, the Commission finds that Ms Wang gave the following evidence, knowing that it was false or misleading, with the intention of hiding her involvement with the \$100k cash that is the subject of this investigation:

- to the NSWEC on 24 July 2017 that she was “on holidays” and “on a cruise” when the \$100k cash was banked and that the first time she became aware of the \$100k cash was “whilst completing the disclosure for the reporting period”
- in her compulsory examination on 9 July 2019 that she:
 - ... was on leave at that time when the cash got handed in to Jenny. So that's why my memory was blank when [not transcribable] otherwise I would have remember [sic] there was a big amount of cash coming in*
- at the public inquiry on 26 September 2019 that she:
 - “wasn't around at the time” of the issuing of invoices dated 9 April 2015
 - was “on leave at the time when the money was banked”
 - was not aware before it was deposited that the \$100k cash had been delivered to NSW Labor head office
 - her knowledge of that matter “should be afterwards, when [she] came back from [her] holiday”.

Section 74A(2) statements

The Commission is satisfied that Mr Cheah, Ms Wang and Mr Wong are “affected persons” with respect to the matters dealt with in this chapter.

Kenrick Cheah

Counsel Assisting submitted that the Commission should consider stating that it is of the opinion that the advice of the DPP should be sought in relation to Mr Cheah regarding one or more possible offences in connection with statements that he made in his interview with the NSWEC on 22 June 2017. Counsel Assisting identified offences of perverting the course of justice in contravention of s 319 of the Crimes Act and/or hindering an investigation in contravention of s 315 of the Crimes Act.

Submissions received on behalf of Mr Cheah reject the contention that Mr Cheah has perverted the course of justice or hindered any investigation.

Neither the submissions of Counsel Assisting, nor those for Mr Cheah in reply, engage with the particular evidence given by Mr Cheah during the NSWEC interview which might constitute such an offence.

Counsel Assisting's identification of offences against s 315 and s 319 of the Crimes Act appears to be based on the understanding that Mr Cheah's interview with the NSWEC was a voluntary interview. However, that is not the case. Mr Cheah attended the NSWEC offices and answered questions in an electronically recorded interview on 22 June 2017 pursuant to the requirements of the Cheah Notice, which was issued under s 110A(1)(d) of the EFED Act. It was not a voluntary interview.

Section 110A(7) of the EFED Act states that a person who provides any document or information, or answers any question, in purported compliance with a requirement made under s 110A, knowing that the document, information or answer is false or misleading in a material particular, is guilty of an offence. The Commission is satisfied that this specific statutory offence is the appropriate offence for the Commission to consider regarding Mr Cheah's answers in his interview on 22 June 2017.

The Commission has surveyed the evidence and found that Mr Cheah falsely stated in his interview on 22 June 2017 that he did not know the nature of the Yuhu Group's business. The evidence suggests that he did know, at that time, that the Yuhu Group was a business involved in property development.

However, Mr Cheah's false statement would only warrant criminal sanction under s 110A(7) of the EFED Act if it was false or misleading in a material particular.

The evidence suggests there may be a degree of doubt on this point, arising on two fronts.

First, news articles, such as the “interesting articles” circulated by Mr Cheah on 1 September 2016, clearly establish that Mr Huang was a person with a prominent media profile as both a property developer (in the ordinary sense of the term) and a political donor (at the federal level). Mr Cheah named Mr Huang as the person who delivered the \$100k cash to Mr Clements at NSW Labor head office. Having done so, the NSWEC was immediately interested in the business of the Yuhu Group. Mr Cheah’s false statement, that he did not know the nature of the Yuhu Group’s business, would not have prevented, and in fact did not prevent, the NSWEC from finding out in short order that the Yuhu Group was involved in property development.

Secondly, as is reported in chapter 2, the available evidence does not demonstrate that Mr Huang was a “close associate” of a corporation falling within the narrow definition of a “property developer” in s 96GB(1)(a) of the EFED Act. Mr Huang was not, therefore, a “prohibited donor” for the purposes of the EFED Act as a result of his connection with the Yuhu Group.

In light of the doubt that arises as to whether Mr Cheah’s false evidence to the NSWEC on this issue was sufficiently material to the NSWEC investigation, the Commission declines to state an opinion that Mr Cheah should be referred to the DPP for consideration of prosecution in relation to statements he made during his interview with the NSWEC on 22 June 2017.

Maggie Wang

Counsel Assisting submitted that the Commission should consider stating that it is of the opinion that the advice of the DPP should be sought in relation to Ms Wang regarding offences against s 110A of the EFED Act, and s 87 of the ICAC Act, concerning her evidence to the NSWEC, and to the Commission, to the effect that she was on holidays at the time that the \$100k cash was banked and did not know about that money until she completed the disclosure for the reporting period.

Ms Wang gave evidence in the public inquiry, and at her compulsory examination, on objection pursuant to declarations under s 38 of the ICAC Act. The answers given by her in the public inquiry and compulsory examination are not admissible against her in criminal proceedings other than proceedings for an offence under the ICAC Act. This fact bears on the Commission’s consideration of Counsel Assisting’s submission.

Ms Wang’s evidence in relation to what was said in her meeting with Mr Wong on 24 July 2017, prior to her NSWEC interview, would not be admissible against her

in any prosecution for an offence under the EFED Act. Nor would Ms Wang’s evidence regarding the steps she undertook in assisting Ms Sibraa respond to the NSW Labor/Country Labor Notices in December 2016. That evidence is relevant to proof of Ms Wang’s knowledge and intention when she falsely told the NSWEC that she was on holidays at the time the \$100k cash was banked and only found out about it while completing the disclosure for the reporting period.

Accordingly, in the absence of Ms Wang’s evidence to the Commission on those two issues, the Commission considers that there would be insufficient admissible evidence and therefore declines to state an opinion that consideration be given to obtaining the advice of the DPP in respect of the prosecutions of Ms Wang in connection with her answers during the NSWEC interview on 24 July 2017.

Ms Wang’s evidence on those two issues would, however, be admissible against her in criminal proceedings for any offence under the ICAC Act.

The Commission is of the opinion that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Ms Wang for offences under s 87 of ICAC Act in relation to:

- her compulsory examination evidence on 9 July 2019 that she:
 - ... was on leave at that time when the cash got handed in to Jenny. So that’s why my memory was blank when [not transcribable] otherwise I would have remember [sic] there was a big amount of cash coming in
- her public inquiry evidence on 26 September 2019 that:
 - she “wasn’t around at the time” of the issuing of invoices dated 9 April 2015
 - she was “on leave at the time when the money was banked”
 - she was not aware before it was deposited that the \$100k cash had been delivered to NSW Labor head office
 - her knowledge of that matter “should be afterwards, when [she] came back from [her] holiday”.

The admissible evidence has been surveyed at length above. It includes the transcript of Ms Wang’s evidence to the Commission in the public inquiry and at her compulsory examination and her statement to the NSWEC dated 3 August 2017. Admissible documentary evidence includes NSW Labor email records, Ms Wang’s

leave records, Mr Wong's Outlook calendar records, the NSW Labor/Country Labor Notices and the material produced in response to those notices. Admissible witness evidence includes Ms Sibraa's evidence regarding Ms Wang's role in responding to the NSW Labor/Country Labor Notices and the evidence of Ms Zhao, corroborated by Ms Murnain and Mr Clements, that it was extraordinary to receive a sum of \$100k cash at NSW Labor head office.

Ernest Wong

The Commission has found that Mr Wong met with Ms Wang on the day of, and just hours prior to, her interview with the NSWEC. During that meeting, Mr Wong advised Ms Wang to be careful what she said to the NSWEC in connection with its investigation into the \$100k cash. Mr Wong also provided Ms Wang with details of the false cover story that he and Jonathan Yee had concocted, in particular relating to Chinese people using cash from gifts of red packets or lucky money, being details that the Emperor's Garden putative donors had relayed to the NSWEC in response to statutory notices issued to them.

Counsel Assisting submitted that Mr Wong's conduct in this regard may have constituted an attempt to pervert the course of justice in contravention of s 319 of the Crimes Act or, alternatively, involved the commission of an offence of hindering an investigation in contravention of s 315 of the Crimes Act. The availability of offences under s 315 and s 319 of the Crimes Act, in the context of investigations by the NSWEC and this Commission, are considered in chapter 17.

So far as an attempt to pervert the course of justice in contravention of s 319 of the Crimes Act is concerned, it is not hard to infer from the evidence that Mr Wong cautioned Ms Wang to be careful about what she told the NSWEC in relation to its investigation, and armed her with details of the false cover story, because he did not want Ms Wang to provide a version of events to the NSWEC in relation to the \$100k cash that was inconsistent with the false version that he and Jonathan Yee had concocted.

However, the Commission is not satisfied that there is sufficient evidence upon which an inference can be drawn that Mr Wong's underlying purpose was to deflect the NSWEC investigation so as to prevent criminal proceedings being commenced or to pervert such proceedings if commenced. The evidence is equally consistent with the possibility that he was motivated, in his meeting with Ms Wang, to prevent the NSWEC from knowing the truth so as to enable NSW Labor and Country Labor to keep the \$100k cash or to prevent the NSWEC from suing to recover that money.

In relation to hindering an investigation, a person commits an offence under s 315 of the Crimes Act if they do anything intending in any way to hinder the investigation of a serious indictable offence committed by another person. The scheme offence contrary to s 96HB of the EFED Act is a serious indictable offence.

The Commission is of the opinion that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong, in connection with his meeting with Ms Wang on 24 July 2017, for an offence of hindering an investigation under s 315 of the Crimes Act.

The available admissible evidence would include all of the evidence set out above in connection with the s 87 ICAC Act offence in relation to Ms Wang, noting in particular Ms Wang's evidence regarding the substance of the meeting with Mr Wong. Also admissible would be the evidence of Jonathan Yee, that Mr Wong asked him to procure "five to ten people" to sign forms falsely stating that they had each donated up to the legal cap of \$5,000 so as to conceal the true source of the donation that Mr Wong had arranged or was intending to arrange. That evidence goes to Mr Wong's awareness that Jonathan Yee and others, including Mr Wong himself, were involved in conduct that may constitute a serious indictable offence.

Evidence regarding other similar meetings that Mr Wong sought out between 2017 and 2019 to discuss investigations into the \$100k cash with persons associated with the scheme (being persons with whom investigators wished to talk) would also potentially be admissible against Mr Wong for offences of hindering an investigation (or similar statutory offences). That evidence follows in later chapters of this report.

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Chapter 21: Circumstances surrounding the death of Mr Liao

As previously reported, 11 of the 12 putative donors admitted that they did not in fact donate the money in connection with the 2015 CFOL dinner that they said they did in their disclosures to the NSWEC, in response to NSWEC enquiries and in prior evidence given to this Commission. The only putative donor not to have made such an admission is Mr Liao.

On 15 June 2018, Commission officers served Mr Liao with a summons to attend the Commission on 25 June 2018 to answer questions in relation to this matter in a compulsory examination. Mr Liao died the evening before he was due to appear at the Commission. This chapter surveys evidence relating to the circumstances surrounding Mr Liao's death.

Mr Liao's role in the scheme

Prior to his death, Mr Liao was the deputy general manager of Wu International, a business based in Chatswood engaged in property development. Until mid-2016, Mr Tong worked under Mr Liao as a project manager at Wu International. At all relevant times, Mr Wood was a director and major shareholder of Wu International. Mr Wood gave evidence that, on a day-to-day basis, it was Mr Liao who ran the business of Wu International.

Evidence considered previously in this report relevantly establishes that:

- the pre-filled invitation/reservation form, which Mr Liao and Mr Tong signed, did not exist until Mr Wong created it in his parliamentary office on 30 March 2015, whereupon he emailed it to Mr Liao and Jonathan Yee (chapter 4)
- at Mr Wong's request, Mr Liao emailed to Mr Wong on 31 March 2015 two completed donor declaration forms, one each signed by himself and Mr Tong. Both of those forms were backdated to February 2015 (chapter 4)

- on Mr Tong's account, Mr Liao and Mr Wood falsely used Mr Tong's name to donate \$5,000 to the Labor Party in connection with the 2015 CFOL dinner, which Mr Tong understood to involve Mr Wong (chapter 1)
- the donor declaration forms of Mr Liao and Mr Tong were the subject of the switcheroo in late April 2015, which retrospectively caused the MYOB system at NSW Labor head office to record each of them as having donated \$5,000 to Country Labor in connection with the 2015 CFOL dinner (chapter 10)
- Mr Liao disclosed to the NSWEC in January 2016 that he had donated \$5,000 to the Labor Party in connection with the 2015 CFOL dinner. That disclosure made reference to Mr Wong but no reference to Country Labor (chapter 16)
- in 2016 and 2017, Mr Liao helped Mr Tong respond to enquiries by the NSWEC, including making arrangements for an accountant, Mr Teh, to compile documents and draft correspondence. Those steps were taken in circumstances where Mr Tong had communicated threats to Mr Liao and Mr Wood to expose the false use of his name to donate \$5,000 to the Labor Party (chapter 16)
- in a voluntary interview with NSWEC investigators on 28 March 2017, Mr Liao stated that he hand-delivered an envelope containing \$5,000 cash and his signed donor declaration form to an unspecified staff member at the 2015 CFOL dinner on 12 March 2015 (chapter 11). That statement cannot be true given that the pre-filled invitation/reservation form, which Mr Liao and Mr Tong signed, did not come into existence until 30 March 2015.

The Commission has found that the most probable explanation is that, like the other putative donors, Mr Liao

did not in fact donate any sum of \$5,000 to NSW Labor or Country Labor in connection with the 2015 CFOL dinner.

The events of June 2018

On 13 June 2018, three weeks after conducting the first compulsory examinations in relation to this investigation (with Mr Cheah and Mr Clements on 25 May 2018), the Commission issued to Mr Liao a summons under s 35 of the ICAC Act. The summons required Mr Liao to attend the Commission and participate in a compulsory examination, which was scheduled for 2.30 pm on 25 June 2018.

On 15 June 2018, two Commission investigators attended the offices of Wu International and served the summons on Mr Liao. The investigators explained to Mr Liao that it was an offence for him not to attend the examination and that he was not allowed to disclose the summons to any other person except his nominated legal representative.

Mr Liao's summons expressly stated that the compulsory examination was being conducted for the purposes of an investigation of an allegation that, in or around March and April 2015, officials of NSW Labor, members of CFOL, political donors and others had entered into a scheme to circumvent prohibitions or requirements under Part 6 of the EFED Act relating to political donations.

After being served his summons, Mr Liao arranged to be legally represented at the compulsory examination. He retained a firm of solicitors who, in turn, briefed counsel.

On the afternoon of Monday, 25 June 2018, Mr Liao failed to appear at the Commission for his compulsory examination. The Commission subsequently learned that Mr Liao's deceased body had been discovered by officers of the NSW Police Force ("NSW Police") at about 2.30 am on 25 June 2018 on the rooftop of his residential apartment building in Chatswood.

An investigation was conducted by NSW Police to assist the NSW State Coroner ("the Coroner") in relation to Mr Liao's death. The Commission investigators who served Mr Liao with his summons on 15 June 2018 provided statements to NSW Police. At the conclusion of its investigation, NSW Police prepared a statement to assist the Coroner and interested parties.

Key factual findings from the NSW Police investigation include:

- Mr Liao's family were not aware of him having any history of depression, although he had reported prior to his death that he felt exhausted and was not sleeping well
- an employee of Wu International, Oliver Tsui, had advised Mr Liao to see a doctor and obtain a prescription for sleeping tablets
- on 20 and 22 June 2018, Mr Liao saw a doctor and obtained a prescription for medication that is commonly prescribed to treat depression and insomnia
- on Friday, 22 June and Saturday, 23 June 2018, Mr Liao slept in his office, rather than going home. On Saturday, he asked his wife to deliver medications, which he commonly took for hay fever-type symptoms
- on Sunday, 24 June 2018, Mr Tsui attended the office and spoke with Mr Liao about the sleeping tablets he had been prescribed. Mr Tsui commented to Mr Liao that the dosage of Mr Liao's prescriptions might be too strong. Mr Tsui was the last person to see Mr Liao alive
- at 7.30 pm on Sunday, 24 June 2018, another employee of Wu International, Mr Zhan, tried to call Mr Liao's mobile telephone but there was no answer. Mr Zhan said he was calling to report to Mr Liao what had been discussed at a

business conference that he had attended in the Sydney CBD

- at about 10 pm on Sunday, 24 June 2018, Mr Zhan attended the offices of Wu International at Chatswood to look for Mr Liao but was unable to locate him. Instead, Mr Zhan found a note in Mr Liao's office dated 24 June 2018 which was handwritten in Mandarin and addressed to Mr Liao's wife. That note stated that, on the morning of 15 June 2018, Mr Liao had been visited by "two detectives" who had told Mr Liao "not to discuss it" with anyone. Without identifying the subject matter of what the "detectives" had told him, the note flagged Mr Liao's intention to "leave this world" in order to prevent his wife and daughter from becoming "family members of a criminal"
- on finding the note, Mr Zhan contacted Mr Liao's wife who tried unsuccessfully to call Mr Liao on his mobile telephone
- Mr Zhan then contacted "another employee" to help conduct a search of both the Wu International office building and Mr Liao's residential building
- the searches conducted by Mr Zhan, Mr Liao's wife and the unidentified Wu International person did not find Mr Liao, but they did find two empty bottles of medication in his office
- Mr Zhan reviewed CCTV footage, which showed Mr Liao leaving his office at about 5.40 pm on 24 June 2018
- at about 1 am on 25 June 2018, Mr Zhan and Mr Liao's wife attended Chatswood Police Station, apparently unaccompanied by the unidentified Wu International person, to report Mr Liao's disappearance
- NSW Police conducted a thorough search and discovered the deceased body of Mr Liao at 2.36 am on a ledge on the rooftop of his residential apartment building
- located in the vicinity of Mr Liao were items including a briefcase, which contained medications and two further letters dated 23 June 2018 (but which appear to have been written after the note dated 24 June 2018), that were addressed jointly to his wife and daughter and individually to his daughter
- the letter addressed jointly to Mr Liao's wife and daughter indicated that, although he had "already said goodbye", Mr Liao felt the need to explain "why I decided to leave". The letter identified

"Australia ICAC" as the body which had told Mr Liao that he could not discuss the matter. Part of the letter read (in English translation):

The real situation was, I am involved in some sort of political donation. It is my own money for the donation. There is no direct money which has been paid from my credit card and bank card. So the other thing is that, when it happened it was actually around March 2015. It was a while back so I'm not clear about that. So that is the problem.

But I remember when my father was in China he was interrogated [and] he went to gaol and I am petrified.

- the letter addressed to Mr Liao's daughter was consistent with the other letters
- the officer who conducted a forensic examination of the scene formed the opinion that Mr Liao appeared to have committed suicide by overdosing on medication
- the last depictions of Mr Liao on CCTV showed him departing the Wu International offices at 5.40 pm on 24 June 2018, entering the ground floor of his apartment building at 5.53 pm, and getting into an elevator on his own
- Mr Zhan accessed Mr Liao's work computer and provided NSW Police with a search history, which recorded searches, conducted at 7.44 am on 24 June 2018, relating to overdoses of medication
- Mr Liao's doctor told NSW Police that Mr Liao had seen him on 20 and 22 June 2018 and had reported that he was under investigation, which was causing him stress and that he was not coping. Mr Liao's doctor advised him to see a psychologist.

There is no indication in the NSW Police records as to the identity of the Wu International person, who Mr Zhan called after speaking to Mr Liao's wife and who helped search for Mr Liao between about 10 pm on 24 June 2018 and when the matter was reported to police at 2.36 am on 25 June 2018. It appears that that person did not accompany Mr Zhan and Mr Liao's wife to the police station at 2.36 am or provide their details to NSW Police. While there is no direct evidence before the Commission in relation to the identity of that person, the circumstantial evidence surveyed below suggests that it may have been Mr Wood.

The officer in charge of the NSW Police investigation formed the opinion, for the assistance of the Coroner,

that Mr Liao died on the rooftop of his apartment building between 5.53 pm on 24 June and 2.36 am on 25 June 2018 after having intentionally taken a large overdose of medication and that the probable cause of his death was multi-drug toxicity. He did not consider that the death was suspicious. Mr Liao's family did not request a coronial inquest into his death.

Although the letter dated 23 June 2018, quoted above, insists that it was Mr Liao's "own money for the donation", that assertion is in tension with the other available evidence. In particular, as noted above, the evidence establishes that the pre-filled invitation/reservation form did not exist until 30 March 2015. Mr Liao could not have delivered that form together with \$5,000 cash to a worker at the 2015 CFOL dinner as he claimed to have done in his interview with the NSWEC.

Counsel Assisting submitted that it seems unlikely that Mr Liao would take the extraordinary step of ending his own life if he had, in fact, donated \$5,000 as he said that he had in his donor declaration form and in his disclosure to, and interview with, the NSWEC. The Commission accepts that submission and is satisfied, as previously reported, that Mr Liao did not in fact donate a sum of \$5,000 in connection with the 2015 CFOL dinner.

Mr Zhan gave evidence at the public inquiry. He is a cousin of Mr Wood's and has been employed by Wu International since 2014 as a secretary responsible for company accounts and bookkeeping.

Mr Zhan gave evidence that, on 24 June 2018, Mr Wood attended an event at The Star hosted by the Australia China Economics, Trade & Cultural Association (ACETCA). The circumstances in which ACETCA was invited by Mr Wong to purchase tables at the 2015 CFOL dinner and make payment to the "Friends of Chinese Community" bank account are examined in chapter 6. Mr Zhan said that he was responsible for picking up Mr Wood from The Star on 24 June 2018. Asked where he took Mr Wood after picking him up, Mr Zhan said "either his home or the office".

Mr Wood agreed that he was the vice-chairman of ACETCA in 2018. He accepted that ACETCA hosted its annual gala dinner on 24 June 2018 at The Star and that he attended the event. In a compulsory examination on 11 November 2019, the transcript of which was tendered in evidence in the public inquiry, Mr Wood confirmed that Mr Wong was also in attendance at the gala dinner. Mr Wood said that he expected Mr Liao to also attend the gala dinner but that Mr Liao had told him that he could not attend because he had an important meeting the next day.

During the compulsory examination on 11 November 2019, Mr Wood explained that he spoke to Mr Liao at the

Wu International offices at about lunchtime on the day of the gala dinner. Mr Wood said of that conversation, "I talked to him, I said it was a very good opportunity, everybody will be there, why you don't attend the meeting, the dinner party". Despite Mr Wood being one of the last people to see Mr Liao alive, he did not report that interaction to NSW Police, which was investigating Mr Liao's death for the Coroner.

Mr Wood denied that Mr Liao told him what the important meeting the following day was or that Mr Liao was required to answer questions at a private hearing before the Commission. He rejected the proposition that he applied pressure to Mr Liao to answer the Commission's questions in a particular way so as to avoid implicating Mr Wood.

Mr Wood's awareness of Mr Liao's compulsory examination summons is relevant to the assessment of a submission by Counsel Assisting regarding a separate meeting that occurred in November 2018 between Mr Wood and Mr Tong. That issue is explored in chapter 23.

During the compulsory examination on 11 November 2019, Mr Wood was asked how he got to the gala dinner. He replied, "I was driving there ... I was the driver of my own car". Asked how he got home after the event, he replied "I went together with my wife, and I was driven by my wife home". Asked if he was sure that Mr Zhan did not drive him home, Mr Wood said that he could not recall. Asked if it were possible, he repeated that he could not recall. The Commission regards Mr Wood's answers on this issue as unconvincing and evasive. They are consistent with an attempt to distance himself from the events involving Mr Zhan and the discovery of Mr Liao's body that evening.

Mr Zhan gave evidence that he waited for Mr Wood in the car park at The Star on 24 June 2018 for up to three hours. He said there were hundreds of people in attendance. He said he did not see Mr Wong. Asked whether Mr Liao was supposed to attend that event, Mr Zhan said that he understood that Mr Liao should have done so but that Mr Wood explained to Mr Zhan that Mr Liao was unwell and had asked for leave not to attend.

With the assistance of an interpreter, Mr Zhan gave the following evidence:

[Counsel Assisting]: You said a little while ago that you were concerned because you had tried to contact Dr Liao on that day. Do I have that right?

[Mr Zhan]: *Yes. I called him for certain things and I have called many times, he hadn't picked up. He was a responsible person.

*He normally would not ignore calls.*²*

[Q]: *But why were you trying to contact Dr Liao on a Sunday?*

[A]: **In fact he was supposed to attend that function but he didn't turn up and I forgot what the matter was that I needed to contact him for, possibly relating to the business and something, it was something that I need to report him, report to him.**

The Commission does not accept Mr Zhan's speculation that the purpose of his attempted calls to Mr Liao that night "possibly relat[ed] to the business or something". The calls were made on a Sunday evening in the context of the gala dinner, described by Mr Zhan to the Commission as "a community activity", which appears to have had nothing to do with property development that was the business of Wu International.

As noted above, Mr Zhan told NSW Police on the night of 24 June 2018 that he was calling to report to Mr Liao what had been discussed at a business conference that he had attended in the Sydney CBD. This suggests that the substance of what Mr Zhan needed to report to Mr Liao concerned the subject of discussions at the gala dinner.

In circumstances where both Mr Wood and Mr Wong were in attendance at the gala dinner, and noting that Mr Wong conducted numerous meetings between 2017 and 2019 with individuals involved in the \$100k cash scheme to discuss investigations into that matter, an inference arises that Mr Zhan may have been trying to call Mr Liao to report the substance of some communication between Mr Wong and Mr Wood at the gala dinner

² The asterisks here and elsewhere in the report denote evidence translated from original language.

touching on Mr Liao's purported donation and/or his imminent appearance before the Commission.

Such an inference would be consistent with Mr Zhan's role in facilitating other meetings involving Mr Tong, with each of Mr Wong (in September 2018) and Mr Wood (in November 2018). Those meetings are considered in chapters 22 and 23. However, the Commission is not satisfied that the available evidence is sufficiently cogent to permit an inference of the kind set out in the preceding paragraph to be drawn.

Ultimately, it is not possible to know what Mr Liao might have said had the Commission put to him the proposition that, like the other putative donors, he did not in fact donate the money in connection with the 2015 CFOL dinner that he said he did in his disclosure to the NSWEC and in response to NSWEC enquiries.

However, the Commission is satisfied that Mr Liao took his own life on the evening of 24 June 2018 and that he did so in circumstances where he:

- knew that he had not donated \$5,000 in connection with the 2015 CFOL dinner
- had previously lied to the NSWEC regarding that purported donation
- was aware that Mr Tong had, in May 2017, presented an ultimatum to Mr Liao and Mr Wood to the effect that Mr Tong would "reveal all" to investigating authorities if Wu International did not "have the matter dealt with once and for all" (chapter 17)
- knew that Mr Wood and, most likely, Mr Wong would be in attendance at the ACETCA gala dinner that evening
- had been summoned to appear before the Commission the following day to answer questions in relation to those very matters.

Chapter 22: Mr Wong's meeting with Mr Tong at Parliament House on 17 September 2018

As set out in chapter 20, Mr Wong sought out and conducted meetings with Mr Clements on 19 July 2017 and with Ms Wang on 24 July 2017 to discuss evidence that had been, or should be, given to the NSWEC in the course of its investigation into the \$100k cash received in connection with the 2015 CFOL dinner. During his meeting with Ms Wang, Mr Wong tried to influence what she might say to NSWEC investigators.

Mr Wood and Mr Wong attended the ACETCA 2018 gala dinner at The Star on the evening of 24 June 2018, being the evening that Mr Liao died (chapter 21). Mr Liao was due to give evidence to the Commission the following day. Mr Zhan attempted numerous times during that evening to call Mr Liao. Mr Zhan told police that he made those calls for the purpose of reporting to Mr Liao what had been discussed at a "business conference" that he had attended in the Sydney CBD.

On 17 September 2018, 12 weeks after Mr Liao's death, Mr Wong met with Mr Liao's former colleague at Wu International and fellow putative donor, Mr Tong, at Mr Wong's office at NSW Parliament ("the Parliament House meeting"). Mr Tong was escorted to the meeting by Mr Zhan. During the meeting, on Mr Tong's account, Mr Wong asked Mr Tong whether electoral authorities had contacted him and said that, if they did so, Mr Tong should continue to say what he had told "the electoral office" in the past. Mr Wong disputes that account.

If Mr Tong's account were accepted, the Parliament House meeting would constitute a further instance of Mr Wong meeting with, and seeking to influence the evidence of, a person of interest to those investigating the \$100k cash. This chapter surveys the evidence relating to the organisation of the Parliament House meeting and sets out the Commission's findings as to what was said and done during that meeting.

Who arranged the meeting at Parliament House?

Mr Tong gave evidence at the public inquiry that he received a telephone call from Mr Zhan on 14 September 2018. During that call, on Mr Tong's account, Mr Zhan informed him that Mr Liao had committed suicide and said that Mr Wong wanted to meet with Mr Tong in Chatswood for yum cha. Mr Tong said that he replied to Mr Zhan by asking him, "I'm not very familiar with Ernest Wong, why should I be having yum cha with him?". On Mr Tong's account, Mr Zhan said that he did not know why and that he was just passing on a message. He did not tell Mr Tong whose message it was that he was passing on.

Mr Tong gave evidence that, prior to Mr Zhan's telephone call, he had only met Mr Wong once and that was during a site visit to a farm owned by Wu International. Records obtained from Wu International confirm that Mr Liao, Mr Wood and Mr Tong inspected a property with Mr Wong on 3 August 2015 in relation to a "farm development". Mr Wood confirmed that the farm site was located at The Oaks.

Mr Tong said that Wu International was seeking Mr Wong's help with the development of the farm. Asked what Mr Wong's role was, Mr Tong said:

I think our boss was wanting some help from Mr Wong to develop the farm ... they were planning to develop some sort of residential property, so Ernest being a government official maybe he makes it easier for him to talk with other government officials.

Mr Wong agreed he visited The Oaks farm site and gave advice to the Wu family regarding its development.

On receiving Mr Zhan's telephone call on 14 September 2018, Mr Tong said that he considered it strange that Mr Wong would want to meet him for yum cha and

thought at the time, "Why would he be wanting to have yum cha with me? What does he want from me?". With the assistance of an interpreter, Mr Tong gave the following evidence:

[Counsel Assisting]: *Do we take it from what you said before that in September 2018 Mr Zhan gave you a call to arrange for yum cha with Mr Wong, but did he then ring you another time to say that it couldn't happen at yum cha and other arrangements were to be made?*

[Mr Tong]: **I think it was on the 14th that when Kenny Zhan rang me, and on the same day he later rang me and advised me that Ernest Wong didn't have time to have yum cha with us, so the, the meeting location was changed to, was changed at, at, at the State Parliament.**

[Q]: *And did you tell Kenny that you were happy to meet with Mr Ernest Wong?*

[A]: **I can't say whether I was happy or not, but I was invited by a government official to have a meeting, so if I refused him it seems very impolite for me to do so.**

[Q]: *At the time of your telephone call with Kenny, what did you think the meeting with Mr Ernest Wong was going to be about?*

[A]: **I really didn't know. I don't know what he was going to talk about.**

[Q]: *Did Kenny [Zhan] tell you why Mr Ernest Wong wanted to see you?*

[A]: **He didn't know too. He didn't know too.**

[Q]: *Did you ultimately go to see Mr Ernest Wong at Parliament House?*

[A]: **Yes.**

Mr Tong's evidence above is corroborated by a contemporaneous file note that he made shortly after the Parliament House meeting regarding the arrangements for, and what was said and done during, the meeting ("the Tong File Note"). In relation to the arrangements for the meeting, the Tong File Note read:

Refer: Record of the meeting in Parliament House Mr Ernest Wong Office at 4:00pm on 17/9/2018.

This meeting request by Mr Kenny Zhan (he work for Wu International as accountancy). On 14/9/2018 at about 11:30am, he told me Mr Ernest Wong want to meet me some time on Saturday in Chatswood, and he will inform me the time and address again. He haven't told me for what he want to meet me. But until Saturday morning Mr Zhan told me the meeting will postpone to Monday afternoon in his Parliament Office, I said I don't know where his office and never been his place. Kenny said he will pick me up at me home to Mr Wong Office than we are there for this meeting on time.

The complete Tong File Note is reproduced in this chapter as figure 5. Further details of that record are considered later in this chapter.

Mr Zhan gave evidence in the public inquiry on two occasions. On 4 September 2019, Mr Zhan was less than forthcoming regarding the Parliament House meeting and other matters. On that occasion, which preceded Mr Tong's evidence on this issue, Mr Zhan said that, some months after Mr Liao's death, he was asked to drive Mr Tong to Parliament House to meet with Mr Wong, but could not recall whose idea it was and he initially suggested that it could have been either Mr Tong, Mr Wong or Mr Wood.

Asked for further detail, Mr Zhan said that he recalled receiving a telephone call from someone asking him to drive Mr Tong to Parliament House. He accepted that it was possibly Mr Wood who had asked him to do so and agreed that it could not have been Mr Tong. Mr Zhan also agreed that the meeting occurred on a workday and accepted that he would not be driving Mr Tong around on a workday unless his employer had authorised it or asked him to do so.

Mr Zhan said, in the days beforehand, he spoke to Mr Wong on the telephone regarding arrangements for the Parliament House meeting. Consistent with Mr Tong's evidence, Mr Zhan said the meeting was originally planned to take place in Chatswood but then Mr Wong instructed that it be changed to his office in Parliament House.

Figure 5: Contemporaneous file note of the Parliament House meeting created by Mr Tong on 18 September 2018

Refer: Record of the meeting in Parliament House Mr Ernest Wong Office at 4.00pm on 17/9/2018.

This meeting request by Mr Kenny Zhan (he work for Wu International as accountancy). On 14/9/2018 at about 11.30am, he told me Mr Ernest Wong want to meet me some time on Saturday in Chatswood, and he will inform me the time and address again. He haven't told me for what he want to meet me. But until Saturday morning Mr Zhan told me the meeting will postpone to Monday afternoon in his Parliament Office, I said I don't know where his office and never been his place. Kenny said he will pick up me at me home to Mr Wong Office than we are there for this meeting on time.

I want to declare and Record in here for the meeting (on 17/9/2018);

1. When we arrived Parliament House, Mr Wong are waiting us in the Entrance Hall than we straight go to his Office. I also don't know this time why Mr Wong want to see me in his Office. In the meeting, Mr Wong said to me I hear recently your healthy has little problems, you must take care for that. I said to him - yes, but now simply OK, I will take care and thank you for concern.
2. Recently has any Donation Office people to ask and meet you? I said NO, for what? HE said that's good, the things may be over. I said may be. And I told Mr Wong, about this donation – From start to the end, I don't want involve and know nothing about that, until I received LABOUR OFFICE sent me letter said I donated \$5,000.00 and instructed me can obtain TAX deduction for that. I am very surprise when I do donation? I haven't, therefore I can not to get the Tax Deduction. Eventually I find out this is Wu use my name to donate such money to LABOUR Party.
3. I told Mr Wong I am very upset why they (Wu International) use my name to donate such money, without tell me and obtain my agreement, when I received LABOUR OFFICE sent me Tax Invoice than I knew Wu use my name to donation. At that time I keep mouth shuttle due to I still work for them, if I told all the true to Donation Office, that mains I have lost my job immediately.
4. Mr Wong told me should keep the same don't say anything, if Donation Office to see me again, told Wu let them ask a Solicitor to help for that. After that no other things, we are just frankly talk each other.

In near 5 O'clock I and Mr Kenny Zhan left Mr Wong Office, then meeting say finest.

When Mr Zhan gave evidence on the second occasion, on 4 October 2019, after Mr Tong and Mr Wood had given evidence regarding the Parliament House meeting, he was more forthcoming and gave what appeared to be a full account of the matters that were asked of him. Asked why he was more forthcoming on 4 October 2019, Mr Zhan said that he had listened to the advice of his lawyer and had thought hard about the questions he had been asked on the previous occasion and tried to give as much information as possible. Mr Zhan said he wondered whether he had “been used as a middleman to do something”. Asked who he thought had used him in that way, Mr Zhan said, “Maybe Wu International, maybe Ernest Wong, maybe Steve Tong, I don't know”.

On 4 October 2019, Mr Zhan gave clear evidence to the effect that he did contact Mr Tong to make arrangements to take him to see Mr Wong to the Parliament House meeting and that he did so on instructions which could not have come from anyone other than Mr Wood.

During the same day, Mr Zhan also produced to the Commission an email that he had received from Mr Tong on 18 September 2018 attaching, for Mr Zhan's benefit, a copy of the Tong File Note recording the arrangements for, and what happened at, the Parliament House meeting. Mr Tong's email to Mr Zhan was titled, “Meeting record with Mr Ernest Wong on 17.9.2018” and read:

Hi Kenny,

Please read the attached which is the above for in case in future someone use our meeting to do political matters, and in the future we cannot to see Mr Wong and talk about such things, Nothing to do with us, Wu cause the problem, don't let them take you and me to involve, I don't care what they to do. Please understand our situation. If you have any idea or thinking, please let me know, many thanks.

Regards

Steve Tong

Mr Zhan was shown the Tong File Note and agreed that it was “mostly accurate”. The details of that note as to what occurred during the Parliament House meeting are considered later in this chapter. Mr Zhan agreed that the Tong File Note accurately set out how the Parliament House meeting was arranged. In respect of those arrangements, the Tong File Note indicated that Mr Zhan contacted Mr Tong at 11.30 am on 14 September 2018 and said that Mr Wong wanted to meet Mr Tong.

Mr Wood gave evidence that he directed Mr Zhan to take Mr Tong to meet Mr Wong in September 2018. That part of Mr Wood's evidence is logical and consistent with Mr Zhan's account. The Commission accepts that he did

so. Mr Wood said that he understood that the purpose of the Parliament House meeting was to give Mr Tong and Mr Wong an opportunity to “clarify about the donation” and resolve Mr Tong's complaint that his name had been fraudulently used.

Mr Wood's evidence was that it was his idea for Mr Tong to meet with Mr Wong in September 2018. He rejected the proposition that it was Mr Wong's idea. Asked why he arranged the meeting, Mr Wood said that he did so “because Mr Tong asked me for help to, to see and talk to Mr Wong”. That evidence is in clear conflict with Mr Tong's evidence that he was surprised by Mr Zhan's telephone call on 14 September 2018 telling him that Mr Wong wanted to meet Mr Tong in Chatswood for yum cha.

Mr Wood was asked whether Mr Tong requested Mr Wood's help to “see and talk to Mr Wong” verbally or by some other means. Mr Wood said that Mr Tong made the request in an email. The email that Mr Wood eventually identified as the communication that caused him to arrange the Parliament House meeting was one sent by Mr Tong to Mr Wood on 5 May 2017 (at around the time that the NSWEC asked Mr Tong to provide a witness statement). In the email, Mr Tong expressed frustration about persistent requests from the NSWEC and asked Mr Wood:

Could you ask Eness [sic] Wong, why electoral people so hate labour [sic] and any duty apply to donation to labour [sic]? or give me Mr Wong's telephone to me, I will talk to him about that.

Mr Wood could not explain how an email sent in May 2017 could cause him, 16 months later, to arrange a meeting between Mr Wong and Mr Tong in September 2018. He rejected the proposition that the 5 May 2017 email could not have been the thing that triggered him to arrange the Parliament House meeting. He insisted that it was. The Commission rejects Mr Wood's evidence on this issue.

Mr Wong gave evidence at the public inquiry on several occasions regarding the Parliament House meeting. The first time was on 2 September 2019, which was prior to Mr Tong or Mr Wood giving evidence on the issue. On that occasion, Mr Wong sought to explain the Parliament House meeting by reference to a conversation he had with Mr Liao over lunch in mid-September 2016, during which Mr Liao is asserted to have told Mr Wong that Mr Tong wanted to meet Mr Wong “because he was very sick but then he was actually called in by the electoral office [for an interview] in regards to some Labor donations...”. Mr Wong's evidence of that conversation with Mr Liao is considered in chapter 18.

Mr Wong said that, following his September 2016 conversation with Mr Liao, and his related meeting with Ms Murnain on 16 September 2016, he called Mr Liao

and said he would be happy to meet with Mr Tong. Mr Wong said that he subsequently met with Mr Tong in his parliamentary office.

Asked to clarify when the Parliament House meeting occurred, relative to his conversation with Mr Liao in September 2016, Mr Wong said he could not recall. He said he did not know whether the meeting occurred in 2016 or 2017 or at some later time. He said:

I would not be able to remember the exact date but I do remember that he mentioned that he, I'm pretty sure that would be after his interview with electoral office.

The proposition was put to Mr Wong that the meeting with Mr Tong did not in fact occur until 2018. He said he could not remember. He rejected the proposition that the Parliament House meeting with Mr Tong occurred only after this Commission started investigating the matter. Mr Wong was then shown the Parliament House visitor register for 17 September 2018, which showed that Mr Wong had signed in Mr Tong and Mr Zhan on that date. Mr Wong conceded that he met with Mr Tong at Parliament House on 17 September 2018. He agreed that that was after the NSWEC had referred the investigation to this Commission. He said that he only had one meeting with Mr Tong at Parliament House.

Mr Wong could offer no explanation as to why the meeting with Mr Tong was arranged two years after Mr Wong, on his account, called Mr Liao and offered to meet Mr Tong. The Commission does not accept Mr Wong's evidence that a conversation, which he says he had with Mr Liao in 2016, is what triggered arrangements to be made two years later for the Parliament House meeting in September 2018.

Asked whether he arranged the meeting or whether it was someone else who did so, Mr Wong answered, "Someone else. Someone initiated it". Mr Wong then gave evidence that he recalled a conversation in 2018 where someone from Wu International, probably Mr Zhan, made contact with him seeking to set up a meeting for Mr Tong. He said the Wu International person identified the purpose of the meeting, which was to give comfort and advice to Mr Tong in relation to his interview with the NSWEC.

Mr Wong agreed that the initial arrangement for the meeting may have been for the meeting to occur in Chatswood but that he had said, "Just come to my office". A question arises as to why Mr Wong changed the location of the meeting to his office in Parliament House. This issue is considered later in this chapter in the context of evidence from Mr Tong and Mr Zhan that Mr Wong confiscated their mobile telephones at the start of the Parliament House meeting.

The Commission does not accept Mr Wong's evidence that the purpose of the Parliament House meeting related to giving comfort and advice to Mr Tong concerning his interview with the NSWEC. That evidence is inconsistent with the evidence as to what actually occurred during the meeting, which is set out below. A further difficulty with Mr Wong's evidence on this issue is that Mr Tong never participated in an interview with the NSWEC. He was invited to provide a statement to the NSWEC in April 2017 but avoided doing so. Those matters are considered in chapter 17.

Indeed, Mr Wong's evidence regarding the purpose of the Parliament House meeting is fundamentally inconsistent with his own evidence towards the end of the public inquiry. On 11 December 2019, Mr Wong gave evidence that he had a discussion with Mr Liao "later on", during which Mr Liao told Mr Wong that:

...he, Steve Tong, there's no need for Steve Tong to see me because he did not, because he was so sick that he was not called in [to the NSWEC] for the interview.

On this evidence, if it were accepted, Mr Wong knew, at least at the time of Mr Liao's death in June 2018, that there was no need for Mr Wong to meet with Mr Tong in relation to the NSWEC investigation.

The Parliament House meeting occurred on 17 September 2018; 16 weeks after the Commission conducted its first compulsory examinations in relation to this matter with Mr Cheah and Mr Clements. It was 12 weeks after Mr Liao's death, which, as set out in the previous chapter, occurred on the eve of his scheduled compulsory examination before the Commission. In these circumstances, it is much more likely that the purpose of the meeting between Mr Wong and Mr Tong in September 2018 concerned matters pertaining to this Commission's investigation.

Evidence considered in the following chapter includes an admission by Mr Wong that, as at 27 June 2018 (that is, two or three days after Mr Liao's death), he knew that the NSWEC investigation of this matter had been referred to this Commission. He said he "probably" heard that from Mr Cheah and admitted relaying that information to Mr Clements at a meeting on 27 June 2018.

The Commission is satisfied that Mr Wong knew that this Commission, and not the NSWEC, had carriage of this investigation at the time that arrangements were being made for the Parliament House meeting.

On 3 September 2019, Mr Wong was re-examined by his senior counsel and gave a different account regarding how the Parliament House meeting came about. Having given further consideration to the circumstances in which

he met Mr Tong, Mr Wong gave the following evidence regarding arrangements for that meeting:

- after Mr Liao's death, Mr Wong attended "an organisation's function" and someone from Wu International (he could not recall whom) was also in attendance
- at that function, the unknown Wu International person told Mr Wong that Mr Liao had taken his own life and relayed some of the details of the notes that Mr Liao had left
- the unknown Wu International person also told Mr Wong:

in regards to death of Dr Liao, he did mention about the, the interview, sort of like, you know, because there is sort of like an investigation, that he probably would be...
- in response to that information, Mr Wong was concerned about Mr Tong, who he understood to have been sick, and asked the unknown Wu International person "how was Mr Tong". Mr Wong specifically recalled asking that question because he knew Mr Tong was sick and "...really [did not] want to see another, another, another sad story happen"
- the unknown Wu International person replied that, "[Mr Tong] was okay but then he's still sort of like very agitated"
- in response to that information, Mr Wong said words to the effect of, "Look, it [sic] that's the case, if [Mr Tong] still wants to see me, I'm more than happy to see him".

This account by Mr Wong is at odds with the evidence he gave the previous day and was given in circumstances where his previous evidence could not reasonably be maintained, as the two-year gap between his conversation with Mr Liao in September 2016 and the Parliament House meeting in September 2018 had been exposed by other evidence.

The Commission does not accept that Mr Wong was motivated to meet Mr Tong out of concern for Mr Tong's welfare. The evidence, set out below, as to what was done and said during the Parliament House meeting suggests some other, less compassionate, motivation.

Nor does the Commission accept that Mr Wong could not recall the identity of the Wu International person with whom he claims to have discussed these matters. Mr Wong clearly knew Mr Zhan and Mr Wood. There is no evidence that any other person associated with Wu International, aside from the deceased Mr Liao, was involved as an actor in this matter.

Even if Mr Wong's revised evidence were accepted, even in part, it would not greatly assist him. To the contrary, it would suggest that Mr Wong had knowledge, at the time that he offered to meet with Mr Tong, that Mr Liao had taken his own life in contemplation of being interviewed in connection with an investigation into donations related to the 2015 CFOL dinner. It would also suggest that he was aware of the substance of the notes that Mr Liao had left. The evidence is that one of those notes included a reference to "Australia ICAC" (chapter 21). These matters would support an inference that the primary purpose of the Parliament House meeting concerned this Commission's investigation.

The Commission's assessment of Mr Wong as a witness is presented in chapter 7. In essence, the Commission considers that Mr Wong is not a witness of credit. The Commission does not accept any of Mr Wong's evidence absent it being an admission against self-interest or corroborated by other, reliable evidence. The Commission regards Mr Wong's evidence in relation to the purpose of, and arrangements for, the Parliament House meeting as internally inconsistent, at odds with the other evidence and unreliable.

Having carefully considered the evidence, including that relating to Mr Wong's meetings with Mr Clements, Ms Wang and the Emperor's Garden putative donors (considered in the previous chapter and the following two chapters), the Commission is satisfied to the requisite standard that:

- in the wake of Mr Liao's death, someone from Wu International, most likely Mr Wood, informed Mr Wong of the circumstances of Mr Liao's death, including furnishing details of the notes that Mr Liao left behind
- by at least 27 June 2018, Mr Wong knew that the NSWEC had referred the investigation of this matter to this Commission
- armed with that information, it was Mr Wong's idea that arrangements be made for Mr Tong to be brought to him for a meeting
- Mr Wong's purpose in initiating the meeting with Mr Tong was to discuss with him investigations, most likely by this Commission, into the 2015 CFOL dinner
- Mr Wood directed Mr Zhan to take Mr Tong to meet with Mr Wong in September 2018
- on 14 September 2018, Mr Zhan did as instructed by Mr Wood and contacted Mr Tong and told him that Mr Wong wanted to meet with him in Chatswood for yum cha

- Mr Tong was surprised at Mr Zhan's telephone call and did not know why Mr Wong would want to meet with him
- Mr Wong, through Mr Zhan, deliberately changed the location of the meeting with Mr Tong so that it took place in his office in Parliament House rather than in Chatswood
- Mr Zhan accompanied Mr Tong on 17 September 2018 to the meeting with Mr Wong at Parliament House.

What happened at the meeting?

Mr Tong gave evidence that, on 17 September 2018, Mr Zhan picked him up from his home and drove him to the Sydney CBD. On Mr Tong's account, they parked at World Square and walked together to Parliament House. Mr Zhan agreed that he drove Mr Tong to the Sydney CBD and they parked at World Square, but he said they took a taxi to Parliament House.

Mr Tong said that, during the drive to the city, he asked Mr Zhan why Mr Wong wanted to see him and Mr Zhan replied that he did not know. Mr Tong said he asked why Mr Liao had committed suicide. In response to that question, on Mr Tong's account, Mr Zhan said "something about he was being asked to provide some information to the government, but he said he wasn't too sure".

Mr Zhan said that, during the drive to the city, he and Mr Tong discussed "extensively" the death of Mr Liao. The Commission accepts that Mr Tong was made aware, en route to the Parliament House meeting, that Mr Liao had taken his own life for reasons associated with a request that he provide a government body with information.

Mr Tong and Mr Zhan agree that they entered the Macquarie Street security gate at Parliament House together and were signed in by Mr Wong. That is confirmed by the Parliament House visitor register for 17 September 2018. While the visitor register did not record the time of day that they were signed in, it must have been before the next visitor, who was signed in at 4.55 pm. The Tong File Note indicates that the Parliament House Meeting had concluded by about 5 pm.

Mr Tong and Mr Zhan also agree that Mr Wong was waiting for them at the security gate when they arrived at Parliament House. Mr Tong said that it appeared that Mr Wong knew that Mr Zhan would be there and, from the way they spoke, he understood that Mr Wong and Mr Zhan knew each other well.

Mr Tong gave evidence that Mr Wong escorted them to his office. Asked what happened when they arrived at

Mr Wong's office, Mr Tong replied with the assistance of an interpreter:

So, there are two parts to his office. When we first got there, there was, we were greeted by a man, was quite senior, and we were told that man was Mr Wong's secretary. Then we went, then we went further in, inwards, to his office, and, and that's where his office is. And so Ernest Wong closed the door, but when we were starting to speak, they took away my, my mobile, and also Kenny's mobile.

Mr Tong was asked to clarify that evidence. He said that he, Mr Wong and Mr Zhan sat down at Mr Wong's desk and Mr Wong asked for Mr Tong's mobile telephone and Mr Zhan's mobile telephone. Mr Tong said that he and Mr Zhan both handed their telephones to Mr Wong, who put them into a drawer. Mr Zhan confirmed Mr Tong's account and agreed that he gave his mobile telephone to Mr Wong, who put it in a drawer and returned it to Mr Zhan at the end of the meeting.

Mr Tong said that, when Mr Wong put their mobile telephones in the drawer, he thought Mr Wong was concerned that he or Mr Zhan could be recording the conversation. That is why, after the meeting, Mr Tong wrote down a record of what had happened in the meeting. That record became the Tong File Note.

Mr Wong accepted that he met with Mr Tong at Parliament House in September 2018 and that Mr Zhan was present during the meeting. However, Mr Wong rejected the proposition that he confiscated the telephones of Mr Tong and Mr Zhan at the start of the meeting and put them in a drawer. It was put to Mr Wong that he confiscated their telephones because he was concerned that what was about to happen in the meeting may implicate him. Mr Wong denied that proposition.

Having weighed the evidence, the Commission rejects Mr Wong's denial and accepts the evidence of Mr Tong and Mr Zhan on this issue, and is satisfied that Mr Wong did confiscate their mobile telephones and put them away in a drawer at the start of the Parliament House meeting.

That finding is consistent with Mr Clements' evidence that Mr Wong:

- sought to push Mr Clements' mobile telephone away during a meeting at a café on 27 June 2018 (three days after Mr Liao's death) at which Mr Wong has admitted to having told Mr Clements that the NSWEC investigation had been referred to this Commission
- suggested that Mr Clements leave his mobile telephone upstairs (at the offices of the Australian Guangdong Chamber of Commerce) when they left to go downstairs for coffee on

3 January 2019, whereupon Mr Wong asked Mr Clements if he had heard from or spoken to this Commission.

The circumstances of those meetings, and others, are considered in chapter 23.

That Mr Wong confiscated the mobile telephones of Mr Tong and Mr Zhan gives rise to an inference that he did so because he anticipated that the conversation to follow would implicate him and he was trying to protect against the risk that Mr Tong (in particular) might record what was said. The Commission is satisfied that the evidence supports such an inference.

Mr Wong's conduct and state of mind with respect to the confiscation of the mobile telephones of Mr Tong and Mr Zhan further assists in understanding why Mr Wong directed, in the lead up to the Parliament House meeting, that the location be changed from Chatswood to his office at Parliament House, where security is robust and visitors are screened by metal detectors.

Mr Wong gave evidence that he chose his office for the meeting because that is where he ordinarily meets constituents. The Commission does not accept that evidence. Mr Tong was not a constituent of Mr Wong's.

Counsel Assisting submitted that the Commission should find that it was no accident that Mr Wong chose Parliament House as the location for his meeting with Mr Tong. Rather, the submission is made, the Commission would find that it was chosen so as to assist Mr Wong in using the prestige of his office to pressure Mr Tong to lie. The Commission accepts that submission, noting Mr Tong's evidence above that he felt it would be impolite to refuse Mr Wong's request to meet in circumstances where Mr Wong was "a government official" and his evidence below as to what was said during the meeting.

The Commission is also satisfied that Mr Wong's furtive conduct with respect to mobile telephones, and the evidence set out below, as to what was said during the Parliament House meeting, suggests that Mr Wong may have also had a practical reason for changing the location of that meeting to his parliamentary office; that is, to ensure Mr Tong, in particular, would be screened by Parliament House security and thereby further guard against the risk that Mr Tong might record the Parliament House meeting.

Mr Tong gave evidence that, after Mr Wong had confiscated their mobile telephones, the following matters were discussed:

- Mr Wong enquired, as an introductory matter, after Mr Tong's health

- Mr Wong then asked Mr Tong if anyone from the electoral office had been calling him, in response to which Mr Tong said, "No, they haven't been calling me and they haven't been sending me any letters"
- Mr Wong said, "Quite well, maybe this matter is over". Mr Tong responded in the following way:

*And I said, "I hope so." And I said to him, "I don't wish to be involved in any of your matter."
And I said, "The whole thing was done without my knowledge, it was done by the company, Wu's International. They used my name to make a donation. I only know about it when I received an invoice from the Labor Party." And I said to him, "I hope I will not be involved furthermore in this matter of donations."*

- after Mr Tong aired his grievance, Mr Wong said:

"That's fine. If anything happens in the future you just stick with the thing that you had said earlier in the company." He said, "The company [Wu International] will hire a lawyer to deal with the matter for you."
- Mr Tong told Mr Wong that he was very angry because "they" (Wu International) had used his name to make donations, which Mr Wong did not respond to. Mr Wong said, "Just say whatever you told the electoral office in the past".

Mr Tong clarified that his evidence, that Mr Wong said that he should stick with what he had said "earlier in the company", was a reference to what he had previously said to the electoral office in accordance with what Mr Liao had asked Mr Tong to say. He explained:

To me, he asked me to continue to say what Dr Liao had asked me to say, but of course what Dr Liao had asked me to do was very clear, he was telling me not to tell the truth, to continue with the lying of telling lies, but of course what Mr Wong was telling me at the time wasn't so clear or straightforward, he wasn't so obvious in that he didn't ask me to tell, to telling lies.

Mr Tong said that the meeting lasted about half an hour and that Mr Zhan was present and seated beside him throughout. He said that Mr Zhan appeared to be listening but did not say much.

Mr Tong was shown the Tong File Note. He agreed that it was an accurate record of what was said and done during the Parliament House meeting. He stated that he created that note on the evening of 17 September 2018 and that he did so because Mr Wong had confiscated their mobile telephones and Mr Tong "had a feeling that something would happen in the future".

While it does not refer to Mr Wong's confiscation of mobile telephones (a fact that is independently corroborated by Mr Zhan and supported by circumstantial evidence), the Tong File Note sets out what was said during the Parliament House meeting in four numbered bullet points and is essentially consistent with Mr Tong's evidence as to those matters.

The only additional nuance to be gleaned from the Tong File Note is that Mr Tong told Mr Wong that he had "kept his mouth [shut]" when he still worked at Wu International because he would have lost his job if he told the truth to the electoral authorities. It was in response to that statement, according to the Tong File Note, that Mr Wong told Mr Tong that if the electoral authorities contacted him again he "should keep the same don't say anything" and tell Wu International so they can arrange a lawyer.

Mr Zhan gave evidence that the Parliament House meeting was conducted in Cantonese. On the first occasion that Mr Zhan gave evidence, which was after Mr Wong had given initial evidence on this issue but before Mr Tong had done so, he was guarded and less than forthcoming. Mr Wong had given evidence earlier that he thought Mr Zhan was not present during the whole meeting and had "left the room for certain things".

On the first occasion he gave evidence to the Commission, Mr Zhan said that he had not paid attention to the substance of the conversation between Mr Wong and Mr Tong, which was private. He said he could not recall mention of donations or Mr Wong telling Mr Tong to keep his mouth shut, but he agreed it could have been said because he was not paying attention. He sought to explain his lack of attention by reference to playing with his mobile telephone (evidence he later retracted, as set out above). Asked if he was present for the whole meeting, Mr Zhan said he could not recall if he excused himself to go to the bathroom.

On 4 October 2019, when Mr Zhan gave evidence on the second occasion, he gave what appeared to be a full and frank account of the Parliament House meeting. As reported above, he also produced to the Commission a copy of an email he received from Mr Tong on 18 September 2018, attaching for his benefit a copy of the Tong File Note.

On 4 October, Mr Zhan was shown the Tong File Note. He confirmed that he received a copy of that document from Mr Tong by email on 18 September 2018. He agreed that the Tong File Note was "mostly accurate" in setting out what had happened during the Parliament House meeting. Asked if the four numbered paragraphs accurately set out what was said in Mr Wong's office on 17 September 2018, Mr Zhan replied, "I basically agree to it".

Mr Zhan also said that, having thought hard about it, he was present in Mr Wong's office for the entire meeting and did not excuse himself to go to the bathroom. He agreed that he could hear the conversation between Mr Wong and Mr Tong. He gave evidence that he heard enough of the conversation that, when he received the Tong File Note, his impression was that what was set out in the note matched what had happened during the meeting.

Mr Zhan was asked whether, after the Parliament House meeting, he reported back to Mr Wood as to what had happened between Mr Tong and Mr Wong during that meeting. Mr Zhan answered:

I have mentioned it to Alex [Wood] after the email. He came to my computer and read it. And then he didn't say anything afterwards, so I just, there was no more discussion, I just left it there.

He confirmed that he was referring to Mr Tong's email of 18 September 2018 (which attached the Tong File Note). Mr Zhan said he did not forward that email to Mr Wood.

During the public inquiry, Mr Wood was shown the email that Mr Tong sent to Mr Zhan on 18 September 2018 and the attached Tong File Note. He denied that Mr Zhan showed that email to him in September 2018 and maintained that he had never seen it before. The Commission does not accept Mr Wood's evidence on that issue, particularly in circumstances where Mr Wood was the person who directed Mr Zhan to take Mr Tong to meet with Mr Wong. The Commission accepts Mr Zhan's evidence that he showed that email to Mr Wood on, or about, the date he received it.

That Mr Wood was aware of the Tong File Note, and Mr Tong's email to Mr Zhan on 18 September 2018, would also be consistent with Mr Wood's conduct regarding his subsequent meeting with Mr Tong in November 2018. Evidence in relation to that meeting is surveyed in chapter 23.

On 2 September 2019, before Mr Tong or Mr Zhan had given evidence on this issue, Mr Wong agreed that the following occurred during the Parliament House meeting:

- Mr Wong asked after Mr Tong's health; in turn, Mr Tong thanked him
- Mr Wong asked Mr Tong whether anyone from the NSWEC had asked to meet him, in response to which Mr Tong said no, they had not
- Mr Wong said, "That's good, the thing is maybe over"
- Mr Tong probably said that he never donated any money and he didn't know about it until he was sent a tax invoice from the Labor Party

- Mr Tong mentioned a lot of things that he was not happy about with regard to Wu International, one of which was probably that they had used his name to donate money without telling him or getting his agreement.
- Mr Tong also said that he was not the actual one who paid for that particular donation and that Mr Liao and Alex Wu (Mr Wood) asked him to fill in the form.

On 2 September 2019, Mr Wong disputed the proposition that Mr Tong had told him during the meeting that he had kept his mouth shut about the donation matter when he was still working for Wu International. Mr Wong also rejected the proposition that he told Mr Tong that he should continue to keep his mouth shut about the matters discussed in the meeting. Mr Wong's evidence was:

I just ask him, "If you are sure it's not your money, then tell them. But if it's your money, then you have to make sure that you, that's something that you would tell them as well." I just want him to insist on whatever that he himself thinks is the truth of it.

The Commission does not accept that Mr Wong encouraged Mr Tong to tell the truth to those investigating these matters. The evidence of Mr Tong, corroborated by Mr Zhan and supported by the contemporaneous Tong File Note, indicates that Mr Wong did precisely the opposite.

Mr Wong's evidence was that he suspected that Mr Tong was unhappy with Wu International because he had been fired and that his allegations may have been motivated by retaliation. Mr Wong explained that that was the reason that he did not act on Mr Tong's allegations or draw them to the attention of the NSWEC.

There is, however, no evidence whatsoever to suggest that Mr Tong was fired from Wu International. To the contrary, the evidence from both Mr Tong and his former employer, Mr Wood, is that Mr Tong retired from Wu International in mid-2016. The Commission rejects Mr Wong's evidence that he suspected that Mr Tong was motivated by retaliation and is satisfied that that suspicion formed no part of Mr Wong's thought process.

On 11 December 2019, Mr Wong was shown a copy of the Tong File Note. On that occasion, Mr Wong again denied telling Mr Tong not to say anything. But he also rejected the substance of the second numbered bullet point, to the effect that Mr Tong told Mr Wong that he had not donated \$5,000 and that Wu International had used his name to donate that sum to the Labor Party. Mr Wong insisted that Mr Tong did not once mention during the whole conversation that he had not donated any money. This evidence is in striking contrast to

Mr Wong's own prior evidence on 2 September 2019, set out above, where he agreed that Mr Tong had made such statements.

On 16 and 20 November 2018, nine weeks after the Parliament House meeting, Mr Wong gave evidence to the Commission in a compulsory examination. During the public inquiry, Mr Wong accepted that he did not tell the Commission in his compulsory examination in November 2018 about his recent meeting with Mr Tong at Parliament House.

Asked if he agreed that the Parliament House meeting would have been of interest to the Commission, Mr Wong replied, "not in my recollection that I had that sort of mind, mindset though". Mr Wong rejected the contention that he deliberately chose not to tell the Commission about the Parliament House meeting because he thought doing so may tend to implicate him. His answer was that, "it just did not come across my mind at all".

That response is difficult to comprehend in circumstances where the substance of the allegation being investigated by the Commission was set out clearly on the face of Mr Wong's compulsory examination summons. The scope of the examination also made it abundantly clear to Mr Wong that the Commission was investigating fraudulent donations in connection with the 2015 CFOL dinner.

However, the problems with Mr Wong's compulsory examination evidence are more serious when consideration is given to the answers that Mr Wong gave about Mr Tong. An excerpt of the transcript detailing those answers was tendered in the public inquiry. During his compulsory examination, Mr Wong was shown the pre-filled invitation/reservation form completed by Mr Tong and was asked:

[Mr Johnston]: *Can you see that this is a reservation form completed in the name of Steve Tong?*

[Mr Wong]: *Yep.*

[Q]: *Do you know Steve Tong?*

[A]: *I'm not sure if that is, that person that I am, I, I am sort of like recollecting.*

[Q]: *Who are you recollecting?*

[A]: *Another Steve but I can't remember his surname quite well. Yeah, but he works in, in Emperor's Garden.*

[Q]: *What's his job in Emperor's Garden?*

[A]: *He's a waiter. He's a, a head waiter or manager.*

[Q]: *And his first name is Steve?*

[A]: *Steve, yes. That's what we usually call him. I'm, I'm not sure. I'm, I'm, I can't say that would exactly be that one but that's only one that I can think of but, you know.*

In circumstances where Mr Wong had met with Mr Tong in his office at Parliament House just nine weeks previously, it is not believable that Mr Wong did not recall who Mr Tong was when he gave evidence in his compulsory examination. That is particularly the case when it is appreciated that those questions were put in connection with Mr Wong being shown Mr Tong's signed (and backdated) donor declaration form, which Mr Wong had himself procured, through Mr Liao, on 31 March 2015. Added to that, Mr Wong had forwarded Mr Tong's form to Mr Cheah on 17 April 2015 for the purposes of the switcheroo.

Evidence tendered in the public inquiry included a note retrieved from Mr Wong's mobile telephone, which was created at 9.55 am on 17 November 2018; that is, it was created the morning after Mr Wong's first day giving evidence in the compulsory examination. The note set out details of the donations and issues that were the subject of the Commission's investigation (chapter 23).

For present purposes, it suffices to observe that the note on Mr Wong's telephone listed the 12 putative donors and the sums of money that they had each purported to have donated. The fake donors were organised in two groups. "Steve Tong 5000" and "Leo 5000" were set out at the top of the note, quite separate from the other putative donors, who all have links with the Emperor's Garden. This suggests that Mr Wong knew, on 17 November 2018, just three days before the evidence above, that Mr Tong was associated with Mr Liao and not with the Emperor's Garden.

The Commission finds that Mr Wong's evidence, that he thought Mr Tong to be a waiter at the Emperor's Garden, was knowingly false and that Mr Wong gave that answer in a deliberate attempt to keep the Commission from drawing connections between Mr Tong and the likes of Mr Liao, Wu International and, indeed, himself.

The Commission has carefully weighed all the evidence and accepts the evidence of Mr Tong, which is supported by the Tong File Note and corroborated by Mr Zhan, as to what was said and done during the Parliament House meeting on 17 September 2018. Accordingly, the Commission finds that:

- having arranged for Mr Tong to be brought to Parliament House, Mr Wong waited for him and Mr Zhan at the security checkpoint and signed them in
- upon entering his office, Mr Wong confiscated the mobile telephones belonging to Mr Tong and Mr Zhan and placed them in a drawer
- Mr Wong then asked Mr Tong if anyone from the electoral office had been calling him, in response to which Mr Tong said no, they had not
- Mr Wong said words to the effect of, "Good, maybe this matter is over"
- Mr Tong told Mr Wong that he did not wish to be involved in this matter, he had not donated \$5,000 to the Labor Party, and that Wu International had fraudulently used his name to make the donation without his consent
- Mr Tong told Mr Wong that he had kept his mouth shut about the donation matter when he still worked at Wu International for fear that he would lose his job if he told the truth to the electoral authorities
- Mr Wong told Mr Tong to keep silent and that if anything happened in the future Mr Tong should continue to say whatever he had told the electoral office in the past.

The Parliament House meeting on 17 September 2018 was not the last attempt to influence what Mr Tong might say to those investigating the \$100k cash donation in connection with the 2015 CFOL dinner. Chapter 23 includes a survey of evidence relating to Mr Wood's meeting with Mr Tong in November 2018 and Mr Wong's attempt to arrange a further meeting with Mr Tong in January 2019.

Did Mr Wong engage in corrupt conduct?

Although the impetus for this investigation was the referral from the NSWEC under s 13A of the ICAC Act, the Commission retains the power to investigate conduct that may amount to "corrupt conduct" whether or not that conduct has been referred to the Commission for investigation under s 13A of the ICAC Act: s 13A(4).

For the purposes of the ICAC Act, "corrupt conduct" is any conduct which falls within the description in s 8, but which is not excluded by s 9. The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report. In summary:

- the Commission makes findings of relevant facts on the balance of probabilities having due regard

- to the gravity of the consequences that may flow from such findings, including reputational damage
- the Commission then determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act
- if they do, the Commission turns to a consideration of s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A)
- in the case of subsection 9(1)(a) of the ICAC Act, the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a criminal offence
- the Commission then considers whether, for the purposes of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

Mr Wong was a member of the NSW Legislative Council from May 2013 until his endorsement was withdrawn by NSW Labor and he left politics in March 2019. He was a public official at the time of the 2015 CFOL dinner and remained a public official until five months before the Commission's public inquiry commenced. For the purposes of s 8(1)(c) of the ICAC Act, Mr Wong was, at all relevant times, a public official or former public official. In this investigation, Mr Wong is the only public official involved in the conduct under investigation.

In chapter 14, the Commission made findings that Mr Wong entered into, and carried out, a scheme for the purpose of circumventing the requirements in s 88(1) and s 88(2) of the EFED Act (read with s 92(2)) to the effect that the true source of the \$100k cash donation had to be disclosed to the NSWEC. The evidence set out in part 2 of this report establishes that Mr Wong used the privileges to which he had access by virtue of his office (such as access to an office in Parliament House and to publicly funded resources such as scanning machines and an email address) as part of the unlawful scheme.

The Commission has made further findings in this chapter that Mr Wong met with Mr Tong in his office at Parliament House on 17 September 2018 during which he sought to pressure Mr Tong to keep silent and, if Mr Tong was contacted again in relation to the donation matter, to continue to say whatever he had told the electoral office in the past.

The Commission finds that Mr Wong deliberately chose Parliament House as the location for that meeting in order to:

- assist Mr Wong in using the prestige of his office to pressure Mr Tong to lie
- ensure that Mr Tong would be screened by Parliament House security and thereby further guard against the risk that Mr Tong might record the Parliament House meeting.

Counsel Assisting submitted that Mr Wong's conduct in this regard amounts to a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act. Section 8(1)(c) relevantly provides that corrupt conduct includes "any conduct of a public official or former public official that constitutes or involves a breach of public trust".

Counsel Assisting submitted that it was a breach of public trust for Mr Wong to use privileges afforded to him by virtue of his office as a member of the Legislative Council for the purposes of carrying out an unlawful scheme to circumvent the requirements of the EFED Act and for the purposes of influencing investigations into whether such a scheme existed.

Submissions were received on behalf of Mr Wong on this issue. In relation to Mr Wong's involvement in the scheme to circumvent the EFED Act, those submissions contend that:

- to the extent that Mr Wong may have carried out such a scheme, he did so not in his capacity as a member of the Legislative Council but rather from his position within the Labor Party, whose interest he was seeking to advance
- any breach of trust arising from Mr Wong's use of parliamentary emails and scanners to carry out the scheme is limited to a misuse of parliamentary resources incapable of constituting a criminal offence for the purposes of s 9 of the ICAC Act.

In respect of the Parliament House meeting with Mr Tong, the submissions for Mr Wong contend that the findings necessary for corrupt conduct to be established are not available on the evidence. The Commission has carefully considered the evidence above and rejects that submission. The submission is then made for Mr Wong that, even if those findings were available, any breach of trust could only be the misuse by Mr Wong of his parliamentary office and would therefore be incapable of constituting corrupt conduct by reason of s 9 of the ICAC Act.

Counsel Assisting submitted that the concept of "public trust" is one that has considerable historical pedigree and may fairly be described as having "partially unmapped boundaries": *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125 at 184C. It may be constituted by what might broadly be described as "abuse of office".

Paul Finn cites the example of the United States case of *State v Gleitsmann* 161 A.2d 747 (N.J.Super.A.D. 1960).³ That case considered a police officer indicted for making a telephone call from a police station to arrange an appointment not for police business and using an official police car to drive to another location for his personal affairs. That conduct was held to be capable of constituting criminal misconduct in public office. Although not binding, the decision offers guidance for the scope of duties of public officials, the breach of which may constitute a breach of public trust. It affirms the duty of a public official to refrain from using public property for private purposes.

A parliamentary office is a venue that carries with it an implication of power, authority and integrity. It is associated with the institution of Parliament, which members of Parliament have committed to respect. The allocation of a parliamentary office to a member of Parliament is a privilege, which attaches to that official position and which is protected by security and can be used with confidentiality.

The evidence establishes that Mr Wong used the resources of his parliamentary office to conduct overt acts going to the heart of the scheme to circumvent the requirements of the EFED Act.

For example, Mr Wong used his office scanner on 30 March 2015 to create the pre-filled invitation/reservation form, featuring his handwritten figure of \$5,000, and the strikethrough of non-cash payment options. Mr Wong then sent that document to each of Jonathan Yee and Mr Liao by way of his parliamentary email, those emails featuring Mr Wong's official signature block identifying him as "Hon. Ernest Wong Member of NSW Legislative Council". Those emails carried implications of power, authority and integrity associated with Mr Wong's office.

Having received Mr Wong's emails on 30 March 2015, and in accordance with Mr Wong's instructions, Mr Liao and Jonathan Yee then caused each of the 12 putative donors to complete and sign copies of the pre-filled invitation/reservation form, falsely stating that they had donated sums of \$5,000 in connection with the 2015 CFOL dinner.

Insofar as the Parliament House meeting with Mr Tong is concerned, the evidence is that Mr Wong deliberately changed the location of the meeting from Chatswood to his office at Parliament House. The Commission has found that he did so in order to use the power and

authority of his office to influence what Mr Tong might say to those investigating the 2015 CFOL dinner and minimise the risk that Mr Tong might record what was said during the meeting. In doing that, Mr Wong abused the privileges of power, security and confidentiality associated with his office.

Having considered these matters, the Commission accepts the submission of Counsel Assisting that Mr Wong's misuse of privileges and resources attached to his office, in carrying out an unlawful scheme and attempting to procure or encourage Mr Tong to lie to investigatory authorities, amounts to a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act.

For the purpose of s 9(1)(a) of the ICAC Act, Mr Wong's conduct could constitute or involve:

- an offence of entering into or carrying out a scheme for the purpose of circumventing a prohibition or requirement of Part 6 of the EFED Act in contravention of s 96HB of the Act, namely the requirements in s 88(1) and s 88(2) of the Act (read with s 92(2)) to the effect that the true source of a "reportable political donation" received or made must be disclosed to the NSWEC
- an offence of attempting to hinder an investigation under s 315 of the Crimes Act, in relation to his meeting with Mr Tong on 17 September 2018.

The evidentiary basis for the s 96HB EFED Act offence is set out in detail in chapter 14.

A person commits an offence against s 315 of the Crimes Act if they do anything intending in any way to hinder the investigation of a serious indictable offence committed by another person. The scheme offence contrary to s 96HB of the EFED Act is a serious indictable offence. Admissible evidence that would be available to prove that Mr Wong may have committed such an offence is detailed below in a statement pursuant to s 74A(2) of the ICAC Act.

The Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act have been met.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Wong's conduct is serious corrupt conduct. In this respect, it is important to note that Mr Wong was a member of the NSW Legislative Council at the time that he engaged in the relevant conduct. The more senior the public official, the greater the level of public trust in their position and the more onerous the duty involved. There is authority that (*R v Obeid (No 12)* [2016] NSWSC 1815 at [79]):

³ P Finn, "The Forgotten 'Trust': The People and the State" in Cope (ed), *Equity: Issues and Trends*, 1995, pp 132-135.

...under this State's constitutional arrangements, and leaving aside the third arm of government, only Ministers occupy a more senior position than that occupied by parliamentarians.

The seriousness of Mr Wong's conduct is not to be understated. It was directed towards undermining the EFED Act and the democratic process, which that legislation was enacted to protect. It was directed towards interfering with the evidence that a witness might give to investigating authorities examining such conduct. The seriousness of those matters is illustrated by the maximum penalties for the relevant offences. The scheme offence against s 96HB of the EFED Act is punishable by imprisonment of up to 10 years. An attempt to hinder an investigation against s 315 of the Crimes Act is punishable by imprisonment of up to seven years. These are very serious matters indeed.

Section 74A(2) statement

The Commission is satisfied that Mr Wong is an "affected person" with respect to the matters dealt with in this chapter.

Ernest Wong – attempt to hinder an investigation

Counsel Assisting submitted that the Commission should state that it is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to Mr Wong's conduct in relation to his meeting with Mr Tong at Parliament House on 17 September 2018 for offences of attempting to pervert the course of justice in contravention of s 319 of the Crimes Act and/or attempting to hinder an investigation in contravention of s 315 of the Crimes Act.

The availability of those two offences, in the context of investigations by the NSWEC and this Commission, is considered in chapter 17.

Although the evidence shows that Mr Wong knew, at the time that he arranged the Parliament House meeting with Mr Tong, that the NSWEC investigation had been effectively escalated by virtue of its referral to this Commission, the Commission is not satisfied that an inference can properly be drawn that Mr Wong's underlying purpose in meeting with Mr Tong was to deflect that investigation so as to prevent criminal proceedings being commenced or to pervert such proceedings if commenced. Alternate inferences are available as to why Mr Wong sought to interfere with the investigation. Those alternatives are noted in chapter 20. The Commission is not satisfied that the available evidence supports the referral of Mr Wong to the DPP for

consideration of an offence of attempting to pervert the course of justice contrary to s 319 of the Crimes Act.

The Commission is of the opinion, however, that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong, in connection with his meeting with Mr Tong at Parliament House on 17 September 2018, for an offence of hindering an investigation contrary to s 315 of the Crimes Act.

As noted in previous chapters, a person commits an offence under s 315 of the Crimes Act if they do anything intending in any way to hinder the investigation of a serious indictable offence committed by another person. The scheme offence contrary to s 96HB of the EFED Act is a serious indictable offence.

The key available admissible evidence would include the evidence of Mr Tong and Mr Zhan regarding arrangements for, and what occurred during, the Parliament House meeting. Important documentary evidence that would also be admissible against Mr Wong includes the Parliament House visitor register, the Tong File Note, and the email Mr Tong sent to Mr Zhan on 18 September 2018, attaching the Tong File Note.

Additional evidence, going to Mr Wong's state of mind, would include Mr Clements' evidence regarding his meeting with Mr Wong on 27 June 2018 during which Mr Wong said that the NSWEC investigation had been referred to this Commission. It would also include Jonathan Yee's evidence that Mr Wong asked him to procure "five to ten people" to sign forms falsely stating that they had each donated up to the legal cap of \$5,000 so as to conceal the true source of the donation that Mr Wong had arranged or was intending to arrange. That evidence goes to Mr Wong's awareness that Jonathan Yee and others, including Mr Wong himself, were involved in conduct that may constitute a serious indictable offence.

Evidence regarding other similar meetings that Mr Wong sought out between 2017 and 2019 to discuss investigations into the \$100k cash with persons associated with the scheme (being persons with whom investigators wished to talk) would also potentially be admissible against Mr Wong for offences of hindering an investigation (or similar statutory offences). That includes the evidence set out in chapter 20 and the following chapters of this report.

Ernest Wong – false evidence

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong for an offence of giving false or misleading evidence in contravention of s 87 of the ICAC Act in relation to the evidence he gave

at the compulsory examination on 20 November 2018 to the effect that he thought Mr Tong was a head waiter or manager at the Emperor's Garden restaurant.

Being an offence against the ICAC Act, Mr Wong's own evidence would be admissible against him in any prosecution that may be brought. That would include Mr Wong's admissions in relation to his meeting with Mr Tong at Parliament House on 17 September 2018. The evidence of Mr Tong and Mr Zhan in relation to that meeting would also be available, as would documentary evidence including the note created on Mr Wong's mobile telephone on 17 November 2018, the Tong File Note and the Parliament House visitor register.

Mr Wong's parliamentary email records, which establish that he procured Mr Tong's donor declaration form in March 2015 and forwarded it to Mr Cheah for the purposes of the switcheroo in April 2015, would also be available. As would Mr Wong's admissions in the public inquiry; that it was Mr Tong who he had in mind when he told Ms Murnain on 16 September 2016 that there was a donor from 2015 who had not donated the money that they had declared that they had.

Mr Zhan's evidence, which is considered in the following chapter, that Mr Wong contacted him in early January 2019 in an attempt to arrange a further meeting with Mr Tong, would also be available and shows that Mr Wong knew who Mr Tong was a matter of weeks after Mr Wong's compulsory examination in late November 2018.

Ernest Wong – scheme offence

A separate statement pursuant to s 74A(2) of the ICAC Act is made in chapter 14 regarding Mr Wong's involvement in a scheme to circumvent requirements of Part 6 of the EFED Act in contravention of s 96HB of the Act. The evidence set out in this chapter, relating to Mr Wong's meeting at Parliament House with Mr Tong on 17 September 2018, other than the evidence given by Mr Wong himself, would also be relevant and admissible to prove Mr Wong's ongoing course of conduct with respect to that scheme offence.

Chapter 23: Attempts to influence the Commission's compulsory examinations

On 15 January 2018, the NSWEC referred its investigation into the \$100k cash, received by NSW Labor and Country Labor in connection with the 2015 CFOL dinner, to this Commission pursuant to s 13A(2) of the ICAC Act. On 25 May 2018, the Commission conducted the first compulsory examinations in this matter; those being the examinations of Mr Cheah and Mr Clements.

The evidence before the Commission demonstrates that, from the point at which the Commission commenced its compulsory examinations, up until (and, indeed, during the pendency of) the public inquiry, Mr Wong and Jonathan Yee acted in concert to monitor and influence the Commission's investigation of this matter with a view to concealing the falsity of the donor declarations made by each of the putative donors. The evidence suggests that each of Mr Wong and Jonathan Yee engaged in numerous acts, over an extended period, in carrying out that course of conduct.

This chapter sets out the evidence relating to attempts to monitor and influence the Commission's compulsory examinations. The first part of this chapter focuses on steps taken to influence the evidence that the Emperor's Garden putative donors would give to this Commission in their compulsory examinations. Many of those steps were taken by Jonathan Yee. The rest of the chapter examines evidence in relation to a series of meetings that Mr Wong sought, arranged or conducted with persons of interest to this Commission. During those meetings, the Commission's investigation was discussed and, in some cases, attempts were made to influence the evidence that those persons would give to the Commission.

The next chapter examines evidence of similar attempts to influence the Commission's public inquiry.

Attempts to influence the Emperor's Garden putative donors

The evidence surveyed previously in this report establishes that:

- the \$100k cash was not donated by the 12 putative donors; rather, the true source of that money was Mr Huang
- Mr Wong asked Jonathan Yee to procure "five to 10 people" to sign forms, falsely stating that they had each donated up to the legal cap of \$5,000 so as to conceal the true source of the donation that Mr Wong would arrange
- Jonathan Yee agreed to Mr Wong's request, which he understood amounted to a fraudulent scheme to defeat electoral laws
- pursuant to that agreement, Jonathan Yee procured fraudulent donor declaration forms from each of the Emperor's Garden putative donors
- Mr Wong and Jonathan Yee together concocted, and furnished to the Emperor's Garden putative donors, a false cover story, the details of which the Emperor's Garden putative donors fed to the NSWEC in response to its enquiries
- features of the false cover story included that the putative donors donated parcels of \$5,000 in support of Mr Wong, which they handed to Jonathan Yee in cash, comprising \$100 notes and sourced from "lucky money" and "red packets".

During the public inquiry, Jonathan Yee admitted that he "worked with each and every one of the fake donors" who he had arranged "with a view to [them] trotting out that story that [he] and Mr Wong had invented" to the NSWEC.

Between June 2018 and June 2019, the Commission issued summonses pursuant to s 35 of the ICAC Act to each of the natural person putative donors, and conducted compulsory examinations of them. The Commission could not examine Mr Liao, who died the night before his scheduled compulsory examination. Some of the putative donors gave evidence on multiple occasions.

Each of the Emperor's Garden putative donors gave false evidence to the Commission in their compulsory examinations. Without exception, that false evidence featured details of the false cover story that had been concocted by Mr Wong and Jonathan Yee. Each of the Emperor's Garden putative donors admitted in the public inquiry that the evidence they gave in their compulsory examination(s) was false. Those admissions are set out in chapter 11.

During the public inquiry, Jonathan Yee admitted that he had been involved in a serious cover-up of a scheme to circumvent NSW electoral law. On this issue, he gave the following evidence:

[Counsel Assisting]: *You at least now accept that you've been involved in a serious cover-up?*

[Jonathan Yee]: *Very serious.*

[Q]: *A cover-up of a crime, correct?*

[A]: *That's correct.*

[Q]: *A cover-up of a scheme to circumvent New South Wales electoral law, correct?*

[A]: *Yes.*

[Q]: *As part of that cover-up, you have sought to deflect the New South Wales Electoral Commission in its investigations, correct?*

[A]: *Correct.*

[Q]: *You've sought to deflect this Commission in its investigations, correct?*

[A]: *That's correct.*

[Q]: *And you've sought to do that directly in the evidence that you've given but you've also sought to do it indirectly through the various fake donors that you and I have discussed, correct?*

[A]: *Yes.*

[Q]: *As part of that exercise, you have procured people to give false evidence to this Commission. Do you agree?*

[A]: *That's correct.*

Jonathan Yee further admitted that he worked hard to "stage-manage" the evidence that each of the Emperor's Garden putative donors gave throughout the investigations by the NSWEC and this Commission. These admissions go to Jonathan Yee's personal culpability in connection with the scheme and the associated cover-up and are quintessentially against self-interest. They are also consistent with the evidence of Valentine Yee, who said that Jonathan Yee indicated to him that he was working with Mr Wong to achieve a coordinated cover-up in relation to the donation scheme.

The particular evidence, as to how each of the Emperor's Garden putative donors came to give false evidence to the Commission consistent with the false cover story concocted by Mr Wong and Jonathan Yee, is set out below. That evidence suggests that a number of people may have engaged in conduct amounting to offences

under the ICAC Act, including in contravention of s 89 (procuring false testimony by witness), s 112 (restriction on publication of evidence) and s 114 (disclosures prejudicing investigations). Statements pursuant to s 74A(2) of the ICAC Act regarding such matters can be found towards the end of this chapter.

Valentine Yee and May Ho Yee

During the public inquiry, Valentine Yee gave evidence that Jonathan Yee had admitted to him that he had asked employees of the Emperor's Garden to falsely sign declarations that they had donated money in connection with the 2015 CFOL dinner and that he also spoke to them about the evidence they should give to the Commission.

In respect of his own evidence to the Commission in a compulsory examination on 30 January 2019, Valentine Yee said that Jonathan Yee told him that he should say that he had made the \$5,000 donation that he had previously falsely declared and that he could justify it by saying he could afford to donate such a sum. He said that it was Jonathan's idea that Valentine should tell the Commission in his compulsory examination that he had handed over \$5,000 in cash to Jonathan at the dinner and that he received a handwritten receipt on the night. Valentine Yee agreed that the evidence he gave to the Commission to that effect was false.

During the public inquiry, Jonathan Yee gave evidence that Valentine Yee and May Ho Yee each told him that they had received summonses to attend and give evidence at a compulsory examination. Jonathan admitted that he told both Valentine and May Ho to "stick to the story" that they had previously given to the NSWEC. Jonathan said that both Valentine and May Ho reported back to him afterwards to report that they had sought to stick to the false story that he told them to stick to in their compulsory examinations.

May Ho Yee initially gave evidence that she had decided to tell lies in her compulsory examination on 11 December 2018 in an attempt to help her son, Jonathan. She insisted that Jonathan did not tell her what to say. May Ho Yee later revised that evidence in an affidavit that was tendered in evidence. In the affidavit, she explained that she had been scared in the witness box and had reverted to protecting her children. She further stated that:

- when she received her compulsory examination summons, she asked Valentine Yee to help her read it. Valentine told her she could not tell anyone else about it
- a few days before her compulsory examination, she told Jonathan Yee that the Commission required her to give evidence. She stated that they did not further discuss it

- around the same time, she spoke with Valentine, who summarised for her the table of answers that had previously been provided to the NSWEC on her behalf, and that is how she learned what to say at the compulsory examination about donations, red packets and \$100 notes.

There is tension between Jonathan Yee's admission, that he told both Valentine and May Ho to "stick to the story", which they had previously given to the NSWEC, and Ma Ho Yee's statement that Jonathan did not say that to her. In circumstances where May Ho Yee has admitted to giving evidence designed to protect her children, and in particular Jonathan, the Commission accepts Jonathan Yee's admission against self-interest and finds that he did tell his mother to "stick to the story".

Such a finding is not inconsistent with May Ho Yee's evidence, that Valentine Yee explained and summarised for her the table of answers that had been provided to the NSWEC on her behalf. That Valentine assisted his mother in that way would be consistent with his role in preparing that table of answers on her behalf, evidence in relation to which is set out in chapter 17.

In her affidavit, May Ho Yee further stated that, after she gave evidence in her compulsory examination in December 2018, Jonathan Yee approached her at the restaurant and told her that Mr Wong wanted to see her. She went upstairs and met with Mr Wong in a private dining room. On her account, Mr Wong asked her what she had said to the Commission and she told him as much as she could remember of what she had said in the compulsory examination. Having done so, her evidence is that Mr Wong said words to the effect, "You should continue to tell the same story".

Ms Tam

During the public inquiry, Ms Tam said that, after receiving her summons to appear and give evidence at a compulsory examination, she showed it to Jonathan Yee. She said that Jonathan Yee told her "it was a matter of routine ... just an inquiry" and "that the ICAC did not have evidence at that time, and that we should insist that, that we donated, and it was in cash". Asked if Jonathan Yee gave any further guidance as to what she should say in her compulsory examination, Ms Tam replied:

He did say that because I worked as a casual, I did not, I would not have enough money, and therefore my husband's name had to be added. And he also asked if my daughter and, would give us any money, and if so, we should include another family member as well.

Ms Tam admitted that she complied with Jonathan Yee's request and told lies to the Commission in her two compulsory examinations, which were held on

5 December 2018 and 21 January 2019. She said she did so because Jonathan Yee was the boss and there was no other way to explain it, given her previous false declarations, disclosures and statements to the NSWEC.

Ms Tam admitted that her evidence in the compulsory examination, that she and her husband had donated \$10,000 in 2015, was false. Ms Tam said the reason that she told the Commission in her compulsory examination that she had handed two separate sums of \$5,000 to Mr Wong was because she recalled that the letter, which had previously been sent to the NSWEC on her behalf, and which had been prepared by Jonathan Yee, stated that she had donated in support of Mr Wong and she was trying to give an account in her compulsory examination that was consistent with the false version that had previously been given. She explained, “when lie comes after another lie, it’s very hard to remember them”.

Ms Tam admitted that, having given false evidence in her compulsory examination, she told Jonathan Yee that she had done so. She said she told Jonathan Yee that she had told “lie after lie” in the examination and was very scared. On her evidence, Jonathan Yee told her not be scared, just to insist that the donation was hers.

During the public inquiry, Jonathan Yee gave evidence that he stage-managed Ms Tam’s evidence to the NSWEC. He admitted that he and Mr Wong were together involved in manufacturing the false story that Ms Tam’s husband had contributed to the donation, so as to make it appear more likely that Ms Tam could afford the donation. The genesis of that aspect of the false cover story is set out in chapter 16.

Valentine Yee gave evidence that corroborated Ms Tam. He said that Ms Siu and Ms Tam both told him that they were concerned because they had lied about donating money to the Labor Party. He said that Ms Tam told him that she was concerned about “this private inquiry” and words to the effect that Jonathan Yee had told her to say that she had donated the money.

Further evidence was heard in the public inquiry regarding three meetings Mr Wong conducted with Ms Tam in June 2019 in relation to the compulsory examination of Ms Tam’s husband, Ming Tam. That evidence is examined later in this chapter.

Ms Siu

Prior to giving evidence in the public inquiry, Ms Siu provided to the Commission a statutory declaration in relation to matters relevant to this investigation. That document included a statement that:

Summons from ICAC

The next thing that happened was that I received a summons from the ICAC to attend an interview. I read the summons. I spoke to Jonathan about the summons. Jonathan said something like:

Jonathan Yee: “Just follow the letter to say that money was your money”

The statutory declaration went on to state that, accordingly, Ms Siu gave false evidence at her compulsory examination to the effect that she donated \$5,000 to each of NSW Labor and Country Labor.

During the public inquiry, Ms Siu gave evidence that, after receiving her summons to attend the compulsory examination, she told Jonathan Yee about it. She said that Jonathan Yee told her it would be okay for her to tell the Commission the same story that had been given in the letter to NSWEC. He said she should tell the Commission that the money came from “holiday money” and red packets. Ms Siu gave evidence that Jonathan Yee told her that the Commission would believe her because there was no evidence to disprove it.

Ms Siu gave evidence that one of the things that Jonathan Yee told her to tell the Commission was that the donation was paid in \$100 notes. She said that it was her own idea to add detail to the story regarding moving money to her locker at work. She said she thought that would be consistent with what Jonathan Yee had asked her to say.

During the public inquiry, Ms Siu further admitted that, after each of her compulsory examinations on 13 December 2018 and 23 January 2019, Jonathan Yee asked her what had happened at those hearings and she told him. She said that she did that notwithstanding that she understood the directions she had been given to the effect that she was not permitted to do so. She explained she did so because she was scared, Jonathan Yee had told her it would be okay and she thought he might be able to help.

Mr Mo

Mr Mo told the public inquiry that, after receiving his compulsory examination summons on 14 June 2018, he told Jonathan Yee about it. He said he did so because he was afraid. Mr Mo said he contacted Jonathan Yee by telephone. He said that Jonathan Yee informed him that “a couple of people have been already” and told Mr Mo to say to the Commission what he had previously told the NSWEC. Mr Mo understood that to be a reference to the written answers given to the NSWEC in response to the questions asked of him in 2017.

Mr Mo said, in circumstances where he had previously told lies to the NSWEC and was afraid of getting on the

wrong side of the Yee family, he then gave false evidence in his compulsory examinations, on 29 June 2018 and 9 July 2018, to the effect that he had donated money in connection with the 2015 CFOL dinner by giving \$10,000 to Jonathan Yee in cash, which had been saved from red packets.

Mr Shi

Mr Shi attended the Commission for compulsory examinations on four occasions; being 20 December 2018, and 25 January, 22 February and 8 March 2019. On the first occasion, no interpreter was available to assist Mr Shi and he was not asked any questions about his purported donations. He did, however, give evidence in relation to those matters on the other three occasions.

Mr Shi gave evidence consistent with that of Valentine Yee, May Ho Yee, Ms Tam, Ms Siu and Mr Mo to the effect that, on receiving his summons to appear at a compulsory examination, he showed it to Jonathan Yee. Mr Shi said that Jonathan Yee told him, "that it was simply a continuation of what happened with the Electoral Commission last time" and that Mr Shi "will have to explain with reference to what he has written up before". Mr Shi said he understood this to mean that he had to claim to have donated the money while in fact he had not done so.

Mr Shi admitted that he, accordingly, gave false evidence in his compulsory examinations to the effect that he had donated \$10,000 in 2015 and that some of that money was from red packets. He said that Jonathan Yee told him in advance of the hearing that he should tell the Commission about red packets.

At the public inquiry, Mr Shi gave evidence that, after his compulsory examinations, he reported back to Jonathan Yee and told him that he had done as he had been asked and told lies to the Commission. He admitted that one of the details he told Jonathan Yee was that the Commission had questioned him about his income from his activities selling wine.

In addition to reporting back to Jonathan Yee, Mr Shi gave evidence that, one or two days after each of "at least three" of his compulsory examinations, he was approached at the Emperor's Garden restaurant by Mr Wong who "came to speak to me". Mr Shi said that, on each such occasion, he and Mr Wong had discussions in Cantonese at the restaurant. He agreed with the proposition that those discussions occurred in a private dining room. He said that, during those discussions, Mr Wong told Mr Shi that he "must maintain what [he] said before and that it was [his] own donation and nothing will happen". On Mr Shi's evidence, he replied in the following terms, "I simply told him that I had complied with their request and answered accordingly".

On cross-examination by senior counsel for Mr Wong, it was put to Mr Shi that he did have three conversations with Mr Wong about Mr Shi's compulsory examination summons, but that none of them were private meetings. It was further put to Mr Shi that the scope of those conversations was limited to discussions about the fact that Mr Shi had been summoned and Mr Wong's offer to help Mr Shi find a lawyer who could assist him with tax-related matters concerning cash transactions.

Mr Shi rejected those propositions. He accepted that he told Mr Wong, "I need a lawyer who can help me explain about taxation matters". But Mr Shi insisted that, after each of his compulsory examinations, he reported to Mr Wong that he had continued to give evidence consistent with what had been said before. He said that Mr Wong and Jonathan Yee were both present during those conversations.

Mr Lin

In contrast to the other Emperor's Garden putative donors, Mr Lin gave evidence that he could not recall telling Jonathan Yee about his summons to attend a compulsory examination. Nor could he recall Jonathan Yee telling him what to say in that examination.

Mr Lin's evidence was that, before he appeared at the compulsory examination, he looked at the answers that he had given to the NSWEC in response to the questions that had been asked of him, and decided to tell the same story to the Commission. He explained, "I thought that was what I was supposed to say" because "only this way can I match what I said with what I have told the Electoral Commission before". Mr Lin gave evidence that no one told him to do so.

Mr Lin admitted that, having reviewed the responses given previously to the NSWEC, he went on to tell many lies to the Commission in his compulsory examinations, on 27 June 2018 and 10 July 2018, including that he had donated \$10,000 in \$100 notes saved from lucky money packets.

Mr Wong's meetings with persons of interest

As has been previously reported, Mr Wong conducted meetings with Mr Clements on 19 July 2017 (the Starbucks meeting), Ms Wang on 24 July 2017 and Mr Tong on 17 September 2018 (the Parliament House meeting). As noted above, Mr Wong, together with Jonathan Yee, also met Mr Shi at the Emperor's Garden restaurant on at least three occasions between December 2018 and March 2019, during which Mr Shi's compulsory examination was discussed.

The evidence suggests that, between June 2018 and June 2019, Mr Wong also sought out, arranged or conducted a further series of meetings with persons of interest to this Commission during which the Commission's investigation was discussed and, in some cases, attempts were made to influence the evidence that witnesses would give to the Commission in compulsory examinations. This includes conducting, or attempting to conduct, meetings (or, as

the case may be, further meetings) with Mr Cheah, Mr Clements, Mr Tong, Jonathan Yee and Ms Tam.

A chronology of the meetings, or attempted meetings, with persons of interest to this Commission is set out in figure 6. That chronology includes meetings relevant to both this chapter and chapter 24.

Figure 6: Meetings arranged to monitor and influence investigations into the 2015 CFOL dinner

Date	Person A	Person B	Context & Timing
19 July 2017	Ernest Wong	James Clements	Starbucks Meeting, after Mr Cheah's NSWEC interview
24 July 2017	Ernest Wong	Maggie Wang	Hours before Ms Wang's NSWEC interview
27 June 2018	Ernest Wong	James Clements	Kent Street Café Meeting, days after Mr Liao's death, 4 weeks after compulsory examinations (CEs) of Mr Clements and Mr Cheah
17 Sept 2018	Ernest Wong	Steve Tong	Parliament House Meeting, 12 weeks after Mr Liao's death
16 Nov 2018	Ernest Wong	Jonathan Yee	Emperor's Garden yum cha restaurant ("Emperor's Garden"), after first day of Mr Wong's CE
19 Nov 2018	Alex Wood	Steve Tong	Near Mr Tong's home, the day before the 2 nd day of Mr Wong's CE
1 Dec 2018	Ernest Wong	Jonathan Yee	Guangdong Meeting, two weeks after Mr Wong's CE
3 Jan 2019	Ernest Wong	James Clements	Pitt Street Café Meeting, the day before Mr Wong's further attempt to meet Mr Tong
4 Jan 2019	Ernest Wong	Steve Tong (attempt)	Rebuffed attempt to arrange a further meeting with Mr Tong, via Mr Zhan
Jan, Feb & Mar 2019	Ernest Wong / Jonathan Yee	Wei Shi	Emperor's Garden, after each of Mr Shi's three CEs on 25 Jan, 22 Feb & 8 Mar 2019
March 2019	Ernest Wong	Steve Tong (enquiry)	Wu International office in Chatswood, Mr Wong enquired after Mr Tong, via Mr Zhan
9 Jun 2019	Ernest Wong / Jonathan Yee	Teresa Tam	Mr Yee's office at Emperor's Garden, three days after service of Ming Tam's CE summons
12 June 2019	Ernest Wong	Teresa Tam	Emperor's Garden BBQ & Noodle shop, day of Mr Tam's CE, Mr Wong handed Mrs Tam the Wong Note
14 June 2019	Ernest Wong / Jonathan Yee	Teresa Tam	Mr Yee's office at Emperor's Garden; two days after Mr Tam's CE
Public inquiry summonses served from 29 July 2019. Public inquiry announced on 31 July 2019.			
After PI announced	Ernest Wong	Jonathan Yee	Emperor's Garden, discussion of maintaining false cover story, Mr Wong asked to meet Putative Donors
Aug 2019	Jonathan Yee	Teresa Tam	Emperor's Garden BBQ & Noodle shop, after service of Ms Tam's summons
Aug 2019	Ernest Wong	Wei Shi	Emperor's Garden private room
Aug 2019	Ernest Wong	Patricia Siu	Emperor's Garden private room
Aug 2019	Ernest Wong	May Ho Yee	Emperor's Garden private room
Aug 2019	Ernest Wong	Valentine Yee	Emperor's Garden private room
Aug 2019	Ernest Wong	Lei Mo	Emperor's Garden private room
Aug 2019	Ernest Wong	Johnnie Lin	Emperor's Garden private room
Aug 2019	Ernest Wong	Teresa Tam	Emperor's Garden private room
Public inquiry commenced on 26 August 2019			
15 Sep 2019	Ernest Wong	J Yee	Chinese Masonic Club, prior to Valentine Yee changing evidence in the public inquiry
15 Sep 2019	Ernest Wong	Stanley Yee	Chinese Masonic Club, at Mr Wong's request
21/22 Sep 2019	Ernest Wong	J Yee (attempt)	Emperor's Garden, week after Masonic Club meeting, Mr Wong asked to see Jonathan Yee, who refused

Discussions with Mr Cheah after his compulsory examination

On 25 May 2018, the Commission conducted compulsory examinations with each of Mr Cheah and Mr Clements. The evidence tendered in the public inquiry includes a copy of the summons that was issued to Mr Cheah and which required him to attend and give evidence in his compulsory examination. That copy was located in a filing cabinet at NSW Labor head office inside a manila folder labelled, "NSWEC Inquiry Chinese Friends of Labor".

During the public inquiry, Mr Cheah gave evidence that, after his compulsory examination, he told Ms Sibraa that he had attended the compulsory examination. He said he "maybe" also gave her a "brief rundown of what the topics that were asked, like, you know, NSW Labor, Country Labor and the donors and the hundred thousand". He said that he did so because, "after coming here and seeing how formal and serious it was, I thought the best thing to do would be to tell my employer as it involves them".

Mr Cheah gave evidence that he also discussed his compulsory examination with Mr Wong and, "most likely", with Jonathan Yee. In relation to the conversation with Mr Wong, Mr Cheah said that it occurred "a bit further on". He said that he told Mr Wong about the "private hearing" in "just general terms", including the fact that he had participated in the examination and what lines of enquiry, or "topics", were being pursued. He said that he "more likely than not" also disclosed similar information to Jonathan Yee.

Later, on re-examination by his counsel, Mr Cheah said that he did not tell Mr Wong about the content of the evidence he gave in his compulsory examination, "more about what was the investigation about". Mr Cheah was asked to give examples:

[Mr Dixon]: And so for example what did you discuss?

[Mr Cheah]: General terms like I told him it was to do with the, the financial relationship between Country Labor and NSW Labor and there were some, there was some line of questioning about the \$100,000.

Mr Cheah agreed that, at the start of the compulsory examination, he was directed not to tell anyone that he had participated in it or the substance of any questions or answers given. He agreed that he breached that direction, at least in part, by telling such things to Ms Sibraa, Mr Wong and "more likely than not" Jonathan Yee. He explained that he "wasn't thinking about the forbidden aspect of it".

Mr Wong's meeting with Mr Clements on 27 June 2018

During the public inquiry, Mr Clements gave evidence that, within a day or so of being served his summons to attend and give evidence at the compulsory examination on 25 May 2018, he started receiving calls from Mr Wong trying to talk to him. Mr Clements and Mr Cheah were both served summonses on 16 May 2018.

On Mr Clements' account, he avoided or "brushed" Mr Wong's attempted contacts until about one month after Mr Clements' compulsory examination, at which point he agreed to a request from Mr Wong to meet. They met at a café in Kent Street ("the Kent Street café meeting") in Sydney. Mr Clements said that Mr Wong, who initiated the meeting via WhatsApp, "was just about to head to Hong Kong, and he was just desperate, he just wanted to talk to me".

The evidence includes a record from Mr Wong's parliamentary Outlook calendar relating to a meeting at 3.30 pm on 27 June 2018 titled "Jamie Clements". The entry was created on 26 June 2018 and related to a meeting scheduled to take place at "kent st part one espresso down from Bathurst st near fraser suites hotel". Mr Wong was specified as the sole "organiser" and "required attendee". When shown that record in the public inquiry, Mr Wong said it was consistent with his recollection that he did meet with Mr Clements at Part One Espresso on 27 June 2018. Mr Wong agreed that he requested the meeting.

According to Mr Clements, the Kent Street café meeting commenced with discussions about Mr Wong's plans to stand against the Labor Party. Mr Clements gave evidence that, after discussing those matters:

... and then he said, he said – my, my phone was in front of me, I put it in front of me on the table, and he pushed the phone aside, and I pushed it back in front of me. And he said, "That Electoral Commission investigation has now gone to the ICAC." Of course I knew that already. "Has gone to the ICAC, and they're investigating." And I just looked at him and, like I just looked, like, just gave him a shocked look. And he, he said, oh, but it's all, it's all okay, it's just that people paid in cash, and everybody's told the Electoral Commission that they paid in cash, and that was it.

Mr Clements said that he did not respond to Mr Wong's statement or disclose to Mr Wong that he had participated in a compulsory examination.

Mr Clements' account of the meeting is largely corroborated by Mr Wong, who agreed that he told Mr Clements words to the effect that the NSWEC had

referred its investigation to this Commission. During the public inquiry, Mr Wong was asked how it was that he came to know in June 2018 that this Commission was investigating donations in connection with the 2015 CFOL dinner, as follows.

[Counsel Assisting]: So how did you know? Who told you?

[Mr Wong]: I didn't have any recollection except who told me. But first of all, there must be rumours over there. But I'm pretty sure that at the time when I'm having conversation with either Kenrick Cheah or Jonathan Yee, probably Kenrick Cheah, that I would be, I, I, I would come across that situation.

[Q]: Well, why do you say probably Kenrick Cheah?

[A]: Because I do meet him more often than with Jonathan Yee, particularly in Parliament House.

Given that Mr Cheah and Mr Clements received their compulsory examination summonses on 16 May 2018, and Mr Wong shortly thereafter took steps in May and June 2018 to arrange a meeting with Mr Clements, and in light of Mr Cheah's admission that he discussed his compulsory examination with Mr Wong, the Commission is satisfied that Mr Cheah was the source of Mr Wong's knowledge in June 2018 that the NSWEC investigation had been referred to, and was being investigated by, this Commission. On Mr Wong's evidence, such information may have been communicated by Mr Cheah to Mr Wong at Parliament House.

Mr Wong also accepted in evidence that he may have pushed Mr Clements' telephone aside during the Kent Street Café Meeting. But Mr Wong rejected the proposition that he did so out of fear of being implicated if the meeting was recorded. Mr Wong sought to explain that conduct by asserting that it was his practice to ask people to put away their telephones during meetings as they can be distracting.

An initial difficulty with Mr Wong's explanation, however, is that he did not ask Mr Clements to put his telephone away. The evidence is that Mr Wong pushed Mr Clements' telephone aside. The Commission is satisfied that the more likely explanation for such a proactive step is that Mr Wong was concerned the discussion about the Commission's investigation might be recorded and may tend to implicate him. Such a finding

is consistent with evidence of other furtive conduct (regarding telephones) by Mr Wong, including:

- telling Ms Murnain that he did not want to talk over the telephone when arranging to meet her behind Parliament House on 16 September 2016 (chapter 18)
- initiating the Kent Street Café Meeting via the encrypted messaging service WhatsApp
- confiscating the mobile telephones of Mr Tong and Mr Zhan during the Parliament House meeting in September 2018 (chapter 22)
- suggesting to Mr Clements that he not bring his mobile telephone to a subsequent meeting on 3 January 2019 (considered later in this chapter).

In terms of the chronology of events, it is curious that the Kent Street café meeting between Mr Wong and Mr Clements took place on 27 June 2018, being just two (or three) days after the death of Mr Liao. The evidence in relation to Mr Liao's death is presented in chapter 21. Mr Clements was asked whether Mr Wong told him of Mr Liao's death during the Kent Street café meeting. Mr Clements said that Mr Wong did not do so. Notwithstanding, it seems unlikely that the temporal proximity of Mr Liao's death and the Kent Street café meeting could be adequately explained as mere coincidence.

Given Mr Clements' evidence regarding Mr Wong's desperation to meet with him at the time that the arrangements were put in place, such arrangements being made on 26 June 2018 (according to Mr Wong's parliamentary Outlook calendar), which was the day after Mr Liao's scheduled compulsory examination, it is possible that Mr Liao's death was among factors motivating Mr Wong to discuss this Commission's investigation with Mr Clements at the Kent Street café meeting. The evidence before the Commission does not, however, support any positive findings on that particular issue.

Mr Wong's compulsory examination on 16 November 2018 and his meeting with Jonathan Yee

In November 2018, about four months after the Kent Street café meeting and two months after the Parliament House meeting, Mr Wong attended the Commission and gave evidence in a compulsory examination over two days (Friday, 16 November and Tuesday, 20 November 2018). Mr Wong's false evidence in his compulsory examination, to the effect that he thought Mr Tong was a waiter at the Emperor's Garden restaurant, is considered in chapter 22.

Jonathan Yee gave evidence at the public inquiry that, after Mr Wong's compulsory examination on

16 November 2018, Mr Wong told Jonathan Yee that he had participated in the compulsory examination. On Jonathan Yee's account, during those discussions, they discussed the progress and direction of the Commission's investigation.

In the early stages of the public inquiry, Mr Wong gave evidence that he had some discussions with Jonathan Yee concerning the NSWEC investigation but he denied that he had similar discussions regarding investigations by this Commission. However, in the face of evidence of such discussions, Mr Wong subsequently conceded that he told Jonathan Yee that he had been summoned to a compulsory examination and, later, that he had participated in such an examination. He agreed that he breached directions pursuant to s 112 of the ICAC Act in that regard. However, he denied that he went further and told Jonathan Yee about the lines of enquiry in the compulsory examination.

During the public inquiry, Counsel Assisting put a proposition to Mr Wong that, after his compulsory examination on 16 November 2018, he went to see Jonathan Yee at the Emperor's Garden restaurant. Mr Wong accepted that he "probably" went to the Emperor's Garden, although he could not recall doing so. It was put to Mr Wong that, at the Emperor's Garden, he went upstairs to Jonathan Yee's office where he stayed for about 45 minutes. Mr Wong said he had no recollection of it.

Counsel Assisting further suggested to Mr Wong that, during the course of that meeting on 16 November 2018, he discussed with Jonathan Yee the Commission's investigation in deliberate breach of the s 112 direction he had been given that very day. Mr Wong replied that he did not have any recollection of that either.

Evidence tendered in the public inquiry included a note retrieved from Mr Wong's mobile telephone. The note was created at 9.55 am on 17 November 2018. That is, it was created the morning after Mr Wong's first day of giving evidence in his compulsory examination and his attendance at the Emperor's Garden. The note read:

Steve Tong 5000

Leo 5000

Johnny lin 10000

Jonathan yee 10000

Emperor' garden 10000

Wai shi 10000

Teresa 10000

Patricia Siu 10000

Jonathan mum 10000

Harbour city 5000

Valentine yee 5000

Lai Mo Ray 10000

Labor dictating split of donation to ALP and Country Labor

Forms with \$5000 written on top

Forms with payment option struck out

Forms photocopied for two donations

Forms with different dates two Feb, most are on 30/3 and a few on 31/3

This note was shown to Mr Wong during the public inquiry. He denied that he discussed the substance of the note with Jonathan Yee. He rejected the proposition that the note was the result of a joint effort between Mr Wong and Jonathan Yee arising from their discussions at the Emperor's Garden on 16 November 2018. Mr Wong's evidence was that he made the note himself "because that was the first time I was being properly examined by this Commission that I came across these names".

Mr Wong's explanation, and his denial that the note related to discussions between himself and Jonathan Yee about the Commission's investigation, does not sit comfortably with evidence regarding another note, of a similar type, which was the subject of such discussions between Mr Wong and Jonathan Yee about two weeks later in Guangdong, China. That evidence is set out later in this chapter.

In circumstances where Jonathan Yee has given evidence amounting to an admission against self-interest, and where that admission is consistent with the existence and content of the note retrieved from Mr Wong's telephone, the Commission rejects Mr Wong's evidence on this issue.

The Commission finds that Mr Wong and Jonathan Yee did discuss the progress and direction of the Commission's investigation during their meeting on 16 November 2018. Given that that meeting took place so immediately after Mr Wong's compulsory examination, an inescapable inference arises that their discussion included matters touching on the substance of Mr Wong's compulsory examination. The Commission finds accordingly.

Mr Wood's meeting with Mr Tong on 19 November 2018

At 9 am on 19 November 2018, the Commission served on Mr Tong a summons to appear and give evidence in a compulsory examination in early December 2018. The service of Mr Tong's summons occurred following the first day, but before the second day, of Mr Wong's compulsory examination. It was served about two months after Mr Wong's meeting with Mr Tong at Parliament House.

Mr Tong gave evidence that, upon receipt of that summons, he rang Mr Zhan and said words to the effect of, "Now I have to go to ICAC. What your company can [sic] help me with?". Mr Tong explained that he made that call to Mr Zhan because he had previously been told that, if anything happened concerning his purported donation, the company (Wu International) would deal with it. In the Parliament House meeting, Mr Wong had said that the company would hire a lawyer for Mr Tong. Mr Tong's evidence was that:

- later that same day (19 November 2018), between 8 pm and 9 pm, Mr Zhan and Mr Wood came to his home and rang him on the telephone to say that they had arrived
- Mr Tong went outside and met them, he got into the back of their car with Mr Wood and Mr Zhan drove them around the streets for 10 to 20 minutes
- during the meeting in the car, Mr Wood said words to the effect of, "just stick with the evidence that you had given to the Electoral Commission then it should be fine"
- Mr Tong replied to the effect of, "Okay, I'll do what you've said".

Mr Tong explained that, in accordance with Mr Wood's instructions, he gave false evidence on the first day of his compulsory examination on 4 December 2018, to the effect that he had donated \$5,000 in connection with the 2015 CFOL dinner. As has been previously reported, Mr Tong returned to the Commission for the second day of his compulsory examination shortly thereafter, apologised for lying, and gave a full and honest account.

Mr Tong also gave evidence that, after appearing at the compulsory examination on 4 December 2018, he received a telephone call from Mr Zhan, who wanted to know what Mr Tong had told the Commission. Mr Tong said that he told Mr Zhan that he could not speak to him about it. Mr Tong said that he had not communicated with Mr Zhan or Mr Wood since then. There is, however, evidence that a further attempt was made, by Mr Zhan on behalf of Mr Wong, to contact Mr Tong in January 2019.

That matter is considered later in this chapter.

Mr Tong's account is consistent with call charge records, which establish that Mr Tong's telephone was used to call Mr Zhan's telephone at 1.23 pm on 19 November 2018. That call occurred about four hours after the service of Mr Tong's summons and lasted just two seconds. Four minutes later, at 1.27 pm, Mr Zhan's telephone was used to ring Mr Tong's telephone and the call lasted almost three minutes. Two further calls were recorded from Mr Zhan's telephone to Mr Tong's telephone later that day at:

- 8.51 pm, lasting 22 seconds, at which time Mr Zhan's telephone was located in the vicinity of Chatswood (Wu International was based in Chatswood)
- 9.31 pm, lasting 39 seconds, at which time Mr Zhan's telephone was in the vicinity of Mr Tong's home.

As noted in chapter 22, Mr Zhan gave evidence on two occasions in the public inquiry. On the first occasion, on 4 September 2019, Mr Wood was present in the hearing room and Mr Zhan gave evidence that was guarded and less than forthcoming. On the second occasion, on 4 October 2019, Mr Zhan gave what appeared to be a fuller account of the matters asked of him. Mr Zhan's explanation as to why he was more forthcoming on 4 October 2019 is set out in chapter 22.

In relation to the meeting with Mr Tong on 19 November 2018, having been shown the call charge records, Mr Zhan accepted in his evidence on 4 September 2019 that he might have met Mr Tong on that date. He recalled that he drove Mr Wood from Chatswood to Mr Tong's house, likely departing after nightfall. He agreed that the meeting may have occurred at about 8 pm or 9 pm.

As to the purpose of the meeting, Mr Zhan's initial evidence was vague and evasive. He said that he could not recall why he had driven Mr Wood to Mr Tong's house. He suggested that the meeting was for the purpose of discussing Mr Tong's health and exchanging festive greetings for the Chinese mid-Autumn festival. The latter explanation makes little sense given that that festival occurred in mid-September 2018 (some two months earlier). Mr Tong flatly rejected that suggestion.

It was put to Mr Zhan on 4 September 2019 that the conversation between Mr Wood and Mr Tong on 19 November 2018 concerned investigations by this Commission into political donations. Mr Zhan did not deny that proposition but said he could not recall, as the conversation was a private one between his boss, Mr Wood, and Mr Tong. Implausibly, given the evidence below, Mr Zhan said that he kept his distance and played on his telephone. Mr Zhan rejected the proposition that

he was giving false and incomplete evidence to protect Mr Wood, who was his boss and cousin.

On the second occasion that Mr Zhan gave evidence, that being 4 October 2019, he gave a fuller account of what occurred at the meeting on 19 November 2018. He agreed that he drove a loop around Mr Tong's home while Mr Tong and Mr Wood were talking to each other in the backseat of the car. Asked if one of the things that Mr Wood said to Mr Tong was "just stick to what you have said earlier then it will be fine", Mr Zhan agreed that "it should be but I'm not 100 per cent sure". Mr Zhan accepted that it is possible those words were said. He said that he thought Mr Wood and Mr Tong's discussion had something to do with donations.

On 4 October 2019, Mr Zhan gave evidence that it was Mr Wood who told Mr Zhan to drive to Mr Tong's house. He said that he made contact with Mr Tong at Mr Wood's request. But he denied that he knew at that time that Mr Tong had received a summons to appear at a compulsory examination. Asked if it is possible that Mr Tong rang Mr Zhan and told Mr Zhan that he had a summons to appear at the Commission, Mr Zhan replied, "I truly have forgotten about those details". He agreed that, if Mr Tong had called him and said he had a summons and needed the company's help, then Mr Zhan would definitely have drawn that to Mr Wood's attention.

To the extent that there remains tension between the accounts of Mr Tong and Mr Zhan, the Commission notes that the call charge records support a finding that it was Mr Tong, and not Mr Zhan (or Mr Zhan on Mr Wood's instructions), who initiated telephone contact between them on 19 November 2018. This lends weight to Mr Tong's account that he called Mr Zhan to seek assistance from Wu International in dealing with the summons, which had been served on him that morning. The Commission finds accordingly.

Mr Wood was legally represented throughout the public inquiry. He did not seek leave to cross-examine Mr Tong on any of his evidence. In his own evidence, Mr Wood agreed that he visited Mr Tong one evening in late 2018 and that he gave instructions to Mr Zhan to drive him there. But he denied putting pressure on Mr Tong to give particular evidence at his compulsory examination. He specifically denied telling Mr Tong to stick to what he had said earlier and that it would be fine.

However, Mr Wood's evidence regarding his attendance upon Mr Tong on 19 November 2018 was confused and, in part, internally inconsistent. In a compulsory examination on 19 November 2019, the transcript of which was tendered in evidence in the public inquiry, Mr Wood said that one of the reasons for his visit to Mr Tong towards the end of 2018 was "about the ICAC matter".

When asked to explain how he knew about the Commission's investigation, Mr Wood asserted that, "after Mr Liao passed away in his letter, final letter, he mentioned so we have learned about it". That letter was said by Mr Wood to have been "on [Mr Liao's] desk in his office".

The immediate difficulty with that part of Mr Wood's evidence is that the letter that Mr Liao left on his desk on the evening of 24 June 2018 made no mention of this Commission. It merely referred to Mr Liao being visited by "two detectives". When shown a copy of that letter, Mr Wood accepted as much. However, he asserted that the reference to "detectives" led him to understand that it "means it was from the ICAC".

The Commission rejects that explanation. Without prior knowledge that Mr Liao was a person of interest to this Commission, there could be no rational basis for Mr Wood inferring that a mere reference to "detectives" would have any correlation to this Commission. To the contrary, such a reference would more likely lead to a conclusion that Mr Liao had been visited by police officers.

Mr Wood then sought to offer an alternative explanation, suggesting "[a]lso, we have received letters from ICAC to Dr Liao". He was asked what letters he was referring to and replied:

The letter which you gave me, ask me, meaning to come, it, that letter also was, that kind of a letter was also on the desk of Mr Liao.

The Commission understands that this was a reference to having seen the summons issued to Mr Liao to attend and give evidence at a compulsory examination. Mr Wood explained that this document was located "after [Mr Liao] passed away", when:

... we went to see his office and checking, and because he mentioned the two detectives, we want to find out who these two detectives were.

A fundamental difficulty with this evidence of Mr Wood's is that, according to the NSW Police who investigated the matter for the Coroner and conducted an extensive search of Mr Liao's office and a forensic examination of the crime scene, no copy of Mr Liao's summons was found on Mr Liao's desk. In these circumstances, only two explanations appear to be open: first, Mr Wood did not find Mr Liao's summons on his desk or, secondly, he did find Mr Liao's summons on his desk but it was no longer on Mr Liao's desk when police conducted their search of Mr Liao's office.

The Commission notes that Mr Wood's evidence on this issue indicates that he was involved with others in searching Mr Liao's office in the wake of Mr Liao's death. That suggests that Mr Wood may well have been the

unidentified Wu International person, referred to by Mr Zhan in his dealings with NSW Police on the night of Mr Liao's death, who helped Mr Zhan and Mr Liao's wife search for Mr Liao on the night that his body was discovered (chapter 21).

If Mr Wood's evidence, that he found Mr Liao's summons on Mr Liao's desk, were to be accepted, serious questions would arise as to why:

- the summons was no longer on Mr Liao's desk when NSW Police conducted its search of Mr Liao's office later that night
- Mr Wood did not accompany Mr Zhan and Mr Liao's wife to the police station to report him missing
- Mr Zhan did not name Mr Wood as the unidentified Wu International person who helped search for Mr Liao that night.

In answering those questions, careful consideration would need to be given to whether consciousness of guilt played some part in relation to those matters.

Ultimately, the Commission is not satisfied that there is sufficient evidence to enable a positive finding to be made as to whether or not Mr Wood did find a copy of Mr Liao's summons on Mr Liao's desk. If he did, questions arise as to why that document was not left in place for NSW Police to find. If he did not, questions arise as to why he told the Commission in his compulsory examination something that he must have known was not true. Either way, adverse inferences arise concerning Mr Wood's involvement in this matter.

In any case, when Mr Wood was recalled to give evidence in the public inquiry, he sought to retreat from the evidence that he had given in his compulsory examination on 11 November 2019. Indeed, he denied that one of the reasons that he met with Mr Tong in late 2018 was to "discuss the ICAC matter". Instead, he asserted that the purpose of the visit was to "check on [Mr Tong's] health". The Commission has rejected a similar explanation from Mr Wong as to why he arranged the meeting with Mr Tong at Parliament House in September 2018.

After being confronted with the inconsistency between that evidence and the evidence that he gave in the compulsory examination on 11 November 2019, Mr Wood gave a series of evasive answers. At one point, he sought to maintain both the evidence that he gave in the compulsory examination on 11 November 2019 and evidence directly inconsistent with that evidence.

Mr Wood insisted that it was his idea to meet Mr Tong in November 2018. However, that does not sit comfortably with Mr Tong's evidence, corroborated by call charge

records, that he initiated contact with Mr Zhan that day to seek help from Wu International in relation to his summons.

Counsel Assisting submitted that the Commission should reject Mr Wood's evidence with respect to his meeting with Mr Tong on 19 November 2018. Having considered the evidence, the Commission accepts that submission and finds that:

- Mr Tong initiated telephone contact with Mr Zhan on 19 November 2018 and told him that he was being required to attend the Commission to give evidence and asked for help from Wu International
- Mr Zhan communicated Mr Tong's message to Mr Wood, who arranged for Mr Zhan to drive him to meet Mr Tong near his home after 9 pm that night
- during that meeting, Mr Wood told Mr Tong words to the effect of, "just stick with the evidence that you had given to the Electoral Commission then it should be fine"
- at least one of the purposes of Mr Wood's attendance upon Mr Tong that night was to seek to influence the evidence that Mr Tong would give at his compulsory examination
- in accordance with Mr Wood's instructions, Mr Tong gave false evidence in his compulsory examination on 4 December 2018, consistent with his previous representations to the NSWEC, to the effect that he had donated \$5,000 in connection with the 2015 CFOL dinner.

From these findings, the question arises as to whether Mr Wood acted in concert with Mr Wong in respect of his meeting with Mr Tong on 19 November 2018. It is a curious coincidence that that meeting occurred the day before Mr Wong was due to continue giving evidence on the second day of his own compulsory examination before the Commission.

Mr Wong has rejected the proposition that, after the Parliament House meeting, he made arrangements for Mr Wood to go and speak to Mr Tong about the Commission's investigation. He denied that he pressured Mr Wood to ask Mr Tong to stick to the story that he had given in the past.

There is no direct evidence that Mr Wong directed, pressured or asked Mr Wood to go and speak to Mr Tong on 19 November 2018. There is, however, circumstantial evidence that:

- Mr Wong delivered to Mr Tong during the Parliament House meeting on 17 September 2018

a very similar message to that which Mr Wood delivered to Mr Tong on 19 November 2018; namely, that Mr Tong should continue to say whatever he had told the NSWEC in the past

- Mr Zhan was involved in, and attended, both the Parliament House meeting and the meeting on 19 November 2018
- Mr Wong subsequently took steps, in January 2019, to have Mr Zhan try to arrange a further meeting between Mr Wong and Mr Tong. The evidence in relation to that matter is set out later in this chapter.

In circumstances where Mr Wong was due to attend the second day of his own compulsory examination on 20 November 2018, and where the evidence shows that Mr Wong engaged in furtive conduct demonstrating a consciousness of investigative processes and steps that might be taken to counter them, it would not be surprising if Mr Wong had sought to limit his exposure and engage Mr Wood to meet with Mr Tong on his behalf on 19 November 2018. Mr Wood and Mr Wong have both rejected such a proposition.

Having carefully considered the evidence, the Commission is not satisfied that a finding can be made on the available evidence that Mr Wong caused, or was otherwise involved in, Mr Wood's attempt on 19 November 2018 to influence the evidence that Mr Tong would give at his compulsory examination.

Mr Wong and Jonathan Yee meet in China on 1 December 2018

In late November 2018, about a week after the second day of Mr Wong's compulsory examination on 20 November 2018, Mr Wong and Jonathan Yee travelled to China, where they took part in events associated with the Federation of Australian Guangdong Communities. One of those events was held in the city of Zhaoqing in Guangdong Province.

Jonathan Yee gave evidence that, during the course of that trip, he had discussions with Mr Wong about the progress of the Commission's investigation. He said that one of those discussions was in a coffee shop in Zhaoqing one afternoon after the day's events had concluded. He said:

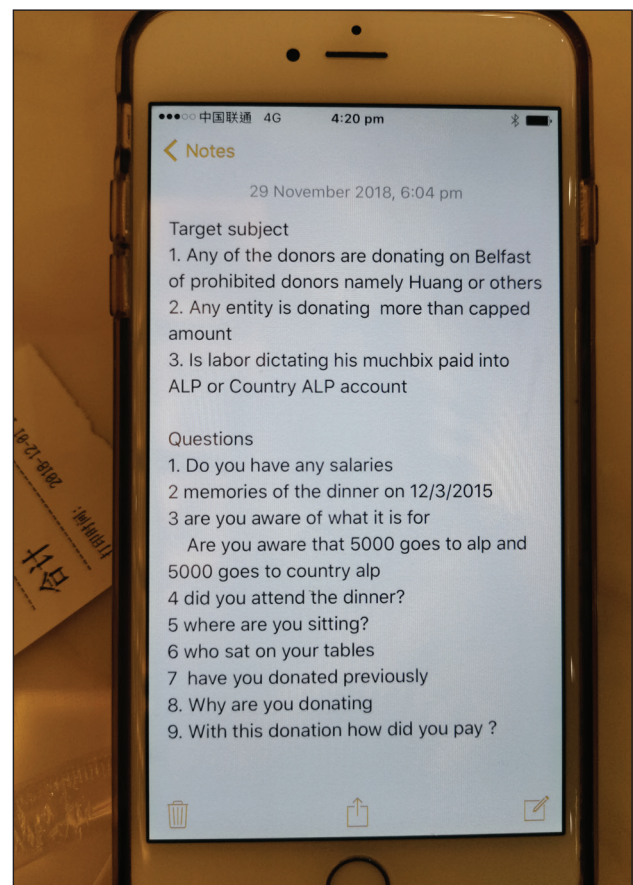
... when I got there [Mr Wong] showed me a list of, well, a document on his phone stating certain things, which I can't remember at the moment what it, what it says, and in showing me that he asked me several question and he said, "Can you look at these questions," or the statement that he made on the phone, "Can you look into those matters and make sure you know it precisely how to answer".

Jonathan Yee gave evidence that he used his own mobile telephone to take a photograph of the notes document depicted on Mr Wong's mobile telephone. A copy of that photograph was obtained from Jonathan Yee's mobile telephone and tendered in evidence. It is shown in figure 7.

The note sets out a list of:

- three "Target subject[s]", including whether:
 - any of the donors donated on behalf of prohibited donors "namely Huang or others"
 - any entity donated in excess of the cap
 - the Labor Party dictated the amounts of money that were paid to each of "ALP" and "Country ALP"
- nine "Questions", including relating to sources income, attendance at and recollection of the dinner, intention to donate \$5,000 to each of "alp" and "country alp", reasons for donating and the mode of payment of donations.

Figure 7: Photograph taken by Jonathan Yee of Mr Wong's mobile telephone during a meeting in Guangdong, China, on 1 December 2018



The content of the photograph indicates that the note was created at 6.04 pm on 29 November 2018. The photograph depicts the mobile telephone sitting on a table on top of a receipt that was dated 1 December 2018. That is consistent with Jonathan Yee's evidence that Mr Wong brought the note to the meeting rather than it representing a record of discussions between them that day.

At the time of that meeting, Jonathan Yee had not yet participated in a compulsory examination before the Commission. He said that the note set out the general subject matter of what he discussed with Mr Wong on that occasion and that part of that discussion concerned giving Jonathan Yee an indication as to the lines of enquiry that were likely to be made of him in the event that he was required to participate in a compulsory examination.

Mr Wong gave evidence prior to Jonathan Yee in the public inquiry. He said that he recalled having a discussion with Jonathan Yee in Guangdong in late 2018 regarding the Commission's investigation but that he did not recall the specifics of that discussion. Mr Wong was shown the photograph represented in figure 7. He was asked whether the discussions he had with Jonathan Yee in Guangdong included the matters summarised in that note. He replied, "Not really".

Mr Wong rejected the proposition that he and Jonathan Yee discussed in Guangdong the question of whether one of the targets of the Commission's investigation was whether any of the donors donated on behalf of prohibited donors; namely, Mr Huang or others. When the further proposition was put to him that they also discussed whether any entity donated more than the capped amount, he replied in vague terms:

Look, I really did not recall if we had a discussion as such. We have a very broad discussion with regards to the whole situation, and whole issues, in particular, the Chinese community's response to it. Because we had been asked many times by the Chinese media, a lot of the Chinese community groups, in regards to how that this, you know, what, what, what, what situation. So we discussed that. But with all these particular questions, I do not recall any of those has been discussed in full details or, or whatever it is.

Towards the end of the public inquiry, Mr Wong was again asked about his meeting with Jonathan Yee in Guangdong in late 2018. He accepted that they discussed matters relating to the Commission's investigation, including that Jonathan Yee told Mr Wong that his mother, May Ho Yee, had received a summons to attend and give evidence to the Commission. Mr Wong admitted that he disclosed to Jonathan Yee that he had participated in a compulsory examination. However, Mr Wong denied that he made notes on his telephone as

to the Commission's lines of enquiry or target subjects on or around 29 November 2018, prior to meeting with Jonathan Yee in Guangdong. He denied showing Jonathan Yee his telephone during that meeting. Mr Wong rejected the proposition that the photograph in figure 7 depicted an image of his mobile telephone.

Jonathan Yee's evidence as to what happened in Guangdong tends to implicate himself in conduct that constitutes an attempt to prevent this Commission from finding out the truth regarding the scheme to circumvent electoral laws with respect to the \$100k cash received in connection with the 2015 CFOL dinner. It is incriminating evidence fundamentally against his own interests. It is corroborated by the photograph that he took of Mr Wong's mobile telephone on that occasion.

In these circumstances, the Commission accepts Jonathan Yee's evidence, and rejects Mr Wong's denials, in relation to what was said and done at the meeting between them in Guangdong on 1 December 2018. The Commission finds that Mr Wong brought to that meeting the note depicted in the photograph represented in figure 7 and brought those matters to Jonathan Yee's attention for the purpose of giving him an indication as to the lines of enquiry likely to be made of him in the event that he was required to participate in a compulsory examination before this Commission.

Mr Wong's meeting with Mr Clements on 3 January 2019

Mr Clements gave evidence that, on 3 January 2019, about six months after the Kent Street café meeting, he met Mr Wong on level 7 of the office building in Pitt Street, Sydney, where Mr Clements had been using rent-free office accommodation provided by Mr Huang's Yuhu Group. The purpose of the meeting was in relation to Mr Clements' access pass to that office space. Asked why Mr Wong was involved in such matters, Mr Clements explained that the office space had been allocated by Mr Huang to, and Mr Clements shared it with, the Australian Guangdong Chamber of Commerce, an organisation with which Mr Wong was associated. Mr Clements gave the following evidence as to what occurred at that meeting:

[Counsel Assisting]: And what was that occasion?

[Mr Clements]: Oh, actually, that's not true. I, well, on the 3rd, I think it was around 3 January this year, when he set up the meeting to give me the pass or the application for the pass which he somehow forgot to bring to the meeting, he never gave to me, we had a discussion

– it was also a discussion about what he was going to do after he left office, you know, and what I had been doing and, you know, maybe we could, you know, tic tac toe off each other, you know? And, you know, what had I been doing and, you know, how, you know, how, how, you know, what had been a success for me in terms of my dealings with China and we had that discussion. And then he said, “Why don’t we go down for a coffee downstairs?” And I said, “Sure. I’m on my way out.” And I think he indicated to me that I should leave my phone and I said, “I’m not leaving my phone,” and I put it in my jacket pocket and we went downstairs to the café downstairs.

[Q]: Downstairs from the Pitt Street building, is that right?

[A]: Yep. There’s a really good café down there ... and he said, he said, “Have you heard anything from the ICAC?” or “Have you spoken to the ICAC?” I said, “I haven’t heard a word.”

Mr Clements explained that his answer to Mr Wong was false in that Mr Clements had in fact participated in a compulsory examination six months earlier and was conscious that he should not breach the non-publication order made on that occasion.

Mr Clements was asked if he was sure that Mr Wong indicated to him that he should leave his telephone in the office before going downstairs for coffee. He confirmed that Mr Wong did tell him to leave his telephone, saying, “it was kind of mumbled. It was, “Oh, you can leave your phone,” you know, something like that. And I recall saying, “I’m not leaving my phone””.

Mr Clements was asked whether it occurred to him why Mr Wong had asked him to leave his telephone and he replied, “Well, he was probably going to tell me something or ask me something, you know”. He said that he understood that Mr Wong did not want that conversation to be recorded, explaining “everybody thinks that you can, you know, yeah, record people’s phones”. He confirmed that it was in the conversation with Mr Wong downstairs in the coffee shop that Mr Wong said words to the effect of, “Have you heard anything from the ICAC?”.

Mr Wong gave evidence that he could not recall, but he did not deny, that he met Mr Clements in the first week of January 2019, during which meeting he mentioned this Commission. Mr Clements was not cross-examined by senior counsel for Mr Wong in relation to his evidence about the January 2019 meeting. No submissions were received on behalf of Mr Wong in relation to that evidence.

The Commission notes that Mr Clements’ uncontested evidence regarding Mr Wong’s indication that Mr Clements should leave his mobile telephone is consistent with the accounts of Mr Tong and Mr Zhan as to Mr Wong’s conduct during the Parliament House meeting. In these circumstances, the Commission accepts Mr Clements’ evidence in relation to the meeting on 3 January 2019.

Mr Wong’s attempt on 4 January 2019 to arrange a further meeting with Mr Tong

When Mr Zhan gave evidence at the public inquiry on 4 October 2019, he said that Mr Wong contacted him on 1 January 2019 via WeChat (a Chinese messaging, social media and mobile payment application) to convey holiday greetings. Mr Zhan explained that Mr Wong then “mentioned that he wanted to see my friend”. On Mr Zhan’s account, Mr Wong did not mention Mr Tong by name, but Mr Zhan understood that it was Mr Tong who Mr Wong wanted to meet, “because it wouldn’t have been anyone else between us”. Mr Zhan agreed in evidence, by way of clarification, that Mr Wong was asking him in January 2019 to set up another meeting between Mr Wong and Mr Tong.

Mr Zhan said that he agreed to do what Mr Wong had asked and took steps to try to arrange a further meeting with Mr Tong. On Mr Zhan’s account, he then tried to call Mr Tong on the telephone but Mr Tong did not pick up his call. Mr Zhan then used his girlfriend’s telephone to call Mr Tong’s home number. He said that Mr Tong’s wife answered the call and Mr Zhan said words to the effect that “we want to meet ... with Steve”. He could not recall if he mentioned Mr Wong’s name. In any event, Mr Tong’s wife told Mr Zhan that Mr Tong was not feeling well and that Mr Zhan should not contact him. Mr Zhan said he reported back to Mr Wong, “I told Mr Ernest Wong that Steve was ill and that his wife required us not to contact him during those times”.

Mr Zhan produced to the Commission mobile telephone records pertaining to his girlfriend’s service, which established that a call was made from her mobile telephone to the home telephone of Mr Tong at 5.26 pm on 4 January 2019. The duration of that call was one minute and 23 seconds. Those records are consistent with Mr Zhan’s evidence.

Mr Zhan gave evidence that, about three months later, in March 2019, Mr Wong attended the offices of Wu International. On that occasion, according to Mr Zhan, “[Mr Wong] asked if my friend was okay and I replied that he wasn’t feeling well”. Mr Zhan explained that, again, Mr Wong did not refer to Mr Tong by name but Mr Zhan understood him to be referring to Mr Tong.

Mr Zhan’s evidence, regarding Mr Wong’s request in January 2019 to arrange a further meeting with Mr Tong, was put to Mr Wong during the public inquiry. Mr Wong replied, “I cannot give an answer yes or no because I don’t know how you interpret of my saying in regards to meeting up with Mr Zhan”. That appears to have been a reference to Mr Wong’s earlier evidence that he recalled meeting with Mr Zhan at a Chinese New Year event in 2019, during which Mr Wong asked Mr Zhan how Mr Tong was going, and offered that Mr Zhan could call him if he needed any further assistance regarding Mr Tong. Chinese New Year fell on 5 February 2019. The Commission regards Mr Wong’s evidence as non-responsive to the question, which was directed towards his conversation with Mr Zhan in early January 2019.

In circumstances where Mr Zhan’s evidence is corroborated by mobile telephone records, the Commission accepts his evidence and finds that Mr Wong did contact Mr Zhan on, or shortly after, 1 January 2019 and asked Mr Zhan to arrange for him a further meeting with Mr Tong. The Commission accepts Mr Zhan’s evidence that his attempts to do as requested by Mr Wong were rebuffed by Mr Tong’s wife and that Mr Zhan reported as much to Mr Wong.

Mr Wong’s three meetings with Ms Tam in June 2019

Earlier in this chapter, it was reported how Ms Tam came to give false evidence in her compulsory examinations on 5 December 2018 and 21 January 2019, which included the false assertion that she and her husband, Mr Tam, had together donated two sums of \$5,000 in connection with the 2015 CFOL dinner. On 6 June 2019, the Commission served a summons on Mr Tam requiring him to attend the Commission and give evidence in relation to this matter. Mr Tam’s compulsory examination (“Mr Tam’s 2019 CE”) was scheduled for 2 pm on 12 June 2019.

During the public inquiry, Ms Tam gave evidence that, when Mr Tam received his compulsory examination summons on 6 June 2019, she told Jonathan Yee that that had occurred. The evidence suggests that shortly thereafter, Mr Wong met with Ms Tam on three separate occasions:

- 9 June 2019 (three days before Mr Tam’s 2019 CE)
- 12 June 2019 (the day of Mr Tam’s 2019 CE)

- 14 June 2019 (two days after Mr Tam’s 2019 CE).

The evidence in relation to each of those meetings is set out below.

First meeting – 9 June 2019

Ms Tam gave evidence that, at lunchtime on Sunday, 9 June 2019, she received a telephone call from an Emperor’s Garden employee who asked her to come to the restaurant. Upon arriving at the restaurant, Ms Tam said that she spoke with Jonathan Yee, who asked her to join him in his office upstairs. She said that Mr Wong was waiting in the office. She met with both Jonathan Yee and Mr Wong. According to Ms Tam, the following occurred during that meeting:

- Ms Tam told Jonathan Yee that she was very scared because her husband had received the summons to give evidence at the Commission and she wanted to engage a lawyer
- Jonathan Yee said in response that he would help find a lawyer for her husband
- Mr Wong said “that we must insist that the donation was made in cash and then we will have nothing to worry about”
- Mr Wong asked Ms Tam what her husband did for a job and she told him that her husband worked in a restaurant
- Mr Wong then said that workers in restaurants get tips and lucky packets, and he suggested that Ms Tam add that detail to the evidence to support a claim that she and her husband had paid the \$10,000 donation because “there won’t be enough from [Ms Tam’s] pay”.

During the public inquiry, Jonathan Yee gave evidence confirming that he became aware, in June 2019, that Mr Tam had been summoned to attend a compulsory examination before the Commission. He agreed that he promptly drew that to the attention of Mr Wong. The substance of Ms Tam’s evidence, that she met with Jonathan Yee and Mr Wong on 9 June 2019 to discuss the fact that her husband had been summoned, was put to Jonathan Yee. He responded, “I cannot recall, but yes, we would have met up ... I don’t dispute it”.

Jonathan Yee was asked about arrangements that may have been made for a lawyer to represent Mr Tam at the compulsory examination. He said that Mr Wong asked him to call John Zhang of CMI Legal and ask, “Can you assist one of my staff in representing [Mr Tam] in front of the Independent Commission Against Corruption?”.

Jonathan Yee said that he did as Mr Wong asked and arranged for Mr Tam to be represented by CMI Legal.

Asked who paid for that legal representation, he said that Mr Wong paid by way of \$3,000 in cash, which Mr Wong handed to Jonathon Yee, and which Jonathan Yee then gave to Ms Tam. Jonathan Yee said that Ms Tam later told him that the actual bill from CMI Legal was for a higher amount; that being \$3,800. Jonathan Yee said he conveyed that information to Mr Wong and asked him to forward the outstanding \$800 to Ms Tam. On Jonathan Yee's evidence, Mr Wong indicated he would deal with it.

The documentary evidence before the Commission includes a paid invoice from CMI Legal dated 13 June 2019 issued to Mr Tam in the sum of \$3,822.50 for legal services, including disbursement of counsel fees, in connection with an "ICAC Summons to Appear and Give Evidence at compulsory examination". This invoice is consistent with Jonathan Yee's evidence.

On cross-examination by senior counsel for Mr Wong, Ms Tam rejected the proposition that, during her meeting with Mr Wong on 9 June 2019, prior to Mr Tam's compulsory examination, Mr Wong had said that he could not act as a solicitor for Mr Tam because he might have a conflict of interest.

In relation to the meeting on 9 June 2019, Mr Wong agreed that he met with Ms Tam and Jonathan Yee a couple of days before Mr Tam's compulsory examination. He said that he knew, at the time of that meeting, that Ms Tam had previously participated in a compulsory examination. However, he disputed Ms Tam's evidence that it was his suggestion in that meeting that Mr Tam should add to his evidence by saying that he worked in a restaurant where he earned tips and received lucky packets.

Second meeting – 12 June 2019

Ms Tam gave evidence that she was working at the Emperor's Garden barbecue and noodle shop on Thomas Street on Wednesday, 12 June 2019, the day of her husband's compulsory examination. Ms Tam's evidence is that:

- she had previously told Jonathan Yee that she was going to accompany her husband to see a lawyer before her husband's compulsory examination at 2 pm that day
- Mr Wong came to the barbecue and noodle shop shortly after 11 am. She had not expected to see Mr Wong and thought he wanted to eat, so she showed him to a table. However, he did not sit down
- Mr Wong said that he was aware that she was going to see a lawyer. She responded by saying that she was in a hurry to leave

- Mr Wong then "handed me a piece of paper and told me to get my husband to say, to answer accordingly". The piece of paper comprised two pages of writing in Chinese characters
- she folded the piece of paper, put it in her bag and left. She did not say anything further to Mr Wong other than that she was in a rush to see the lawyer with her husband.

Ms Tam produced to the Commission at the public inquiry the piece of paper that Mr Wong handed to her that day ("the Wong Note"), which was in typed Chinese characters. A complete English translation of the Wong Note is reproduced in figure 8. The Wong Note begins with a message in typed, underlined characters:

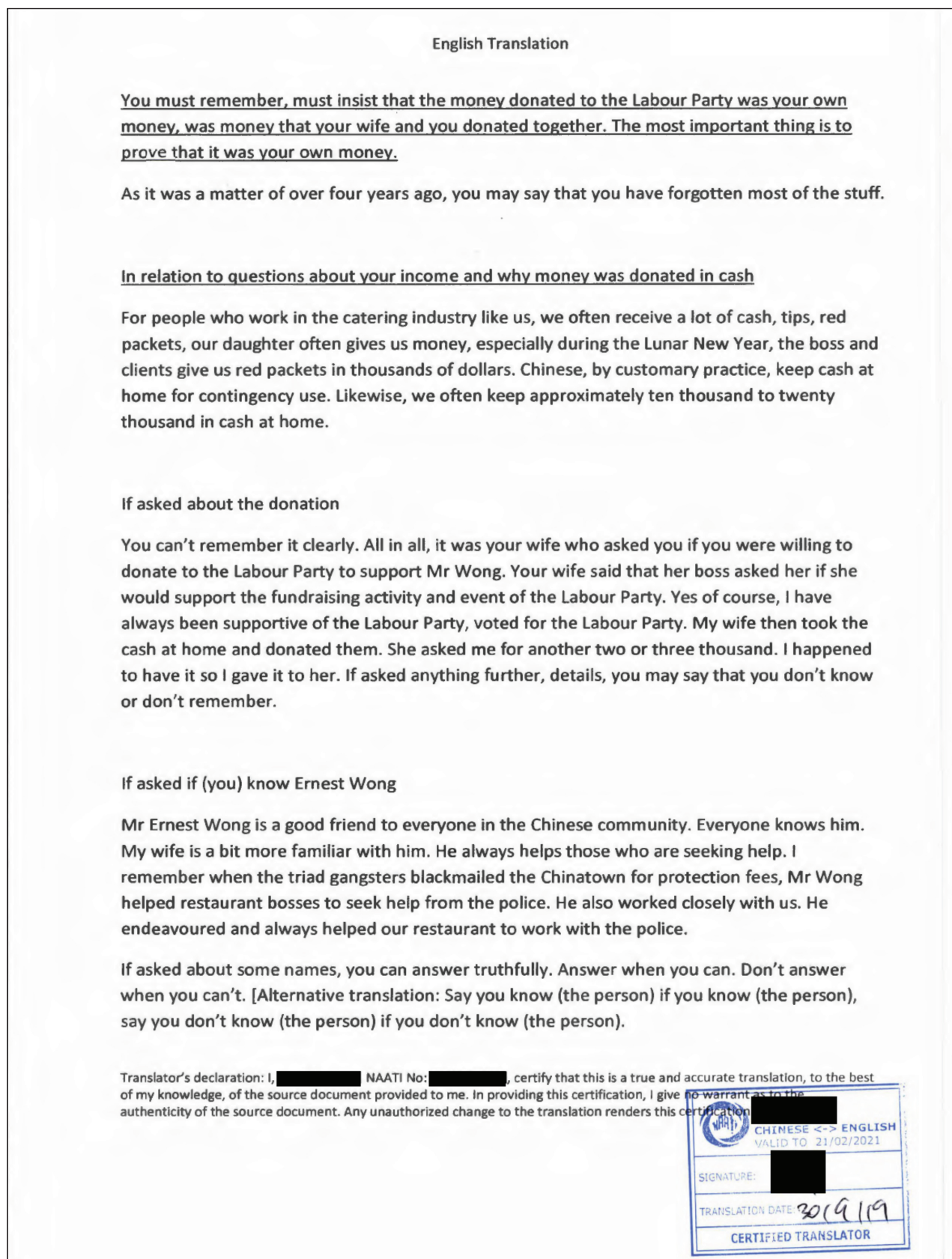
You must remember, must insist that the money donated to the Labor Party was your own money, was money that your wife and you donated together. The most important thing is to prove that it was your own money.

The balance of the Wong Note appears on its face to set out instructions to Mr Tam as to the way that he should answer if asked about certain things, including that:

- he "may say" that he has forgotten most of the details as the donation was made four years earlier
- "in relation to questions about your income and why the money was donated in cash", he should say that people "like us" who work in the catering industry often receive cash, tips and red packets and that his daughter often gave them money, especially during the Lunar New Year
- "if asked about the donation", he should say he cannot remember it clearly, but his wife asked if he would support the Labor Party and Mr Wong, and he agreed and she took the cash from home and donated it
- "if asked if (you) know Ernest Wong", he should say that Mr Wong was a "good friend" to everyone in the Chinese community and helps those who seek help, including restaurant bosses who were being blackmailed by triad gangsters
- "if asked about some names, you can answer truthfully ... Say you know (the person) if you know (the person), say you don't know (the person) if you don't know (the person)".

Ms Tam confirmed in evidence that, when Mr Wong handed her the Wong Note, he said that she should get her husband "to answer accordingly". She said she then left the barbecue and noodle shop in Thomas Street and

Figure 8: English-language translation of the note Mr Wong handed to Teresa Tam hours before Ming Tam's compulsory examination on 12 June 2019



went home to meet her husband. She gave evidence that, upon arriving home about 10 minutes later (at about 11.30 am) she showed the Wong Note to her husband. She said that her husband read the Wong Note and then gave it back to her as he was in a hurry. She then put the note back in her pocket, where it remained until shortly before she appeared at the public inquiry.

Having shown the Wong Note to her husband, Ms Tam said that she then accompanied him to a meeting with his solicitor and a barrister. The barrister indicated to Ms Tam that he needed to talk to Mr Tam without her present and so she returned to work at the barbecue and noodle shop.

During Mr Tam's 2019 CE, he gave evidence to the effect that Ms Tam donated two cash sums of \$5,000 to the Labor Party in 2015 and that she did so with his knowledge and agreement. He sought to explain the source of that cash by reference to savings from tips, lucky money and cash gifts from his daughters. He said Mr Wong was "a friend". These aspects of Mr Tam's compulsory evidence on 12 June 2019 were consistent with the answers suggested by the Wong Note.

Mr Tam subsequently gave evidence in a further compulsory examination on 27 August 2020 ("Mr Tam's 2020 CE"). During that examination, he admitted that the evidence he gave on 12 June 2019 was false and that the truth of the matter was that his wife did not donate any money in 2015. A statement pursuant to s 74A(2) of the ICAC in respect of that false evidence is made in chapter 11.

The evidence given during Mr Tam's 2020 CE also touched on the Wong Note. Counsel Assisting submitted that the Commission would not rely on that evidence, insofar as it may be relevant to findings adverse to Mr Wong, in circumstances where Mr Wong has not had an opportunity to cross-examine Mr Tam on that evidence. The Commission accepts that submission. No reliance is placed on such evidence for the purpose of reaching findings of fact in connection with the Wong Note.

Ms Tam was cross-examined in relation to the Wong Note by senior counsel for Mr Wong. She rejected suggestions that, after the meeting on 9 June 2019, she had wanted further assistance from Mr Wong and had asked him to "prepare something" for her husband. She flatly rejected the proposition that the Wong Note contained information that she herself had provided to Mr Wong.

During the public inquiry, Jonathan Yee gave evidence that Ms Tam made him aware that she had been provided a document by Mr Wong in connection with Mr Tam's 2019 CE. He said that Ms Tam had shown him a copy of that document. The Wong Note (in original Chinese characters) was shown to Jonathan Yee in the public inquiry. He confirmed that was the document Ms Tam had shown him.

Having read the Wong Note to refresh his memory, Jonathan Yee agreed that the gist of it was to provide instructions as to what might be said in response to enquiries by this Commission. He agreed that the Wong Note represented "just part of the story of running interference ... of both Commissions that [he] and Mr Wong [had] been engaged in".

Mr Wong corroborated much of Ms Tam's evidence in respect of their meeting on 12 June 2019. He agreed that he visited her at the barbecue and noodle shop on the day of Mr Tam's 2019 CE. When shown the Wong Note, he agreed that he gave it to Ms Tam during their meeting on 12 June 2019. Mr Wong accepted that he gave the Wong Note to Ms Tam in order for her to give it to Mr Tam. He accepted that he wrote the Wong Note and that he identified the particular matters expressed in it. He also agreed that the translated version of the Wong Note, reproduced in figure 8, was a fair translation.

However, Mr Wong denied that, when he gave Ms Tam the Wong Note on 12 June 2019, he also said to her that she should ask her husband to "answer accordingly".

Mr Wong rejected the proposition that he was seeking to provide advice, by way of the Wong Note, to Mr Tam as to what he should say in his compulsory examination. He denied that the reason he wrote the Wong Note was that he wanted Mr Tam to lie to the Commission because the truth would tend to implicate Mr Wong. Indeed, Mr Wong did not accept that the Wong Note contained any falsehoods.

On Mr Wong's account, he provided the Wong Note to Ms Tam because she had asked him to prepare the document based on information they had previously discussed for the purpose of enabling Mr Tam to communicate to his solicitor "in regards to the whole situation he wants to present". While Mr Wong accepted that the language of the Wong Note was in the form of instructions, he denied that he was actually giving Mr Tam instructions on what to say. Mr Wong insisted that it was just to enable Mr Tam to be clear about the source of the money.

Having considered the evidence, the Commission rejects Mr Wong's explanation. Objectively, the Wong Note speaks for itself. It is clearly a document that instructs Mr Tam as to what he can or cannot remember and what he "must", "may" or "can" say in response to the particular lines of questioning that are set out therein.

That Mr Wong, the author of the Wong Note, wanted Mr Tam, the intended recipient of it, to tell lies in response to questions concerning purported donations made by his wife is made plain by the contrasting language with respect to questions about names. In that context, the note read:

If asked about some names, you can answer truthfully. Answer when you can. Don't answer when you can't. [Alternative translation: Say you know (the person) if you know (the person), say you don't know (the person) if you don't know (the person)].

That the note suggested that Mr Tam was free to “answer truthfully” questions about names suggests that he was not free to do so in relation to the other matters set out in the Wong Note. In relation to those other matters, Mr Wong set out in the note what appears to be a script that Mr Tam should follow.

The Wong Note itself is compelling evidence that Mr Wong’s purpose in drafting and furnishing that document was to guide Mr Tam to provide false evidence to this Commission. It is bolstered by the clear evidence of Ms Tam, which, in turn, is consistent with Jonathan Yee’s evidence, much of which is of the nature of admissions against self-interest. That Mr Wong had an unusual interest in Mr Tam’s compulsory examination is further borne out by the evidence that he paid \$3,000 in cash towards Mr Tam’s legal bill.

Having considered all the evidence, the Commission finds that Mr Wong:

- wrote the Wong Note in order to provide advice to Mr Tam as to what he should say in his compulsory examination on 12 June 2019
- handed the Wong Note to Ms Tam at the barbecue and noodle shop shortly after 11 am on 12 June 2019 and, when he did so, he said words to the effect that her husband should “answer accordingly”
- was motivated to do those things because he wanted Mr Tam to lie to the Commission about Ms Tam’s purported donations because the truth would have exposed, and implicated Mr Wong in, the scheme to circumvent the EFED Act in connection with the \$100k cash.

Third meeting – 14 June 2019

Ms Tam gave evidence that, on Friday, 14 June 2019, two days after Mr Tam’s 2019 CE, she was working at the barbecue and noodle shop when someone rang her from the Emperor’s Garden restaurant in Hay Street, telling her to go there because Jonathan Yee wanted to see her. On arriving at the Hay Street restaurant, she was told to go up to the second level. She did so and saw Jonathan Yee, who told her to go into the office. For a second time, Mr Wong was waiting for her in the office.

Ms Tam said that she met Mr Wong in the office and Jonathan Yee was with them. On her account, Mr Wong asked her “if ICAC had said anything after [her] husband

finished his attendance as summoned”. Ms Tam said that she told Mr Wong and Jonathan Yee that the Commission had said there would be a public inquiry. She gave evidence that Mr Wong replied that it was “just about waiting for the public inquiry” and “there was possibly no evidence and therefore they are still investigating”.

Mr Wong accepted that he did meet Ms Tam after her husband’s compulsory examination in June 2019 but said that he could not recall what was discussed. It was put to Mr Wong that he asked Ms Tam to report to him as to what had happened during the course of Mr Tam’s 2019 CE. Mr Wong responded, “I did not ask her to report to me as such, no”.

Having considered the evidence, the Commission accepts Ms Tam’s evidence and is satisfied that, at the meeting on 14 June 2019, Mr Wong asked her to report information concerning what was said by officers of the Commission during, or after, her husband’s compulsory examination.

Section 74A(2) statements

The Commission is satisfied that Mr Cheah, Mr Mo, Ms Tam, Mr Shi, Ms Siu, Mr Wong, Mr Wood, Jonathan Yee, May Ho Yee and Valentine Yee are “affected persons” with respect to the matters dealt with in this chapter.

Procure false testimony offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the following persons for offences of procuring false testimony in contravention of s 89 of the ICAC Act. An offence under s 89 of the ICAC Act carries a maximum penalty 200 penalty units or imprisonment of five years, or both.

Mr Wong for:

- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Mr Tam at a compulsory examination on 12 June 2019
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Jonathan Yee at a compulsory examination on 27 and 28 June 2019.

Jonathan Yee for:

- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Valentine Yee at a compulsory examination on 30 January 2019

- procuring the giving of false testimony at a compulsory examination in relation to the testimony of May Ho Yee at a compulsory examination on 11 December 2018
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Mr Mo at a compulsory examination on 29 June and 9 July 2018
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Ms Siu at a compulsory examination on 13 December 2018 and 23 January 2019
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Ms Tam at a compulsory examination on 5 December 2018 and 21 January 2019
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Mr Shi at a compulsory examination on 25 January 2019, 22 February 2019 and 8 March 2019
- procuring the giving of false testimony at a compulsory examination in relation to the testimony of Mr Lin at a compulsory examination on 27 June and 10 July 2018.
- in relation to Jonathan Yee and Valentine Yee, their own admissions and the evidence of the Emperor's Garden putative donors, including the statutory declaration of Ms Siu and the affidavit of May Ho Yee
- in relation to Mr Wood, his own evidence and the evidence of Mr Tong and Mr Zhan, corroborated by Mr Tong's summons and call charge records.

Submissions were received on behalf of Mr Wood, which contend that:

- an offence under s 89 of the ICAC Act requires proof that the person alleged to have procured false testimony must have known at the relevant time that the version of the testimony the subject of the charge was in fact false, and
- that the Commission would not be satisfied that the evidence supports a finding that Mr Wood possessed such knowledge in respect of the testimony that is said to have been procured by Mr Wood from Mr Tong.

The Commissions agrees with submission (a) above but does not accept submission (b).

As previously reported, the Commission has found that Mr Wood attended upon Mr Tong on the evening of 19 November 2018 in circumstances where Mr Tong had (that morning) received a summons to attend the Commission and give evidence and had drawn that matter to the attention of Mr Zhan seeking help from Wu International, Mr Wood's company. During the meeting that night, Mr Wood said to Mr Tong words to the effect, "Just stick with the evidence that you had given to the Electoral Commission then it should be fine".

The Commission is satisfied that there is sufficient admissible evidence that Mr Wood knew, as at 19 November 2018, that the information Mr Tong had previously given to the NSWEC was false. The evidence relevant to that issue is set out in detail in previous chapters of this report. For example, it includes:

- the evidence of Mr Tong that Mr Wood and Mr Liao were together responsible for falsely using his name to make a donation
- the evidence of Mr Tong, corroborated by emails and correspondence, that Mr Tong had, both orally and in writing, on numerous occasions, complained to Mr Wood and Mr Liao about the fraudulent use of his name by Wu International in connection with that donation
- Mr Wood's admission that, in September 2016, he was present during a conversation with Mr Tong and Mr Liao in which Mr Tong said that the
- in relation to Mr Wong, his own evidence and the evidence of Jonathan Yee and Ms Tam in addition to documentary evidence including the Wong Note and the photograph on Jonathon Yee's mobile telephone depicting the note on Mr Wong's mobile telephone in Guangdong

Valentine Yee for procuring the giving of false testimony at a compulsory examination in relation to the testimony of May Ho Yee at a compulsory examination on 11 December 2018.

Mr Wood for procuring the giving of false testimony at a compulsory examination in relation to the testimony of Mr Tong at a compulsory examination on 4 December 2018.

The fact that a person has given evidence to the Commission on objection pursuant to a declaration under s 38 of the ICAC Act does not prevent that evidence from being used against the person in the prosecution for any offence under the ICAC Act. It follows that any evidence given during the Commission's proceedings, including relevant admissions made by the affected persons, would be admissible in evidence against them in a prosecution for an offence against s 89 of the ICAC Act.

The available admissible evidence has been set out at length in this chapter. In particular, the following key evidence would be available for the consideration of the DPP:

donation had nothing to do with him and that he threatened to “blow up the matter to become an explosive news”

- the Tong File Note made by Mr Tong following his meeting with Mr Wong at Parliament House on 17 September 2018, during which Mr Wong told him to keep silent and that, if anything happened in the future, he should continue to say whatever he had told the electoral office in the past
- Mr Zhan’s evidence, corroborated by the email records, that he received an email from Mr Tong on 18 September 2018 attaching the Tong File Note and that he showed that note to Mr Wood, who read it
- the evidence of Mr Teh and documentary evidence, including invoices which establish that Wu International, being Mr Wood’s company, retained and paid Teh & Ng to respond to the NSWEC on Mr Tong’s behalf on two occasions.

Publications in breach of directions under s 112 of the ICAC Act

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the following persons for offences of making a publication in contravention of a direction under s 112 of the ICAC Act, contrary to s 112(2). An offence under s 112(2) of the ICAC Act carries a maximum penalty 50 penalty units or imprisonment of 12 months, or both.

Mr Wong for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publication to Jonathan Yee regarding his participation in a compulsory examination on 16 and 20 November 2018.

Mr Cheah for one or more offences of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publication to Mr Wong and Ms Sibraa regarding his participation in a compulsory examination on 25 May 2018.

May Ho Yee for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Mr Wong regarding her participation in a compulsory examination on 11 December 2018.

Ms Siu for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Jonathan Yee regarding her participation in a compulsory examination on 13 December 2018 and 23 January 2019.

Ms Tam for an offence of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to her publication to Jonathan Yee regarding her participation in a compulsory examination on 5 December 2018 and 21 January 2019.

Mr Shi for one or more offences of making a publication in breach of a direction given under s 112 of the ICAC Act in relation to his publications to Mr Wong and Jonathan Yee regarding his participation in a compulsory examination on 25 January 2019, 22 February 2019 and 8 March 2019.

The available evidence is set out at length previously in this chapter. In particular, the Commission notes that the transcript and recording of the relevant compulsory examinations, setting out the terms of the directions made pursuant to s 112 of the ICAC Act, in addition to the admissions made during the public inquiry by each of the witnesses identified above, would be available for the consideration of the DPP in respect of these offences.

Submissions were received on behalf of Mr Cheah in relation to s 112 of the ICAC Act. Those submissions contend that “if Mr Cheah committed a breach, it is based on his own vague evidence and as a result of not recalling the condition”.

Mr Cheah admitted that, at the start of the compulsory examination, he was directed not to tell anyone that he had participated in it or the substance of any questions or answers given. He also admitted that he breached that direction, at least in part, by telling such things to Ms Sibraa, Mr Wong and “more likely than not” Jonathan Yee. The Commission considers that there is sufficient admissible evidence to seek the advice of the DPP in relation to Mr Cheah’s publications to Mr Wong and Ms Sibraa, but not so in relation to his “more likely than not” disclosure to Jonathan Yee.

Counsel Assisting identified a substantial body of evidence, set out in this chapter, which suggests that many of the publications in breach of s 112 of the ICAC Act were made in circumstances where the witnesses who made such publications were approached and asked to do so by either or both of Mr Wong and Jonathan Yee.

The question arises as to whether Mr Wong and Jonathan Yee, in procuring those publications, may be complicit in the commission of any offence that may have been committed under s 112 of the ICAC Act. Accessorial liability is available for certain criminal offences. However, under the Crimes Act such liability is only available for indictable offences. An offence against s 112 of the ICAC Act is not an indictable offence.

Submissions have been made on behalf of some of the putative donors that, in circumstances where Mr Wong and Jonathan Yee were in positions of power and

authority relative to the putative donors, the Commission would consider exercising its discretion not to refer those persons to the DPP for consideration of prosecution for offences such as those against s 112 of the ICAC Act.

The Commission accepts that the putative donors were subject to pressure from Mr Wong and Jonathan Yee, in particular, in the present context, to continue giving false evidence in line with the false cover story that Mr Wong and Jonathan Yee had concocted in an attempt to prevent the NSWEC and this Commission from discovering the truth as to the \$100k cash received by NSW Labor and Country Labor in connection with the 2015 CFOL dinner.

However, where there is clear evidence of conduct that may amount to possible offences, such as those above in contravention of s 112 of the ICAC Act, the Commission is obliged to seek the advice of the DPP.

However, the evidence that Mr Wong procured publications from May Ho Yee, Mr Shi and Mr Cheah in breach of directions under s 112 of the ICAC Act, and that Jonathan Yee did likewise from Ms Siu, is highly relevant to proof of Mr Wong's and Jonathan Yee's ongoing courses of conduct in connection with the scheme offences identified in chapter 14. The evidence of May Ho Yee, Mr Shi, Mr Cheah and Ms Siu would be admissible and available for the DPP's consideration in relation to those scheme offences.

Disclosures of information likely to prejudice an investigation

The evidence set out in this chapter suggests that each of May Ho Yee, Mr Mo, Ms Siu, Ms Tam and Mr Shi disclosed to Jonathan Yee the existence of the summons that they had received, which required them to attend and give evidence at a compulsory examination before the Commission. The evidence suggests May Ho Yee also disclosed her summons to Valentine Yee. Counsel Assisting submitted that each of the persons named above may have committed offences under s 114 of the ICAC Act.

Section 114(1) of the ICAC Act provides, relevantly, that a person who is required by a summons under s 35 to give evidence shall not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates. Section 114(2) provides that s 114(1) does not apply to a summons unless it specifies that information about the summons must not be disclosed.

The summonses issued to each of May Ho Yee, Mr Mo, Ms Siu, Ms Tam and Mr Shi did specify that information about the summons must not be disclosed. However, in circumstances where the summonses were issued in the English language, and where English is not the first

language of any one of those five persons, and where each of them relied substantially on the services of an interpreter in giving evidence to the Commission, doubt arises as to whether they understood that they were not at liberty to disclose the existence of their summonses to others.

In the cases of Mr Mo, Ms Siu and Mr Shi, further doubt flows from the fact that the summonses were served by way of leaving them with family members. This could have encouraged a belief that there was no requirement to keep the summons a secret.

Submissions were received on behalf of Mr Mo that:

Section 114(2) is no mere technicality. The requirement exists to inform the recipient of a summons that he or she must not disclose the existence of the summons. It can serve that purpose where, in the ordinary course of events, it is written in English and is served on a person who is able to read English. In that circumstance, a person may knowingly contravene the section by disclosing the existence of the summons to another person.

However, the specification can have no practical effect, and the requirement imposed by s 114(2) cannot achieve its obvious purpose, if the summons is written in English and is served on a person (such as Mr Mo) who does not have a command of English: see T 1210.20. It would be necessary, in those circumstances, for an ICAC officer to explain the contents of the summons to the [recipient] and any specification therein.

The Commission accepts that submission and is not satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to possible offences under s 114 of the ICAC Act by May Ho Yee, Mr Mo, Ms Siu, Ms Tam and Mr Shi.

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Chapter 24: Attempts to influence the Commission's public inquiry

On 31 July 2019, the Commission announced that it would conduct a public inquiry, starting on 26 August 2019, in relation to this investigation. In the days leading up to that announcement, witnesses were served summonses requiring them to attend and give evidence. The announcement was made about six weeks after Mr Wong's meetings with Ms Tam, during which Mr Wong sought to influence the evidence her husband might give in his compulsory examination. The evidence in relation to those events is set out in the previous chapter.

The evidence shows that, after the announcement of the public inquiry, but prior to its commencement, Mr Wong and Jonathan Yee took further steps to attempt to prevent this Commission from finding out the truth regarding the scheme to circumvent electoral laws with respect to the \$100k cash received in connection with the 2015 CFOL dinner. Those steps involved conversations with the Emperor's Garden putative donors, and Mr Yip, in attempts to influence the testimony that those persons might give at the public inquiry.

There is evidence that Mr Wong conducted meetings with each of the natural person Emperor's Garden putative donors; being Jonathan Yee, May Ho Yee, Valentine Yee, Mr Shi, Ms Siu, Mr Mo, Mr Lin and Ms Tam. The evidence suggests that Mr Wong conducted those meetings in private dining rooms at the Emperor's Garden restaurant. During those meetings, the evidence that each of those witnesses might give at the public inquiry was discussed.

There is also evidence that, when it became apparent in mid-September 2019 that Valentine Yee was going to tell the truth at the public inquiry (that is, that he had not made any donations in connection with the 2015 CFOL dinner), Mr Wong had a further meeting with Jonathan Yee, and also a meeting with Jonathan Yee's father, Stanley Yee, at the Chinese Masonic Hall in Surry Hills.

The evidence concerning these events, and the Commission's related findings, are set out in this chapter.

Meetings prior to the public inquiry

Jonathan Yee gave evidence that, when he received his public inquiry summons on 29 July 2019, he intended to keep telling the false story that he had previously told in his compulsory examination on 27 and 28 June 2019. He admitted that he sought to communicate to each of the "fake donors" that they should do likewise.

Jonathan Yee's admission is corroborated by the putative donors, including Mr Yip of Harbour City Group Pty Ltd. Mr Yip gave evidence in a compulsory examination on 17 March 2020, the transcript of which is in evidence in the public inquiry. During that examination, Mr Yip said that, after he received his summons to attend the public inquiry, he told Jonathan Yee about it. On Mr Yip's account, Jonathan Yee said words to the effect of, "just keep the same, same story".

Mr Yip said that he understood Jonathan Yee to mean that Mr Yip should give evidence at the public inquiry, which was consistent with the false version that Mr Yip had previously given to the NSWEC and which he repeated in his June 2018 compulsory examination before this Commission. That version included assertions that Mr Yip had contributed \$500 towards, and attended, the 2015 CFOL dinner. Mr Yip ultimately kept "the same story" and gave such evidence during the public inquiry, which he later admitted was false.

Jonathan Yee's conversations with each of the Emperor's Garden putative donors in the lead up to the public inquiry are detailed below.

Background to Mr Wong's meetings with the putative donors

Jonathan Yee gave evidence that his attempts to communicate the message to the "fake donors" that they should keep telling the false story that they had previously

told in their compulsory examinations included steps that he took to arrange meetings between Mr Wong and each of the natural person Emperor's Garden putative donors.

According to Jonathan Yee:

- a few days after receiving his summons (on 29 July 2019) and soon after the public inquiry was announced (on 31 July 2019), he had a conversation with Mr Wong in one of the private VIP rooms at the Emperor's Garden yum cha restaurant on Hay Street
- during that conversation, he said to Mr Wong, "It's heading towards a public inquiry, I've got a summons and I believe most of the other people will get a summons sooner or later"
- in response, Mr Wong said to Jonathan Yee words to the effect of:

[Jonathan Yee]: ...He said that, "The Commission is trying [to use] the media to put pressure on you guys to tell the truth. If they have enough information, it would be already forwarded to the respective," is it DPP, you call it? The, the, the Public Prosecutions—

[Counsel Assisting]: It stands for Director of Public Prosecutions, yes.

[Jonathan Yee]: Yes. For further investigation. And through what he was saying he was convincing me that, "You should not be worried," and he did say, "Don't worry about it, just keep to your story and we'll be fine."

- also during that conversation, Mr Wong said words to the effect of, "I would like to meet the individual donors" or "Do you want me to speak to these donors?" in response to which Jonathan Yee replied, "If you want to see them I can arrange it for you".

Jonathan Yee gave evidence, corroborated by each of the Emperor's Garden putative donors, that he made arrangements for Mr Wong to meet with each of those persons. The details of those arrangements, and evidence as to what was said during those meetings, is set out later in this chapter.

Jonathan Yee confirmed in evidence that it was Mr Wong's idea to meet with the putative donors in the lead up to the public inquiry. On cross-examination by senior counsel for Mr Wong, Jonathan Yee denied that those meetings were his own idea. Jonathan Yee rejected the proposition that he asked Mr Wong to speak to the Emperor's Garden putative donors because those persons were concerned and Mr Wong might be able to assist them. In response to that proposition, Jonathan Yee answered:

How could Mr Wong assist them when they're very concerned? It was Mr Wong's concern that the, this story will bust. He needs, needed to speak to the individuals.

Jonathan Yee gave evidence that Mr Wong did not tell him what he intended to say to the Emperor's Garden putative donors. But he said that he understood, based on what Mr Wong had told him; namely, that he should "just keep to [the] story" and that the Commission lacked sufficient evidence and was using the media to pressure witnesses into telling the truth, that Mr Wong would communicate a similar message to the putative donors:

I would say that he's, would be the same, we were talking to me, he's saying that, "Be assured they don't have enough evidence. Be assured that you won't get

in trouble. Once this public inquiry's over, it will be over and done and dusted."

In his evidence, Mr Wong rejected the proposition that he gave advice to Jonathan Yee as to what he should say if called to give evidence in the public inquiry. He specifically denied telling Jonathan Yee that he should not tell the truth to this Commission. Mr Wong also rejected the proposition that he told Jonathan Yee words to the effect that the Commission was trying to use the media to:

...put pressure on you guys to tell the truth. If they had enough information it would already be forwarded to the DPP. Don't worry about it, just stick to your story and we'll be fine.

During the public inquiry, Mr Wong admitted that he did meet with May Ho Yee, Valentine Yee, Ms Siu, Ms Tam, Mr Mo, Mr Shi and Mr Lin after the public inquiry had been announced and before each of them gave evidence. However, he denied that it was his idea to meet them. Mr Wong said that it was Jonathan Yee who suggested to him that:

...all of those employees are now going to a solicitor and he also want me to meet up with them to give them comfort in regards to how they are going to, to cope with it.

In light of the evidence as to what was said and done during Mr Wong's meetings with the Emperor's Garden putative donors, which is set out below, and in the context of other meetings conducted by Mr Wong (such as those with Mr Tong at Parliament House in September 2018 and with Ms Tam in July 2019), the Commission rejects Mr Wong's evidence that the reason he met the Emperor's Garden putative donors after the announcement of the public inquiry was to "give them comfort".

During the public inquiry, Counsel Assisting put to Mr Wong that, as a solicitor, and in circumstances where Mr Wong himself was likely to be a person of interest to the inquiry, it was wrongful for Mr Wong to meet and speak with people who were about to be called to give evidence at a public inquiry before this Commission. Mr Wong initially rejected that proposition, saying, "No, as I said before, it depends on what we're talking about, the context".

Mr Wong subsequently accepted that he knew, when the public inquiry was announced, that there was a risk that substantial allegations might be made against him in the public inquiry. He accepted that it was inadvisable for him to have had discussions with other people who might be called to give evidence in the public inquiry. He accepted that it would be a terrible thing for a solicitor to obstruct justice or be perceived to have done so.

Mr Wong agreed, "at least with the benefit of hindsight", that he should never have participated in the meetings with the Emperor's Garden putative donors. He agreed that it created a perception that he, as a person of interest to the public inquiry, may have been seeking to influence other witnesses' evidence. As will be seen below, the evidence of the Emperor's Garden putative donors suggests that that was precisely what Mr Wong was in fact seeking to do.

Conduct of Mr Wong's meetings with the putative donors

Jonathan Yee gave evidence regarding the steps that he took to arrange the meetings between Mr Wong and each of the natural person Emperor's Garden putative donors after the announcement of the public inquiry. He said that he arranged the meetings to coincide with Mr Wong's attendances to dine at the Emperor's Garden yum cha restaurant on Hay Street.

Jonathan Yee said that Mr Wong was a regular diner at the Emperor's Garden, who usually ate with others in the open area but, on these occasions, the meetings with the putative donors were held in private VIP dining rooms. He said the majority of the meetings were in VIP room 1 but some were in VIP room 3.

Asked if all those meetings occurred on the same day, Jonathan Yee replied that they did not. He said they were held on, "separate days because not everybody worked on the same day". He explained that Mr Wong did not tell him when he would be coming into the restaurant, with the result that Jonathan Yee had to make the arrangements with the putative donors on an ad hoc basis as, and when, Mr Wong turned up; forward planning was not possible.

If any of the putative donors happened to be working at the restaurant on the day that Mr Wong showed up, Jonathan Yee took them to see Mr Wong in the VIP dining room. In relation to those who were not working at the time, Jonathan Yee gave evidence that he asked an employee, who may have been Ming Xie Wei, to call them and ask them to come to the restaurant.

Jonathan Yee said that Mr Wong met with Valentine Yee, May Ho Yee, Mr Mo, Mr Lin and Ms Tam on one day, and that he met with Mr Shi and Ms Siu on separate occasions. He said that all those meetings were arranged in a period of approximately two weeks after the announcement of the public inquiry. That would correspond with the first half of August 2019. The evidence surveyed below suggests that arrangements for at least some of those meetings were made on consecutive Saturdays; being 10 and 17 August 2019.

Jonathan Yee gave evidence that, on each occasion, he escorted the Emperor's Garden putative donor upstairs and showed him or her into the VIP dining room, where Mr Wong was waiting alone and (at least on one occasion) eating a meal. Jonathan Yee's evidence was that, on each occasion, he left the putative donor alone with Mr Wong and closed the door to the VIP dining room. The evidence as to what happened during each of those meetings is set out below.

Mr Wong's meeting with Mr Shi

Mr Shi gave evidence that, within a few days of receiving his summons to appear and give evidence at the public inquiry, he presented the summons to Jonathan Yee at the Emperor's Garden restaurant. On Mr Shi's account, Jonathan Yee told him, "words to the effect that what you said to the ICAC before, you should continue with it". Mr Shi said he agreed to do as requested because he was stressed about having told lies previously and trusted Jonathan Yee.

Mr Shi explained that he understood Jonathan Yee's request to be that he should maintain in the public inquiry what was said in his compulsory examination. Mr Shi confirmed that, after his compulsory examinations, he had reported back to Jonathan Yee that he had "told what he asked me to say". As set out in the previous chapter, Mr Shi also gave evidence that he reported similar information directly to Mr Wong.

Mr Shi gave evidence that, sometime after receiving his public inquiry summons, he was approached by Jonathan Yee who told him to go up to the second level (of the restaurant) because Mr Wong wanted to see Mr Shi. Mr Shi said that he did as Jonathan Yee asked and went upstairs and met with Mr Wong, who was waiting alone in a VIP dining room near "the power room". As to what was said during that meeting, Mr Shi gave the following evidence with the assistance of an interpreter:

[Counsel Assisting]: *And did Mr Ernest Wong say anything to you when you went into the room?*

[Mr Shi]: **Yes.**

[Q]: *What did he say to you?*

[A]: **He told me to insist on the original version, and the original, the, the, yes, original way of explaining.**

[The Commissioner]: *What were his actual words? Try and recall them as he actually said them to you, and how you responded, if you did respond.*

[A]: **He told me to insist on what was said before, and that ICAC did not have enough evidence to prosecute me with, and that I shouldn't worry.**

[Q]: *But when you said they insisted, or he insisted that you, what do you mean by insisted?*

[A]: **Well, that is what I have told the ICAC before.**

[Counsel Assisting]: *But what did you mean by insisted?*

[A]: **The, to maintain what I had said at the private hearing, and then to continue the same at the public inquiry.**

[The Commissioner]: *Well, was he asking you to do it, or was he telling you to do it?*

[A]: **He, he was asking me.**

[Mr Robertson]: *Did you tell Mr Wong what you had told this Commission in the private hearing?*

[A]: **Yes.**

[Q]: *Did you tell him that during the meeting in the VIP room, is that right?*

[A]: **Yes.**

[The Commissioner]: *What do you recall telling Mr Wong about your evidence in the private hearing?*

[A]: **I said that although I have not donated, I claimed to have donated, and I explained about the source of the money.**

As noted above, during the public inquiry, Mr Wong admitted that he met with each of May Ho Yee, Valentine Yee, Ms Siu, Ms Tam, Mr Mo, Mr Shi and Mr Lin after the public inquiry had been announced and before each of them gave evidence. He offered the following explanation as to what he said to them during those meetings:

All those people that I met with, I did tell them two things. First of all I asked them if they had a solicitor. I think that's one thing I tried to stress, to make sure that they would have their solicitor. And, secondly, based on that, I understand that, or based on my knowledge that they were telling the truth, I'm telling

them, say look, if you are comfortable and you find what you said was the truth, then you just say what you said before. That was the line that I gave them in Chinese.

Counsel Assisting put to Mr Wong that his evidence was wrong and that what Mr Wong in fact was doing in those meetings was seeking to obstruct this Commission's investigation by having each of those individuals tell lies at the public inquiry and that he was doing so because he was concerned that their evidence would implicate him. Mr Wong rejected that proposition.

Mr Wong denied that he said to Mr Shi during their meeting words to the effect of, "you should insist on what was said before" and that "ICAC does not have enough evidence to prosecute you with" and that he said that Mr Shi "should not worry". Mr Wong instead sought to explain the substance of his discussion with Mr Shi by reference to a request from Mr Shi for Mr Wong's help finding a lawyer for tax matters. As previously reported, Mr Wong offered a similar explanation in relation to other conversations he had with Mr Shi about Mr Shi's compulsory examinations.

Mr Wong's meeting with Ms Siu

Ms Siu gave evidence that, soon after she received her summons to appear and give evidence at the public inquiry, she spoke to Jonathan Yee about the summons. She said that Jonathan Yee told her "to continue the story" and "to say what I have said before". She understood that to be a reference to the story that she had donated \$10,000, which she had told to the NSWEC and to this Commission in her compulsory examination and which was not true.

Ms Siu gave evidence that, a few weeks after she had received her public inquiry summons, she was working (in her role as a cashier) at the Emperor's Garden yum cha restaurant on Hay Street when an employee, who she thought was female, told her to go to a private dining room where someone was waiting for her. This timeframe is consistent with Jonathan Yee's evidence, that Mr Wong's meetings with the Emperor's Garden putative donors occurred within about two weeks of the announcement of the public inquiry.

Upon entering the room, Ms Siu said that she found Mr Wong alone waiting for her. On Ms Siu's account, the effect of what Mr Wong said to her was:

...that I have to say, I have to persist and say that the \$10,000 was donated from my own money and that things would be okay. Just take it as your own donation and things will be fine.

Ms Siu said that she agreed to do as Mr Wong asked, but

that she later changed her mind and told the truth in the public inquiry.

At the public inquiry, Ms Siu said that, during that meeting with Mr Wong, he "somehow" came to know that she had kept the draft, handwritten letter that Jonathan Yee had given her to copy in September 2016 when she prepared her response to the NSWEC notice to produce documents. As set out in chapter 16, that letter sought to falsely explain Ms Siu's purported cash donation by reference to lucky money and tips and a bank withdrawal of \$5,000 in September 2014. Ms Siu accepted that she may have told Mr Wong about the existence of Jonathan Yee's draft during her meeting with Mr Wong in the private dining room.

On Ms Siu's account, Mr Wong said during that meeting that he wanted to have a look at Jonathan Yee's draft letter to the NSWEC and he told Ms Siu to bring it in to work and that he would pick it up from her. Ms Siu said that she told Mr Wong she would look for it and, if she could find it, she would give him a copy. She said that she later looked for it, found it, put it in her bag and took it to work with her at the Emperor's Garden. She said that, about a week after her meeting with Mr Wong, he came to the cashier counter when he was having lunch at the Emperor's Garden and asked her for Jonathan Yee's draft letter. She gave it to him. It was her only copy.

Ms Siu was not cross-examined during the public inquiry by senior counsel for Mr Wong in relation to any aspect of her evidence.

Mr Wong accepted that he met with Ms Siu after the announcement of the public inquiry and before she gave evidence. He accepted that he said words to her during that meeting to the effect of, "You should tell the same story and you will be alright". He said that he told her that, "She should tell what she believe that was the truth, and that she should actually say what she said before". Asked if there was anything else discussed between them during that meeting, Mr Wong said that they discussed Ms Siu's need for a legal representative and that Ms Siu "kept on telling me how she actually funded that, that donation. She said that she went on holidays and, you know, all sorts of stuff".

While the Commission accepts that Ms Siu and Mr Wong may have discussed during that meeting the particulars of the false explanation contained in Jonathan Yee's draft letter to the NSWEC notice in 2016, the Commission does not accept Mr Wong's evidence that Ms Siu told him in that meeting that she "actually funded that donation". In light of the Commission's finding, and Ms Siu's admission, which is consistent with the weight of the evidence that she did not in fact donate any money in connection with the 2015 CFOL dinner, there is no

conceivable reason why Ms Siu would lie to Mr Wong in that meeting by telling him that she had made such a donation.

Mr Wong's meeting with Mr Mo

Mr Mo was a manager of the Emperor's Garden yum cha restaurant in 2015 but ceased working at the Emperor's Garden in about August 2016. He gave evidence during the public inquiry on 17 September 2019 to the effect that he had not donated sums of \$5,000 to NSW Labor or Country Labor in 2015 and that he had lied to the NSWEC and this Commission about those matters.

During his oral evidence, Mr Mo was not asked about any meetings that he may have had with Mr Wong after the announcement of the public inquiry. Counsel Assisting did not examine Mr Mo on those issues because, at the time, the Commission was yet to discover that Mr Wong had conducted a series of meetings at the Emperor's Garden restaurant with putative donors after the announcement of the public inquiry.

However, when the fact that Mr Wong had done so subsequently became public, Mr Mo produced to the Commission a statutory declaration dated 2 October 2019, which was tendered in evidence in the public inquiry. That statutory declaration sets out his evidence in relation to a meeting that he says he had with Mr Wong in August 2019, including that:

- on either 10 or 17 August 2019 (consecutive Saturdays), he received a telephone call from "Sister Ming", an employee of the Emperor's Garden, who invited him to come to the restaurant for afternoon tea and pick up some moon cakes
- at 3 pm, he attended the Emperor's Garden restaurant and went inside and spoke to his former colleagues, including Ms Ming
- a short time after that, Ms Ming said words to the effect, "Wong Kwok Chung is upstairs having 'tea' (yum cha). He would like to see you. He is in room 3"
- he had been unaware that Mr Wong was in the restaurant and was concerned about what Ms Ming had said because his lawyer had advised him not to speak with any of the persons who were being investigated by the Commission. However, he felt that he could not say, "No"
- he went upstairs and met with Mr Wong who was waiting alone in "Room 3", although Mr Mo assumed from the number of plates on the table that he had been there with a number of people

- Mr Wong said:

I know you have been summoned to give evidence at the public hearing. I've read the answer you have given online. There is no problem with your answers. However, there may be a problem with the forms

- Mr Wong then said, "Don't worry about it. Just remember what you have already told them"
- in response, Mr Mo said "Mmm", meaning "Okay". He understood that Mr Wong wanted him to continue to tell lies about the donations. He was scared of Mr Wong and felt he could not say "No" to his face.

Mr Mo's statutory declaration was tendered in evidence in the public inquiry on 3 October 2019. When attending to that matter, Counsel Assisting outlined the substance of the declaration and indicated that any party with an interest in cross-examining Mr Mo in relation to that evidence should draw that to Counsel Assisting's attention. No such application was made to cross-examine.

Jonathan Yee gave evidence that he asked Ms Ming to call Mr Mo and ask him to come to the restaurant. He accepted that it was possible but did not know whether Ms Ming had used some pretext in that call without mentioning Mr Wong's name. In terms of the timing of events, Jonathan Yee explained that:

I remember one time when Ernest was in and I asked one of my staff, most probably Ming, to give Ray a call, Ray Mo, or sorry, it should be [Lei] Mo, but I call him Ray. In that particular conversation Ray said that he's not in town and then I said to, said to Ming, "Don't worry about it, we'll see if we can organise another time." And the next time that I asked Ming to call he was working up the road and he came down to see Mr Wong. That was [on] the occasion where Johnnie, Teresa, my brother, my mother had also saw [sic] Mr Wong.

Jonathan Yee's evidence suggests that Ms Ming called Mr Mo on two occasions in attempts to arrange a meeting with Mr Wong, who was dining at the Emperor's Garden. On Mr Mo's evidence, it appears that those occasions may have been 10 and 17 August 2019, consecutive Saturdays. Given Jonathan Yee's account, it seems likely that Mr Mo met with Mr Wong on the second of those two Saturdays; being 17 August 2019. According to Jonathan Yee, each of Valentine Yee, May Ho Yee, Mr Lin and Ms Tam also met with Mr Wong on that same day.

Mr Wong admitted that he had a discussion with Mr Mo between the announcement and commencement of the public inquiry. Mr Wong disputed Mr Mo's account of

the conversation, saying he had no recollection of telling Mr Mo words to the effect of, "There is no problem with your answers however there may be a problem with the forms". He denied telling Mr Mo that he did not have to worry about the investigation.

Mr Wong was asked if he told Mr Mo words to the effect of, "Just remember what you've already told them". He replied that he told Mr Mo the same statement that he made to the other persons whom he met. Mr Wong's evidence was that the import of that statement was that he was "telling them to stick to the story that they've already told but [he was] telling them to stick to a truthful story".

Mr Wong's meeting with May Ho Yee

Like Mr Mo, May Ho Yee gave evidence in the public inquiry on 17 September 2019, prior to the Commission becoming aware that Mr Wong had conducted a series of meetings with putative donors in the lead up to the public inquiry. She was not asked questions during her oral evidence about such matters. She subsequently produced to the Commission an affidavit dated 26 September 2019 and a statutory declaration dated 10 October 2019, both of which were tendered in evidence in the public inquiry. The substance of May Ho Yee's evidence as to her meeting with Mr Wong, as set out in the affidavit and statutory declaration, is to the following effect:

- within a few days of receiving her public inquiry summons, Jonathan Yee approached her in the restaurant and told her that Mr Wong wanted to speak to her
- Jonathan Yee took her upstairs into a private dining room, where Mr Wong was having lunch
- Mr Wong asked her what she had said at the Commission
- she assumed that Jonathan Yee had told Mr Wong that she had given evidence in a compulsory examination and she told Mr Wong as much as she could remember about what she said during her compulsory examination
- in response, Mr Wong said words to the effect of, "You should continue to tell the same story"
- she did not realise Mr Wong's involvement in this matter and believed he might be able to help her son, Jonathan Yee, if she told him about what happened in the compulsory examination.

There is some inconsistency in May Ho Yee's evidence as to whether Jonathan Yee was present during her meeting with Mr Wong. In her affidavit, she affirmed that Jonathan Yee was present but remained silent. In her statutory declaration, she said that, having been given the opportunity to think more carefully about it, she believed

that Jonathan Yee took her to the room but left while she had the conversation with Mr Wong.

When May Ho Yee's affidavit and statutory declaration were tendered in evidence in the public inquiry, Counsel Assisting indicated that any interested party that wished to have an opportunity to cross-examine May Ho Yee on that material should draw that to his attention. The Commission emailed interested parties advising of the tender of that material. No application was made to cross-examine May Ho Yee on her evidence.

Mr Wong accepted in evidence that he did meet with May Ho Yee between the announcement and commencement of the public inquiry. He also accepted that he told May Ho Yee during that conversation words to the effect of, "You should continue just to tell the same story". However, Mr Wong's evidence was that the context of that statement was that he was encouraging her to tell the story that she had told before if she felt comfortable that it was the truth.

Mr Wong's meeting with Valentine Yee

Valentine Yee was the first of the Emperor's Garden putative donors to give evidence in the public inquiry. He was the first among that group to admit that he had not in fact donated sums of \$5,000 in connection with the 2015 CFOL dinner.

Valentine Yee denied that, in the lead up to the public inquiry, he had discussions with Jonathan Yee as to what he should say. That evidence does not sit comfortably with Jonathan Yee's general admission that he sought to communicate to each of the fake donors that they should continue in the public inquiry to say what they had previously said in their compulsory examinations. While there is not enough evidence before the Commission to satisfactorily resolve that tension, in the previous chapter, the Commission found that they did have conversations of a similar kind in relation to Valentine Yee's compulsory examination.

Like his mother and Mr Mo, Valentine Yee gave evidence before the Commission was aware that Mr Wong had conducted a series of meetings at the Emperor's Garden restaurant with putative donors after the announcement of the public inquiry. As a result, Valentine Yee was not asked about that matter in his oral evidence. He did, however, produce to the Commission a statement dated 1 October 2019, which has been tendered in evidence. In that evidence, he stated that:

- after he received his public inquiry summons but before he gave evidence, he was called to see Mr Wong who was alone in a private dining room upstairs at the Emperor's Garden restaurant in Hay Street

- Mr Wong asked him how he was “holding up” and Valentine Yee replied that he was doing okay
- Mr Wong said words to the effect of:
 - “You should stick to the version of the ‘truth’ we have given as evidence in the private inquiry”
 - “the Commission does not have sufficient evidence to prove the donations by Emperor’s Garden Pty Ltd and yourself were straw donations”
 - “the hardest and most uncomfortable thing about a public inquiry is the media chasing you after the completion of giving evidence”.

Again, when tendering that statement in evidence, Counsel Assisting indicated on the record that any party who considered that they should have leave to cross-examine Valentine Yee by reference to that statement should draw that to his attention. No such application was made.

Mr Wong accepted in evidence that he had a discussion with Valentine Yee after the public inquiry was announced but before it commenced. He accepted that he said words to Valentine Yee to the effect of, “You should stick to the version of the truth we have given as evidence in the private inquiry” and “The hardest and most uncomfortable thing about a public inquiry is the media chasing you after the completion of giving evidence”. However, he denied that he said to Valentine Yee that the Commission lacked sufficient evidence to prove the donations by Valentine Yee and Emperor’s Garden Pty Ltd were straw donations. Mr Wong again sought to explain the context of what he had said:

[Counsel Assisting]: Are you saying there’s something that you want to say by way of context that puts that particular proposition in context?

[Mr Wong]: Yes. Yes. To all of them that I met, that is what I tell them in Chinese, that if you believe what you said was true, the best thing for you to do is to say what you said before, because that’s easy, because I know a lot of them were getting, will get very nervous, and then they will just make up stories or, you know, give wrong sort of like evidence. So, that is one thing that I just want to tell them. Say, if you feel comfortable, and you believe what you said was true, just say the things you said before.

Mr Wong was unable to adequately explain why he went to the trouble of individually meeting with each of the Emperor’s Garden putative donors in circumstances where he understood that, like himself, each of them had received information with their summonses regarding access to legal representation in connection with the public inquiry and, as he claimed, he regarded the evidence they had previously given to the Commission to be truthful.

Mr Wong was asked if one of the reasons that he sought to meet with the Emperor’s Garden putative donors was that he was concerned that they might lie in the public inquiry. He replied, “No, that is not my concern”. It was then put to Mr Wong that the real reason that he sought to meet those individuals was because he was concerned that they would tell the truth. Mr Wong rejected that proposition.

Mr Wong’s meeting with Mr Lin

Mr Lin and Ms Tam were part-time or casual employees, who worked primarily at the Emperor’s Garden barbecue and noodle shop in Thomas Street. In relation to them, Jonathan Yee explained that he asked someone at the yum cha restaurant in Hay Street to make contact with the barbecue restaurant in Thomas Street and ask them to come to the yum cha restaurant to meet with Mr Wong.

Mr Lin gave evidence in the public inquiry on 19 September 2019. He was the first of the Emperor’s Garden putative donors to disclose to the Commission that he had met with Mr Wong after the announcement of the public inquiry. Mr Lin gave evidence that:

- one day in August 2019, after he had received his public inquiry summons, he was at work at the Emperor’s Garden barbecue and noodle shop and the cashier told him that Jonathan Yee wanted him to go over to the yum cha restaurant
- he went to the yum cha restaurant and saw Jonathan Yee and asked why he had been requested to go there, in response to which Jonathan said someone wanted to see him. Mr Lin asked who it was and Jonathan Yee replied, “You will find out when you go in”
- he went to the VIP private dining room where he found Mr Wong who was eating a meal alone.

Mr Lin gave the following evidence, with the assistance of and interpreter, as to what happened next:

[Counsel Assisting]: Now, doing the best you can, what did Ernest say to you?

*[Mr Lin]: *So we started with hello greeting and then I sat down and then he*

*asked me if I need to go up there. I said, "Yes." He asked me how I am going to, how I am planning to answer the questions and I said, "I will answer as asked." And then he said that it would be best for me to continue with what I have said last time.**

- [Q]: *When he said last time, what was he referring to?*
- [A]: **Last time, as in what I have said when I was at the ICAC.**
- [Q]: *In the private hearing last year, is that right?*
- [A]: **That's correct.**
- [Q]: *What language were you having this discussion in with Mr Wong?*
- [A]: **Cantonese.**
- [Q]: *And are you quite sure that Mr Ernest Wong said words to the effect of, "It would be best for you to continue with the answers you have already given"?*
- [A]: **Yes.**
- [Q]: *What else did Mr Ernest Wong say to you during that conversation?*
- [A]: **He said that if I don't follow what I have said last time then I will be in a lot of trouble.**
- [Q]: *Did he explain what kind of trouble he was referring to?*
- [A]: **Trouble as in it's a lot of trouble now already.**
- [Q]: *Did he say anything else that you can remember?*
- [A]: **What he meant was that I should follow what I said last time. He was like begging for me or requesting me to do so in order to help him.**

Mr Lin confirmed that Mr Wong was very clearly indicating that Mr Lin should give the same evidence that he had given to the Commission previously. Asked if Mr Wong could have been referring to the NSWEC,

Mr Lin replied, "Not the Electoral Commission. I was very clear, he was referring to ICAC". Mr Lin was unable to explain how it was that Mr Wong knew what Mr Lin had previously told the Commission in his compulsory examination. Senior counsel for Mr Wong did not seek leave to cross-examine Mr Lin on his evidence.

In his evidence, Mr Wong agreed that he met Mr Lin between the time of the announcement of the public inquiry and its commencement. But he rejected the proposition that he told Mr Lin during that meeting that, if Mr Lin did not follow what he said last time, he would be in a lot of trouble. Mr Wong repeated that he told each of the persons who he met at the Emperor's Garden restaurant that, if they were comfortable that what they said before was the truth, then they should continue giving that evidence.

Mr Wong's meeting with Ms Tam

Ms Tam gave evidence that, after she received her public inquiry summons, she had a conversation with Jonathan Yee in the office at the Thomas Street barbecue and noodle shop, during which she told him about her summons. Jonathan Yee told her that "everyone" had received a summons and "he told us to say that we have donated" and "to continue with the lie" at the public inquiry.

Ms Tam also gave evidence that she had a similar discussion with Mr Wong on a Friday shortly before the start of the public inquiry. She said that she was working at the Thomas Street barbecue and noodle shop when she received a call from a female employee at the yum cha restaurant, who told Ms Tam to go to the yum cha restaurant because someone needed to see her. When Ms Tam arrived at the yum cha restaurant, her colleague told her that someone was in the VIP room who wanted to see her. Ms Tam was not told who it was that wanted to see her. She said that, when she opened the door to the VIP room, Mr Wong was alone inside eating yum cha. She gave the following evidence as to what happened next:

[Counsel Assisting]: *Did you then enter the room?*

[Ms Tam]: **I did.**

[Q]: *And what happened next?*

[A]: **He told me to sit down.**

[Q]: *And did you then sit down?*

[A]: **Yeah.**

[Q]: *And what happened next?*

[A]: **He said that he has reviewed my information and he told me to say according to my statement,*

to answer in relation to my statement.*

[Q]: *He told you to say something where and when?*

[A]: **He said that to me when I told him, after entering the room, that I have received a summon to attend the ICAC on the 26th of the 8th.**

[Q]: *So just to be clear, you go into the VIP room. Are you saying you then tell Mr Wong that you had received a summons. Is that right?*

[A]: **Yes.**

[Q]: *And then doing the best you can, what were the precise words that Ernest Wong used to you in response?*

[A]: **He said that he has reviewed my statement and told me to answer according, accordingly and that I must insist that I donated my own money.**

[Q]: *Do you know what statement he was referring to?*

[A]: **Those in the – my understanding was that it related to the, the hearing.**

[Q]: *But I think you said that Ernest told you to say things according to your statement. Do I have that right?*

[A]: **Yeah, to tell the lie, the wrong one.**

[Q]: *But you made a reference a moment ago to a statement. I'm just trying to understand what statement you were referring to?*

[A]: **What I meant, I meant the lies that I have told. I have to tell the lie again.**

[Q]: *So Mr Wong is telling you to tell the same lies that you had already told in the past. Is that right?*

[A]: **Yes.**

Ms Tam gave evidence that she felt very scared afterwards because she did not know why Mr Wong had asked her to do such things.

Ms Tam was cross-examined by senior counsel for Mr Wong on her evidence. She rejected the proposition that Mr Wong did not tell her in August 2019 to continue telling lies. Answering Counsel Assisting's question by way of clarification, Ms Tam confirmed her evidence that both Mr Wong and Jonathan Yee had done so.

Mr Wong gave evidence that he did not recall having any meeting or discussion with Ms Tam regarding the public inquiry. He rejected the proposition that he told Ms Tam that she must insist at the public inquiry that she donated her own money.

During the public inquiry, Jonathan Yee was asked whether the putative donors who met with Mr Wong at the Emperor's Garden restaurant in August 2019 reported back to Jonathan Yee afterwards. In response, he gave the following evidence:

[Counsel Assisting]: *Now, did any of these individuals report back to you as to what Mr Wong had said to them?*

[Jonathan Yee]: *No.*

[Q]: *Not at all?*

[A]: *Not at all.*

[Q]: *Surely you at least had some discussions with your brother and perhaps your mother as to what had happened during this meeting apparently behind closed doors in the VIP room?*

[A]: *I actually assumed that whatever Ernest told me as in to the media, to us sticking to the story, would be the same story that he would tell the rest of the people, so I didn't ask them and they didn't intentionally to come up to me and say, oh, Mr Wong told me this.*

[Q]: *So is it right to say that at least at this point in the story, once the meetings had happened with each of the fake donors, at least so far as you were concerned the cover-up was still on foot, everyone was going to come to this Commission and stick to the same story that had been told*

during private hearings and had been told, albeit with less detail, before the Electoral Commission?

[A]: *That's correct.*

As it turned out, that cover-up began to crumble when Valentine Yee decided to change his evidence mid-way through the public inquiry. The circumstances surrounding his decision to do so are reported in chapter 11. That turn of events sparked two further meetings involving Mr Wong, which occurred during the course of the public inquiry. Consideration of the evidence in relation to those meetings follows.

Meetings during the public inquiry

Valentine Yee was the first of the Emperor's Garden putative donors to admit in the public inquiry that he had not donated sums of \$5,000 in connection with the 2015 CFOL dinner. The circumstances in which he came to give that evidence, on Monday, 16 September 2019, are set out in chapter 11. For present purposes, it is relevant to note that Valentine Yee initially gave what he has since admitted was false evidence in the public inquiry on Thursday, 12 September 2019. On that occasion, he sought to maintain that he, and Emperor's Garden Pty Ltd, had made the purported donations.

That Valentine Yee initially attempted to give false evidence at the public inquiry is consistent with Jonathan Yee's admission that he sought to communicate to all of the fake donors that they should tell a story at the public inquiry along the lines of what they had told during their compulsory examinations. It is also consistent with Valentine Yee's evidence that Mr Wong told him during their meeting in August 2019 that he should, "stick to the version of the 'truth' we have given as evidence in the private inquiry".

Valentine Yee explained that he initially lied to the Commission because he was trying to protect his brother. He said that he ultimately decided to tell the truth because he was concerned about his mother's welfare and his staff. He explained that he called a family meeting prior to giving evidence on 16 September 2019, as he had decided that it was best for everybody to tell the truth ("the family meeting"). He said that Jonathan Yee was present at the family meeting and had agreed that it was best to tell the truth.

Jonathan Yee gave consistent evidence about the family meeting. He said that, after he returned from a trip to Hong Kong on the morning of Sunday, 15 September 2019, his mother attended his apartment and told Jonathan's wife that Jonathan was required to attend a family meeting at 3pm that day. Jonathan Yee said

his wife told him about that interaction. He said that he understood at that point that the family meeting had been arranged by Valentine Yee and that it generally concerned the public inquiry.

Jonathan Yee gave evidence that, after he learned of the family meeting, but prior to it taking place, he had a discussion with Steven Huang (a mutual friend of Jonathan Yee's and Mr Wong's) who was having lunch at the Emperor's Garden restaurant. According to Jonathan Yee, he asked Steven Huang to arrange a meeting with Mr Wong that evening. Steven Huang agreed to do so. Jonathan Yee was asked why he had made those arrangements to meet with Mr Wong in circumstances where the family meeting had not yet taken place.

[Counsel Assisting]: *So you must have at least had some idea as to what at least your brother was likely to say at the family meeting. Is that right?*

[Jonathan Yee]: *Well, it's hardly that we have a family meeting like this, I thought it was quite serious. So I thought I would have conveyed, I, I should convey this message to him.*

[Q]: *And you thought in advance that it was likely to be something significant that you want to inform Mr Wong?*

[A]: *That's correct.*

Jonathan Yee gave evidence that the family meeting took place in VIP room 3 upstairs at the Emperor's Garden yum cha restaurant. The persons present included himself, Valentine Yee, May Ho Yee, his father, Stanley Yee, and the family's long-time friend and accountant Stephen Yu. Jonathan Yee explained that it was his father who invited Mr Yu to attend.

According to Jonathan Yee, at the family meeting, Valentine Yee said words to the effect of, "We can no longer tell lies, because the shit has hit the fan. We need to go and tell the truth". That is consistent with Valentine Yee's account of the family meeting. It is also consistent with Valentine Yee's evidence at the start of his private session on 12 September 2019, after having given answers in the public inquiry that were internally inconsistent or patently implausible, that he "would like to speak the truth".

On Jonathan Yee's account, Valentine Yee then turned to him in the family meeting and asked if he was "willing to tell the truth." Jonathan Yee said that:

I looked at my mother, and she, her worried face was extremely worried. I, I can't describe how worried.

I'd never seen my mother so worried. And I said to him, 'I think that's a good idea'.

Jonathan Yee was asked what else was said during the family meeting. He said that his father said that “if he knew about the scheme from day one, he would have told us not to do it”. Jonathan Yee said that the first time he discussed matters related to this investigation with Stanley Yee was when the public inquiry was announced and he told him what the inquiry was about. He said that he did not involve his father in the scheme or ask him to sign one of the donation declaration forms because, “he is a pretty stern man and if he thinks that it's not right, it's not right”. Jonathan Yee agreed that he deliberately chose the people that he asked to sign those forms on the basis that he expected them, unlike his father, to do what he said and not resist what he suggested.

Later that Sunday evening, after the family meeting, it is Jonathan Yee's evidence that Steven Huang came to the Emperor's Garden as arranged and picked up Jonathan Yee to take him to meet with Mr Wong. That meeting took place at the Chinese Masonic Hall in Surry Hills. On Jonathan Yee's account, during that meeting:

- he said to Mr Wong words to the effect of, “The shit has hit the fan. My brother's going to go up and spill the beans” and “My mother's very stressed out”
- he told Mr Wong the substance of what had been discussed in the family meeting and said words to the effect of, “We can't keep telling lies anymore, the more lies we tell the more serious that we can get ourselves into”
- he asked Mr Wong, “Was the real donor Mr Huang Xiangmo?”, in response to which Mr Wong said, “Yes, but can you please not tell the inquiry that the donor is Mr Huang Xiangmo”
- Mr Wong asked if it was possible that Jonathan Yee could “continue” and “speak to” Valentine Yee, in response to which Jonathan Yee said that he did not think he could speak to Valentine anymore
- Mr Wong asked if Jonathan Yee could speak to May Ho Yee and his staff, in response to which Jonathan Yee said words to the effect of, “I can't speak to them anymore either, because ... if my brother breaks, everybody will break”
- Mr Wong then said, “Could I speak to your father?”. In response, Jonathan Yee said, “You're most welcome to speak to my father, but my father will give you the same answer”.

At that point, Jonathan Yee said that he asked Stephen Huang to take him back to the Emperor's Garden restaurant. Upon returning to the restaurant, he told Stanley Yee that Mr Wong wanted to speak with him. Jonathan Yee said that his father replied, “Yeah, I'll go speak to him, I'll tell him what I think”. Jonathan Yee then asked his father to go with Stephen Huang to meet Mr Wong at the Chinese Masonic Hall. On Jonathan Yee's evidence, he waited at the Emperor's Garden and, when his father returned half an hour later, he asked his father:

“What did you say to him?” And he [said that he] told [Mr Wong] to piss off, stop, you know, effing with my family. He already caused enough trouble. And he said, my father said to me he said to Ernest in a Chinese saying which literally translate, eating salty, if you can eat salty fish you can bear the thirst.

During the public inquiry, Jonathan Yee was asked if he had seen Mr Wong since the Chinese Masonic Hall meeting on 15 September 2019. He replied that he had seen Mr Wong the following Sunday night when Mr Wong came to the Emperor's Garden restaurant for dinner with his family. Jonathan Yee said that, after greeting Mr Wong and sending his party upstairs to dine, he avoided Mr Wong that evening. At one point that night, Ms Siu told Jonathan Yee that Mr Wong wanted to see him. Jonathan Yee said that, in response, he told Ms Siu, “I don't want to see him” and that Ms Siu then told him that Mr Wong would be coming in for yum cha the next day. Jonathan Yee gave evidence that he deliberately arrived late at work the following day to avoid seeing Mr Wong.

Mr Wong agreed that he met Jonathan Yee at the Chinese Masonic Hall on 15 September 2019. But he rejected Jonathan Yee's account of their conversation. He denied that Mr Huang was mentioned in the conversation. He denied that Jonathan Yee said words to the effect that, “I don't think we can tell lies anymore because the shit has hit the fan. My brother's going up to spill the beans” and, “We can't tell any lies anymore and we're going to change and tell the truth”. He denied telling Jonathan Yee that he should speak to Valentine Yee with a view to Valentine not “spilling the beans”.

Mr Wong's account of the meeting was that Jonathan Yee told Mr Wong that Stanley Yee was worried about the Australian Tax Office investigating cash transactions and “so they have to change their evidence” and “they are not going to say any of those cash transactions”.

Mr Wong agreed that he asked Jonathan Yee during the Chinese Masonic Hall meeting to set up a meeting with Stanley Yee and that he did meet Stanley Yee that night. But he rejected the proposition that the reason he sought to meet Stanley Yee that night was to ask him to apply

pressure to his family to stick to the stories they had given in the past.

Mr Wong accepted that Stanley Yee said words to the effect of, "If you eat salty fish you must put up with the thirst". But, on Mr Wong's account, Stanley Yee said those words in connection with Jonathan Yee. Mr Wong said he could not recall Stanley Yee saying words to the effect of, "Piss off and stop fucking with my family". He denied that Stanley Yee was angry that his family had been drawn into the donations scandal.

As noted in chapter 12, the Commission rejected Mr Wong's account of the Chinese Masonic Hall meeting and accepted Jonathan Yee's account of that meeting – but for Jonathan Yee's evidence in relation to Mr Huang. The reasons for those findings are set out in detail in chapter 12.

It suffices to note here that, unlike the balance of Jonathan Yee's account of that meeting, there is no corroborating evidence in relation to that part of his account that relates to Mr Huang. As such, the Commission is unable to make a finding as to whether the question of Mr Huang being the true source of the \$100k cash was discussed between Mr Wong and Jonathan Yee during the Chinese Masonic Hall meeting. However, the substance of the asserted fact, namely that Mr Huang was the true source of the \$100k cash, is consistent with the weight of evidence surveyed, and the Commission's findings in chapter 12.

As noted in chapter 14, submissions were received on behalf of Mr Wong to the effect that the "changed" evidence of Jonathan Yee and the Emperor's Garden putative donors and Mr Yip was not adequately tested in the public inquiry to determine whether it was "part of another orchestrated endeavour to serve the interests of Jonathan Yee ... to minimise his involvement in the scheme by blaming Mr Wong". The Commission rejected that submission in chapter 14 and the reasons for doing so are set out in that chapter.

The Commission considers it inherently implausible that the Emperor's Garden putative donors would each change their evidence to falsely disavow genuine cash donations in order to protect the Emperor's Garden business from a tax investigation in circumstances where that changed evidence would expose each of those persons to prosecution, and potential imprisonment, for numerous criminal offences under the EFED Act and for giving false or misleading evidence to the Commission.

In addition, there is clear evidence from Mr Yip and a number of the Emperor's Garden putative donors, including Mr Shi, Ms Siu and Ms Tam, to the effect that it was Jonathan Yee who first told them to continue telling lies when they brought to his attention their summonses

to attend the public inquiry. That they gave such evidence is far from consistent with Mr Wong's submission that "the Yee interests" were seeking to minimise the involvement of Jonathan Yee in the scheme and to blame Mr Wong. To the contrary, those individuals gave evidence that highlighted Jonathan Yee's direct involvement in the attempted cover-up.

As noted above, Jonathan Yee himself admitted in the public inquiry that he sought to communicate to each of the fake donors that, at the public inquiry, they should keep telling the false story that they had previously told in compulsory examinations. This too is far from consistent with an "orchestrated endeavour to serve the interests of Jonathan Yee ... to minimise his involvement in the scheme by blaming Mr Wong". The Commission reiterates its rejection of that submission.

The Commission accepts as truthful the evidence of the Emperor's Garden putative donors in relation to what was said and done in connection with their meetings with Mr Wong in August 2019.

Accordingly, the Commission finds that:

- Mr Wong sought out meetings with, and did meet, each of Jonathan Yee, May Ho Yee, Valentine Yee, Mr Shi, Ms Siu, Mr Mo, Mr Lin and Ms Tam between the announcement of the public inquiry and its commencement
- Jonathan Yee assisted Mr Wong with arrangements to facilitate the meetings with May Ho Yee, Valentine Yee, Mr Shi, Ms Siu, Mr Mo, Mr Lin and Ms Tam in private dining rooms within the Emperor's Garden yum cha restaurant
- those arrangements were made on an ad hoc basis without notice as, and when, Mr Wong turned up to eat at the Emperor's Garden yum cha restaurant, which prevented any forward planning for those meetings; such unpredictability being consistent with Mr Wong's furtive conduct in relation to other meetings the subject of the previous two chapters
- during those meetings in August 2019, Mr Wong pressured each of the Emperor's Garden putative donors to give a version of evidence at the public inquiry that was consistent with what they had previously told the Commission in compulsory examinations, to the effect that they had donated sums of \$5,000 in connection with the 2015 CFOL dinner; that version being false as a matter of fact
- Mr Wong applied that pressure in circumstances where he must have known that the evidence he was asking the Emperor's Garden putative

donors to maintain was false, in light of the factual findings set out in previous chapters of this report, in particular the findings that Mr Wong arranged with Mr Huang to obtain the \$100k cash donation and asked Jonathan Yee to procure “five to 10 people” to sign forms falsely stating that they had each donated up to the legal cap of \$5,000 so as to conceal the true source of that donation.

Section 74A(2) statements

The Commission is satisfied that Jonathan Yee and Mr Wong are “affected persons” with respect to the matters dealt with in this chapter.

Procure and attempt to procure false testimony offences

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of the following persons for offences of procuring, or attempting to procure, false testimony in contravention of s 89 of the ICAC Act. As noted in the previous chapter, an offence under s 89 of the ICAC Act carries a maximum penalty 200 penalty units or imprisonment of five years, or both.

Procuring false testimony:

- Jonathan Yee for procuring the giving of false testimony at a public inquiry in relation to the testimony of Mr Yip at the public inquiry on 10 September 2019
- Ernest Wong for procuring the giving of false testimony at a public inquiry in relation to the testimony of Valentine Yee at the public inquiry on 12 September 2019.

Attempting to procure false testimony:

- Jonathan Yee for:
 - attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Mr Shi
 - attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Ms Siu
 - attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Ms Tam
- Ernest Wong for:
 - attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Mr Lin

- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Mr Mo
- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Mr Shi
- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Ms Siu
- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Ms Tam
- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of Jonathan Yee
- attempting to procure the giving of false testimony at the public inquiry in relation to the testimony of May Ho Yee.

As noted previously in this report, evidence given during the Commission’s public inquiry, including relevant admissions made by affected persons, would be admissible in evidence against them in a prosecution for an offence against s 89 of the ICAC Act.

The available admissible evidence has been set out in detail in this chapter. In relation to Mr Wong, the following evidence, in particular, would be available for the consideration of the DPP:

- Mr Wong’s own evidence, including admissions as to that fact of, and aspects of what was said during, the meetings in August 2019 with each of the Emperor’s Garden putative donors
- the evidence of each of Jonathan Yee, May Ho Yee, Valentine Yee, Ms Siu, Ms Tam, Mr Mo, Mr Shi and Mr Lin as to arrangements for, and what was said during, each of those meetings. That evidence includes statements, documents styled affidavits and statutory declarations
- other evidence set out in previous chapters of this report regarding Mr Wong’s role in the scheme to circumvent the EFED Act would be admissible and relevant to his knowledge of the falsity of the evidence that he was attempting to procure from each of the Emperor’s Garden putative donors during those meetings.

In relation to Jonathan Yee, the principal admissible evidence would constitute his frank admissions and the evidence of Mr Yip, Ms Siu, Mr Shi and Ms Tam. Contextual evidence as to Jonathan Yee’s role in the scheme to circumvent the EFED Act would also be relevant and admissible.

Attempt to pervert the course of justice/ hinder an investigation

The Commission is satisfied that there is sufficient admissible evidence to seek the advice of the DPP with respect to the prosecution of Mr Wong for offences of attempting to pervert the course of justice in contravention of s 319 of the Crimes Act and, or alternatively, attempting to hinder an investigation in contravention of s 315 of the Crimes Act in connection with his meetings with the Emperor's Garden putative donors in August 2019.

The availability of those offences, in the context of investigations by this Commission, are considered in previous chapters of this report.

The evidence is clear that Mr Wong knew, at the time that he sought out and conducted the meetings with the Emperor's Garden putative donors, that he and each of those individuals had been summoned to give evidence at the public inquiry. There is evidence from both Jonathan Yee and Mr Shi that Mr Wong indicated to them that, if the Commission had sufficient evidence, then the matter would have already been referred to the DPP for further action. If that evidence were accepted, it would demonstrate Mr Wong's awareness that criminal proceedings would likely follow the Commission's investigation if sufficient evidence of the scheme were to be uncovered.

It is therefore open to the DPP to consider that evidence in the context of whether at least one of Mr Wong's underlying purposes in meeting with the Emperor's Garden putative donors was to apply pressure to those individuals in an attempt to prevent them from telling the truth to this Commission in the public inquiry and thereby deflect the Commission's investigation so as to prevent criminal proceedings being commenced or to pervert such proceedings if commenced.

The available admissible evidence in relation to offences against s 315 and s 319 of the Crimes Act would mirror that which has been highlighted above in relation to the s 89 ICAC Act offences, with the exception that Mr Wong's own evidence, which was given on objection, could not be used against him.

Scheme offences

The evidence that Jonathan Yee and Mr Wong procured, or attempted to procure, the Emperor's Garden putative donors and Mr Yip to give false testimony at the public inquiry would also be relevant to the proof of, and available for the consideration of the DPP in connection with, Mr Wong and Jonathan Yee's ongoing courses of conduct in connection with the scheme offences identified in chapter 14.

Chapter 25: Policy observations and recommendations

This investigation exposed a number of governance failures within NSW Labor and Country Labor. This chapter sets out the Commission's policy observations and recommendations to address these governance failures. It begins with policy observations regarding:

- the potential for unlawful donations and personal benefits to exert corrupt or undue influence on political decision-making
- the affiliation between NSW Labor and Country Labor
- changes to regulatory provisions for political donations in NSW
- the different electoral donation and expenditure laws across Australian jurisdictions that create opportunities to undermine the intent of NSW donation laws.

Although recommendations are not made in respect of these observations, they do warrant the attention of the NSW Government and other authorities that are appropriately placed to take relevant action and may include re-visiting the definition of what constitutes a political party for the purposes of public finance and regulation.

The chapter then presents the Commission's recommendations to strengthen the laws, policies and procedures concerning political donations in NSW. Particular attention is given to the following issues:

- cash donations
- the management of donations and NSW Labor governance arrangements
- penalties and sanctions that failed to act as an effective deterrent against non-compliance with electoral funding laws
- public statements regarding the NSWEC's compliance activities.

Policy observations

Donations as a mechanism to influence

It is widely accepted that donations made to political parties are a key mechanism through which citizens can exercise their freedom of expression. At present, political party income from membership fees is declining, resulting in increased dependency on private donations. The higher the donation, the greater the influence that significant donors can have. Not every member of the community, however, has the same financial means or the same capacity to influence. As a result, there is a risk that administrative decisions and policy development are skewed by the relatively few who can afford to make substantial donations compared to the majority who cannot.

On 28 October 2010, during the second reading speech to the Electoral Funding, Expenditure Disclosure Amendment Bill 2010, which introduced a cap on donations and electoral spending, then-premier Kristina Keneally said:

These reforms are about putting a limit on the political arms race, under which those with the most money have the loudest voices and can simply drown out the voices of all others.

The risk (whether real or perceived) that wealthy individuals and firms, and those in positions of power, can exert improper influence on politicians to secure favourable decisions is a matter previously investigated by the Commission, and one on which the Australian High Court has deliberated. The Commission's investigation into political finance and corruption found that unlawful donations had been solicited and received by candidates for use in the 2011 NSW State Election.⁴

⁴ NSW Independent Commission Against Corruption, *Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters*, 2017.

The High Court stated that “guaranteeing the ability of a few to make large political donations in order to secure access to those in power” would seem to be antithetical to the principle of political equality. While it can be argued that capping donations restricts the freedom of political expression, it is also considered a legitimate means of pursuing electoral integrity and managing the risk of undue influence and corruption in politics.

This investigation did not investigate whether NSW Labor or Country Labor favoured any major donor in any way. However, it did investigate alleged breaches of the EFED Act in connection with political donations. Moreover, it investigated the actions of Mr Huang, a known major donor to political parties on both sides of the political divide at federal level. As a result, the Commission’s investigation concerned an individual, Mr Huang, who posed a risk of using his financial resources to effectively “buy” political influence.

In his evidence to the Commission, former NSW Labor general secretary Mr Clements acknowledged that donations were the price that major donors paid for political influence, including having access to senior figures in NSW Labor:

[Chief Commissioner]: So are you saying that a big donor to the political party by virtue of the donation is perceived by you as now having influence in meeting people upon request, be they senior members of the party or otherwise?

[Mr Clements]: Yes, yes, yes.

[Q]: So that’s, in your mind anyone, one of the benefits to the donor, a generous donor, it’s in effect a price or an amount paid for influence. Is that right?

[A]: Commissioner, I have to say that’s correct.

Mr Huang was looking for a “friendship, proximity to power” in order to spread his influence through Mr Clements because of his powerful position as NSW Labor general secretary. Evidence given by Mr Xu, Mr Huang’s executive assistant at the Yuhu Group, confirmed that Mr Huang “was attempting to cultivate Mr Clements as a very senior person within the Labor Party”.

In recognition of his major donation and support, Mr Huang was invited by Mr Wong to attend the fundraising dinner as a distinguished guest. Mr Huang was seated alongside federal and state Labor leaders, affording

him the opportunity to influence decision-makers at the highest level of the party.

Obtaining access to, or influence over, a public official on the basis of a lawful political donation is at odds with good public administration. If access and influence are achieved by making an unlawful donation, the consequences could be far more serious, as the sense of mutual obligation is heightened when both donor and a recipient have evaded the law. The recipient relies on the unlawful funds but also has a joint interest with the donor in concealing the nature of the payment. This, in turn, potentially gives the donor additional leverage over the political party. Recommendations 2, 3 and 4 address this issue.

Gifts and benefits provided by Mr Huang to Mr Clements

The personal relationship that developed between Mr Huang (a major donor seeking to influence public decision-making) and Mr Clements (a senior official in a political party that is part of a system of public decision-making) was inappropriate. It generated a mutual interest, fuelled by financial payments that had the potential to compromise public decision-making.

In May 2015, Mr Clements met Mr Huang for dinner. Mr Clements took the opportunity to explain to Mr Huang a situation whereby a trade union secretary had asked him, as general secretary of NSW Labor, for \$10,000 for a union election. As Mr Clements could not provide the union secretary with the money, he asked Mr Huang for it. Within a matter of days, Mr Xu delivered \$10,000 in cash on Mr Huang’s behalf to Mr Clements, who in turn gave it to the trade union leader. Mr Clements failed to disclose it to anyone in NSW Labor or to the trade union leader, and the transaction remained hidden.

In August 2015, when Mr Clements said he was facing “the most difficult time of my life” (personally and professionally), Mr Huang gifted him a further \$35,000 in cash. Mr Clements told the Commission:

I got a call to come to his house, I went to his house. I, he led me upstairs to the room that I’d never been in before and he had a, he had a box, like a wine box, and he opened it and there was cash in it and he had a piece of paper, handwritten in English, it said, “for your legal fees.” He closed the box, screwed the piece of paper up and we walked down and had a cup of tea.

Under NSW Labor policy and NSW law, Mr Clements was not required to declare Mr Huang’s gift, and he did not disclose it to NSW Labor. He also did not disclose the nature of his friendship with Mr Huang.

Soon after resigning as general secretary from NSW Labor in January 2016, Mr Clements was offered a role with

Mandarin International, a subsidiary company of the Yuhu Group to provide “advice and assistance” to Mr Huang on an ongoing basis. This arrangement put Mr Clements on a retainer; he was given access to Yuhu Group offices for the sum of \$1 and was paid \$4,000 per week by Mr Huang from 14 February 2016 to 14 February 2019. Mr Clements provided advice services relating to government relations, media strategy and negotiations.

Mr Clements accepted that, “There was a potential conflict” in his relationship with Mr Huang, and a risk that Mr Huang’s generosity could be used to manipulate him. Reciprocation came in the form of Mr Clements facilitating meetings between Mr Huang and senior NSW Labor politicians – an opportunity for Mr Huang to lobby directly for support of his personal interests.

Although Mr Clements was not a public official, his role as general secretary of NSW Labor made him highly influential. It is often the case that individuals in that role (and other senior officials from the NSW Labor and other political parties) go on to become parliamentarians, ministers or ministerial advisers. Mr Dastyari, for example, formerly held the role of general secretary of NSW Labor before being elected to the Australian Parliament. Consequently, there existed the real possibility that Mr Huang’s gifts to Mr Clements would influence future government policy and decisions, in addition to the immediate access to senior NSW Labor figures that he was granted.

The inappropriate relationship between Mr Huang and Mr Clements stresses the need for political parties to have sound internal controls to manage the risks of gifts, benefits and conflicts of interest. Recommendations 2, 3 and 4 deal with these matters.

The NSW Labor and Country Labor affiliation

At the relevant times, NSW Labor and Country Labor were closely affiliated despite being separately registered entities. The fact that NSW Labor and Country Labor could both lawfully receive political donations up to the permitted cap enabled the architects of the scheme the subject of this investigation to more easily carry out their plan because they only needed to recruit 10 fake donors instead of 20.

In attempting to explain why he directed the finance department to bank half of the \$100k cash into the account of Country Labor, Mr Cheah sought to rely on a practice within NSW Labor head office of “splitting” over-the-cap donations between NSW Labor and Country Labor. However, the evidence suggests that Mr Cheah failed to comply with expectations within NSW Labor head office that checks would be made in

such circumstances with the putative donors to confirm whether they intended to donate to both NSW Labor and Country Labor. The Commission’s findings in relation to that evidence is set out in chapter 9.

Country Labor was registered as a political party in 1999, a time before donation caps were introduced in NSW. As this investigation report was being finalised, the NSWEC published a notice stating that Country Labor’s registration as a political party had been cancelled pursuant to s 68(1) of the *Electoral Act 2017*.⁵

As separately registered entities, NSW Labor and Country Labor could each lawfully accept donations from a single donor subject to the statutory caps that were introduced after Country Labor was formed. As a registered party, Country Labor was also eligible to receive public funding under Part 5 of the *Electoral Funding Act 2018* (Part 6A of the EFED Act). Based on figures published in a 2019 NSWEC report on Administration Fund entitlements and payments (on taxpayer funding to eligible political parties and independent members of Parliament), the estimated maximum amount Country Labor was entitled to claim in the 2019 calendar year was \$1.07 million,⁶ none of which could have been received had NSW Labor and Country Labor been treated as a single entity.

The degree of separation between NSW Labor and Country Labor had previously been raised by the NSWEC. Ms Sibraa, the former governance director of NSW Labor explained:

...when I started in the role there was a whole other issue going on about the separation of Country Labor, proper separation of Country Labor and NSW Labor, that in the past I don’t think, I think the two were much more enmeshed, and it was only through dialogue with the NSW Electoral Commission before I arrived that we come, the party had come, to an understanding that they needed to completely separate the parties and be much more scrupulous about the way money was allocated to each of them and between each of them. There was a whole legal issue around that.

In practice, the shared governance structures and staffing arrangements made it unlikely that Country Labor could exist independently from NSW Labor, or that Country Labor could have policies inconsistent with those of NSW Labor. The NSW Branch Rules (2018), by way

⁵ Section 68(1) states, “The Electoral Commissioner may cancel the registration of a party at the written request of the registered officer of the party”.

⁶ The actual amount paid was approximately \$1.037 million.

of example, show that the NSW Labor administrative committee controlled Country Labor. They state that the NSW Labor administrative committee was responsible for arranging the selection of both NSW Labor and Country Labor candidates for the federal House of Representatives, NSW Legislative Assembly and NSW Legislative Council and local government

Ms Sibraa stated:

...at least from a head office perspective, the pool of staff that deal with NSW Labor matters, is the same pool of staff that deal with Country Labor matters.

Until 2016–17, NSW Labor and Country Labor also shared one accounting file system (MYOB). Ms Sibraa told the Commission:

[Chief Commissioner]: And you understood, I trust, why the Electoral Commission were wanting a financial separation between Labor NSW and Country, or what you earlier referred to as a proper separation. And what did you understand the concern of the Electoral Commission to be in the situation where there had been no such proper separation? What do you understand their concern was?

[Ms Sibraa]: So that, because it involved public funding for two, that there were two separate political parties which were both receiving public funding, but then money, like, the funds transferred from one to the other, it could easily be interpreted as a donation. So we needed to set up a strict set of arrangements to ensure that the, the sort of, the enmeshment of the two had a proper service agreement between it to show that there were costs attributed to Country Labor as well as costs attributed to NSW Labor and also revenue to each, so that they could see properly the money, how, the actual, where the money went in, where the money came out, and that it was properly accounted for.

Ms Murnain, then general secretary of NSW Labor, pointed to the lack of guidance to properly account for the splitting of donations (above the cap) between NSW Labor and Country Labor accounts:

[Counsel Assisting]: Is it then fair to say that at least as at 2015 the procedures were sufficiently lax as might permit something of that kind to occur, in other words for a donation to be split up as between NSW Labor's account and Country Labor's account, even if the donor had not been consulted as to that matter?

[Ms Murnain]: I'm not aware of it actually occurring but it is possible, given the lack of policies.

In evidence, Mr Cheah stated that before any Labor Action Committee fundraising event took place (such as the 2015 CFOL dinner), senior officer holders in NSW Labor would make a decision about whether the funds raised would go to NSW Labor, Country Labor or to the federal account.

It was Mr Cheah who gave instructions to the NSW Labor finance officer to split the \$100,000 donation; that is, \$50,000 to be banked into the NSW Labor account and \$50,000 into the Country Labor account. Mr Cheah said that he did this as he “would have assumed” or inferred that, if there were two forms and \$10,000 from each donor, then one of the forms and half of the money must have been intended for each of NSW Labor and Country Labor because otherwise the donation of \$10,000 would exceed the statutory cap of \$5,000.

Notably, the invitation/reservation forms (of which several variations existed) to attend the CFOL dinner gave no indication to potential donors that they may choose to donate to NSW Labor, Country Labor or federal accounts, or any combination therein. Or, in the event that should they wish to donate more than the capped amount, the excess could be put into a separate account for other purposes. Tellingly, several of the putative donors (Mr Tong, Ms Siu, Ms Tam and Mr Shi) gave evidence that they did not know what, or who, Country Labor was, or of its affiliation with NSW Labor.

In summary, the Commission is not proposing, nor is there evidence to submit, that Country Labor was created for the purpose of allowing donors to circumvent the intent of statutory caps. Although Country Labor is now deregistered there may be a case, for revisiting the purpose of statutory caps on donations and entitlement to public funding for closely affiliated parties. This would involve establishing clear, fair rules that govern the fundraising activities of affiliated political parties.

Potentially, the working group that has been recommended to be established to determine governance and

control standards (see recommendation 2) could examine appropriate standards for the splitting of donations between affiliated political parties, including in relation to the kinds of checks required to be made to ascertain donor intention as to the recipient of such funds. Clearly, the views of potentially affected political parties would need to be obtained and considered by the working group.

Changes to NSW donations regulatory provisions

Since the EFED Act was introduced in 1981, the provisions for regulating donations in NSW have been subject to substantial amendments.

Reforms introduced by NSW governments have incrementally reduced the potential for donations to influence the political process. At the same time, the reforms have placed a greater obligation on political parties and their governance or accounting units to conduct due diligence on their donors and ensure compliance with regulatory responsibilities.

To this effect:

- the Election Funding and Disclosures Amendment (Property Developers Prohibition) Bill 2009 to amend the EFED Act to prohibit political donations by property developers, and the Election Funding and Disclosures Amendment Bill 2010 extended the prohibition to the tobacco, liquor and gambling industries
- from 1 January 2011, a cap of \$5,000, subject to indexation, was placed on *all* donations, including those made by cash, cheque or electronic transfer
- by 2014–15, the cap on donations made to a registered party was \$5,700, due to indexation. However, Special Provisions under Part 7A of the EFED Act (enacted 28 October 2014) reverted the cap to the 2011 rate of \$5,000 until the end of that financial year *only*. This meant that, at the time of the CFOL fundraising event in 2015, donations to a registered political party for state elections in NSW were capped at \$5,000
- for the period starting 1 July 2015, the donation cap to a registered political party reverted to the indexed amount, which was \$5,800
- in 2015 (as previously applicable), under s 92 of the EFED Act, registered political parties were required to disclose all donations to the NSWEC. All donations \$1,000 or more in value were required to be disclosed as *reportable* political donations (this included the name and residential address of the donor, and the date(s) on which

the donation(s) was/were made). A cross-check mechanism required donors making a *reportable* political donation to lodge a disclosure with the NSWEC

- in 2015, registered political parties were also required to disclose small political donations (those under \$1,000 that are *not reportable* political donations) as a lump sum on an annual basis (this included the total amount of donations and the total number of donors)
- from 1 July 2018, under s 57 of the *Electoral Funding Act 2018*, a \$50 exemption for small donations made at fundraising events and functions came into effect (there was no equivalent prior to this date). This allows a party or candidate to accept a political donation of \$50 or less at a fundraising event (for example, the sale of raffle tickets) and did not count towards a donor's donation limit
- in 2019, the Electoral Funding Amendment (Cash Donations) Bill 2019 came into effect on 1 January 2020 (s 50A of the *Electoral Funding Act 2018*) prohibiting the making or acceptance of political donations in cash that exceeds the value of \$100.

In summary, in NSW in 2021:

- property developers (as well as business entities from the tobacco, liquor and gambling industries) are prohibited from making political donations
- all types of donations (cash, cheque, credit card and electronic transfer) are capped
- all donations are required to be reported (albeit that donations under \$1,000 are to be disclosed in aggregate)
- small donations (under \$50) made at a fundraising event do not count towards a donor's donation limit
- making or accepting donations of more than \$100 in cash is prohibited.

Donation laws across Australian jurisdictions

Political financing laws differ significantly, however, across the federal, state and territory jurisdictions. Without a prohibition and caps on the amount of donations that can be made in other jurisdictions, such as in the federal system, all prohibited donors in NSW still have a vehicle to exert political influence by making major donations elsewhere.

While uniformity in political finance regimes across jurisdictions may not be feasible (or necessarily desirable) there is a need for greater transparency as a control to prevent undue influence and corruption. However, as NSW, Queensland and other jurisdictions continue to reform their electoral donation and expenditure laws, it can be argued (or at least perceived) that electoral funding systems are becoming more divergent than harmonised.

Concerns about the lack of harmonisation of election finance laws across Australia were raised in the Commission's 2014 report, titled *Election funding, expenditure and disclosure in NSW: Strengthening accountability and transparency*, as follows:

Each state, territory and commonwealth jurisdiction has its own set of electoral funding laws. Operating at a national level, parties, third-party campaigners and associated entities could take advantage of discrepancies between the laws of the different state and federal jurisdictions. NSW laws have the greatest discrepancies when compared with the other electoral funding laws of Australia. Relative to other jurisdictions, NSW caps and disclosure thresholds are lower, specific groups are banned from donating, and public funding is higher, thereby creating an environment in which cross-jurisdictional differences may be exploited.

The channelling of donations through different jurisdictions is a way of circumventing the intent of the rules in NSW. As a result, tracking the flow of money – and influence – from donors to campaigners to election expenditure is exceedingly complex. For example:

- property development organisations in NSW can lawfully donate for the purpose of funding federal campaigns, but not at state level
- an individual, living in any Australian jurisdiction, can make a single or multiple lawful donations uncapped at the federal level
- the threshold for disclosure of donations at the federal level (\$14,500) is much greater than it is for NSW or any other state in Australia
- a property developer looking to influence a political party can donate \$14,499 at the federal level to be used for “federal purposes” and it need not be disclosed. By law, money for federal purposes must be kept in separate bank accounts; for example, one to be specifically used for “other/general purposes”. In practice, money from the “other/general purposes” account could be allocated for state purposes without being identified in any NSW audit.

Mr Huang, who was based in NSW, was not constrained by the dollar amount of donations he could make at the federal level. Indeed, official records show that between 2012 and 2015, Mr Huang (either by himself or by companies associated with him) made as many as 20 donations, totalling \$1,095,000, to parties at the federal level.

Mr Dastyari, former NSW Labor general secretary and Australian senator, gave evidence that accepting funds into the NSW Labor federal account, which would otherwise be prohibited at the state level, is a known practice, as follows:

[Counsel Assisting]: And that was your practice when you were general secretary, I take it?

[Mr Dastyari]: Of course, I mean, yeah, you, the rules, the rules are very very clear. You take, they're not, let's be clear, prohibited state donors are not prohibited federal donors. You take the money, accept the money into the federal campaign account, and you fully disclose it.

As Mr Dastyari (indirectly) pointed out during the inquiry, the \$100k cash given by Mr Huang could legitimately have been donated at the federal level:

...to me what's incomprehensible about this entire enquiry, to be honest, is that, is if the series of events that have been purported are true, they could have just accepted the money into the federal campaign account, which is what, how you normally take money from prohibited donors or people above the limits. The federal rules allow you to take that money.

In Australia's federal system, it is not uncommon for there to be nine separate sets of laws regulating many areas of public policy. Although the Commission cannot direct recommendations at the Commonwealth Government, it would nonetheless be helpful if there was greater coordination between the federal, states and territories to ensure that reforms to strengthen legislation in one jurisdiction do not unduly create legislative loopholes in another. For example, greater consistency and transparency is needed around the definitions of “donor”, “donation” and “donation threshold”.

Regardless of whether a level playing field between jurisdictions is an attainable goal, at the very least, there should be minimal confusion. This is particularly so with regard to donation disclosure and compliance requirements; both for the donor and the responsible reporting person(s) in political parties.

Cash donations

Compared with payments made by electronic funds transfer, credit card or cheque, donations made in cash can be more easily:

- recorded in the name of a person or organisation that is not the real donor (possibly to conceal a prohibited donation) or not recorded at all
- split to avoid donation caps or disclosure caps.

An examination of the NSW Labor financial records by the NSWEC shows that most cash deposits were, in the period under investigation, less than \$1,000, and that transactions involving large amounts using cash was not a common business practice. The cash donations disclosed by NSW Labor in relation to the 2015 CFOL dinner appear to be exceptions. As discussed above, there was no regulation in NSW specific to cash donations until 31 December 2019.

In the NSW Parliamentary Legislation Review Committee Digest Report (No 7/57 – 22 October 2019, iv), the committee noted that the intention of the Electoral Funding Amendment (Cash Donations) Bill 2019 was to:

...improve traceability and transparency of donations, promote compliance and improve the integrity of the electoral system. These intentions are consistent with the broader objects of the Electoral Funding Act 2018.

Since 1 January 2020, it has been unlawful for a person to knowingly make or receive a political donation in cash that exceeds the value of \$100 (s 50A *Electoral Funding Act 2018*). The penalty to be imposed on a person who does any act that is unlawful under divisions 5 (Management of donations and expenditure), 6 (Prohibition of certain political donations) or 7 (Prohibition of donations from property developers or tobacco, liquor or gaming industries) of Part 3 of the *Electoral Funding Act 2018*, if the person was at the relevant time aware of the facts that result in the act being unlawful, is set out in the offence provision s 145(1).

The offence under s 145(1) of the *Electoral Funding Act 2018* carries a maximum penalty of 400 penalty units or imprisonment for two years, or both. At the time of writing this report, it is noted that prosecution in Court is required to enforce an offence under s 145(1) of the *Electoral Funding Act 2018* relating to a contravention of the cash donation provision in s 50A of the Act. The Commission notes, however, that the NSWEC can issue penalty notices under s 148 of the *Electoral Funding Act 2018* for breaches of other provisions of the Act, including offences under s 145(1) relating to contraventions of various sections in Part 3 Division 5 of the Act (concerning management of donations and

expenditure), which carry similar penalty unit points and terms of imprisonment.

For the offence of exceeding the \$100 cash limit, a distinction should be made between the value of the cash donation made, and the role and responsibility of the person who accepted the cash donation.

Consider, for example, a cash donation that exceeds the cap by \$50. If a local government electoral candidate accepted a cash donation of \$150, this would be an offence, but one that is less likely to proceed to prosecution given the dollar value of the donation against the cost of taxpayer money incurred in proceeding to Court.

Consider also the distinction between the role and responsibility of a party agent (or party official) who accepted and/or disclosed a donation that exceeded the cap, and a volunteer supporting the party at a community event (who perhaps inadvertently accepted such a donation because they were unaware of the rules). Both circumstances would constitute an offence; however, it may be impractical to proceed with prosecution against a volunteer.

In summary, the prohibition on cash donations exceeding \$100 strengthens transparency and goes some way to rebuild public confidence and integrity in the NSW electoral system. However, less severe offences may not warrant the costs and taxpayer expense involved in taking such cases to prosecution. Adopting an approach that allows the NSWEC to issue penalty notices for less severe offences will flag more breaches of donations law that simply may not have been acted upon and ultimately assist political parties to ensure they are compliant with regulatory provisions governing donations.

The Commission supports legislation to limit cash donations to \$100 but makes the following recommendation:

Recommendation 1

That the NSW Government amends the Electoral Funding Regulation 2018 to provide for the NSWEC to issue penalty notices for less severe breaches of the prohibition on cash donations under s 50A of the *Electoral Funding Act 2018*.

The management of donations and the NSW Labor governance arrangements

Political parties are voluntary, not-for-profit organisations that organise themselves in accordance with their own philosophical ideals. Even well-established parties such as NSW Labor tend not to have significant resources and rely heavily on party volunteers.

The public has an interest in the organisation and practices of registered political parties for state elections, not least because these parties may receive taxpayer funding to subsidise their electoral campaigns and administration. At a minimum, the public should expect that parties have proper financial policies and procedures in place to comply with electoral funding legislation.

In relation to the Administration Fund, the Commission's aforementioned 2014 report stated that:

Even though taxpayers pay both for the parties to administer themselves and the NSWEC to administer the fund, in the end, parties receive the full amount even if their internal controls are unsatisfactory.

Consequently, the first recommendation in that report was:

That the NSW Government amends the Election Funding, Expenditure and Disclosures Act 1981 to convert administration funding from a reimbursement scheme to a grant, contingent on the internal governance capability of political parties.

The Commission's recommendation was not adopted. Given the events that took place in this investigation, the Commission reiterates that the rationale behind this recommendation remains sound, and this is reflected in recommendation 2.

As discussed above, NSW Labor and Country Labor shared the same political ideology, staffing arrangements and governance structures. Importantly, one designated party agent was legally responsible for making disclosures of political donations for the two parties. In effect, a lack of satisfactory governance arrangements in NSW Labor meant a lack of satisfactory governance arrangements in Country Labor.

The shortcomings in governance capabilities within NSW Labor's head office during the period under investigation (2015–16) were made evident during the inquiry. The need to strengthen the systems and processes was particularly apparent, as set out in table 4.

Legacy of lax governance arrangements

The lax governance arrangements prior to, and leading up to the time of the event, was a matter that Ms Murnain knew of when she took over from Mr Clements as general secretary. Ms Murnain had conveyed these concerns to Mr Dastyari (predecessor to Mr Clements), who told the Commission:

The Labor Party accounts and donations were a 'shit show' and she was whinging to me about how everyone had abandoned her and she'd been left alone in the Labor Party office and we all moved on to our other careers and she was there to clean up the mess.

Ms Sibraa referred to the governance arrangements and process around the handling of donations as "sloppy, poor governance, terrible way of functioning".

Ms Murnain told the Commission that, in 2015, NSW Labor initiated three independent reviews to address the lack of satisfactory governance arrangements:

...the party undertook three different reviews and has undertaken some since as well in relation to procedures on handling donations in particular but also in relation to the way the office is structured. It, it was the case back then that procedures, everyone has a slightly different view of procedures because that's what happens when things weren't written down. Some, there were some areas of the office that had procedures but obviously governance was a pretty significant issue in 2015, which has been widely reported, and then we proceeded to make a significant number of changes to improve accountability and governance in the office because of those reviews. So there's a number of recommendations, rules, changes and processes that have been put in place since then.

As Ms Murnain indicated, several attempts were made to address the problems of governance within NSW Labor's head office. The Tarrant/Tierney review (2015), the Whelan/Farrar review (2015–16) and the Needham/Bianchi review (2015) each respectively involved a review of the administrative and finance committees, the head office workplace, and the Australian Labor Party (NSW Branch) Rules 2020.

Ms Murnain gave evidence that the Needham/Bianchi review in particular tackled the "pretty systemic cultural issues" that beset the working environment.

Subsequent to the above reviews, and under Ms Murnain's leadership, a number of governance improvements were put in place. For example, the role of governance director was created and a ban on cash donations above \$1,000 was introduced. Important as those improvements were, the matters exposed in this investigation highlighted the serious shortcomings in the governance of NSW Labor head office. More recent measures have included a staff code of conduct and improvements to IT systems to track and disclose donations.

In October 2019, the then NSW Labor leader, Jodi McKay, and federal Labor leader, Anthony Albanese, called for "a new era of transparency and accountability" and announced that a further two-part review of NSW Labor, would be led by former Commonwealth attorney general Michael Lavarch. The focus of the review was on the issue of power within NSW Labor, including:

Table 4: Governance shortcomings at the NSW Labor head office

<p>Accounting for, receipting and banking donations</p>	<p>There was a lack of clarity around who was accountable for bringing the donations from the fundraising event back to NSW Labor head office. Mr Clements considered this to be Mr Cheah’s responsibility. And, although the financial controller agreed that as a matter of proper practice, tax invoices and receipts (such as the \$50,000 in donations made in 2016) should have been issued directly to donors, receipts were sent directly to Mr Wong’s office (in 2016).</p> <p>There was also no policy or procedure to prohibit NSW Labor staff taking home large amounts of cash before banking (such as the \$100,000 that Mr Cheah took home in 2015). According to Mr Cheah, Mr Wong, Mr Clements and Ms Murnain, the 2015 CFOL dinner was typically “chaotic”.</p>
<p>The organisation of fundraising events</p>	<p>Although the 2015 CFOL dinner was organised to raise donations prior to the 2015 NSW State Election, the invitation/reservation forms made no reference to Country Labor for which donations were purportedly made. Any fundraising event, which had the potential to raise money for both NSW Labor and Country Labor, should have ensured that the donation form included an option for donors to clearly indicate to which party they wished to donate.</p>
<p>Identifying prohibited donors and donations that exceed statutory caps</p>	<p>There was a due diligence failure to identify that the donor disclosure forms for NSW Labor (in colour) were photocopied (in black-and-white) to produce otherwise identical but false declarations of donations made to Country Labor. This, and the failure to identify the identically handwritten “\$5000” on the forms should have alerted those reconciling the \$100k cash and the forms to probe deeper and ensure matters were in order.</p>
<p>The roles and responsibilities of staff, including volunteer staff</p>	<p>Ms Murnain said that in 2015:</p> <p><i>...people had in their heads their roles and responsibilities, but nothing was written down that clearly delineated people’s roles that other people would have access to. No-one really understood each other’s roles other than when they worked with each other to understand it.</i></p>
<p>Risk management and internal audit</p>	<p>Ms Wang, financial controller, agreed that the state of the NSW Labor accounts was in a form that the auditors would query in 2016.</p>
<p>NSW Labor’s failure to manage gifts and conflicts of interest</p>	<p>Mr Clements received gifts from Mr Huang in a personal capacity but did not disclose this to NSW Labor. During the inquiry, he agreed this to be a potential conflict of interest</p>
<p>Compliance and ethical obligations of senior party officials</p>	<p>The integrity of senior party officials is called into question by their failure to meet their compliance obligations. For example, Ms Murnain did not report her suspicions, if not knowledge, that an unlawful donation may have been made, either within the party, or to the NSWEC during its investigation of the event.</p> <p>Mr Clements, did not disclose the \$10,000 gifted by Mr Huang (to give to a union member) to either NSW Labor or the NSWEC.</p>

Where power lies within the Branch, how that power is exercised, what are the checks and balances to the use of power and how those entrusted with power are held accountable for using power in the best interests of the Party as a whole.

The first stage of the review focused on the structural reform of the Administrative Committee of NSW Labor (the governing body). The second stage (report forthcoming) will focus on compliance with electoral and donation laws, including fundraising activities and training provided to NSW Labor officials and candidates.

The Lavarch review produced the 2019 interim report, titled *Review into the NSW Labor Head Office*, which made several recommendations for substantial reform of the structure and governance arrangements at NSW Labor's head office. A key recommendation was to establish an audit and risk committee with a remit to advise a newly created state executive board on matters, including:

- preparing statutory accounts and annual financial statements
- monitoring and reviewing the external audit process
- reviewing the risk management framework of NSW Labor
- recommending any internal audit of NSW Labor's regulatory obligations under fundraising disclosure or other laws
- monitoring compliance of all regulatory obligations and advising on continuous improvement of culture of compliance at head office
- reporting directly to the NSWEC or any other appropriate regulatory authority, any suspected illegalities in NSW Labor's compliance with regulatory and legal obligations that have not been acted upon by NSW Labor after identification by the committee.

Notwithstanding the implementation of the Lavarch recommendations or those that may follow from the second stage of the review, the Commission's recommendations set out below are intended to apply to all political parties in NSW.

Recommendation 2

That the NSW Government, in consultation with affected parties, initiates an amendment to the *Electoral Funding Act 2018* so that payments from the Administration Fund are contingent on the achievement of acceptable standards of party

governance and internal control. A working group should be established to determine the relevant governance and control standards, which could relate to:

- **accounting for, receipting and banking donations**
- **the organisation of fundraising events**
- **identifying prohibited donors and donations that exceed statutory caps**
- **the roles and responsibilities of staff, including volunteers**
- **risk management and internal audit**
- **whistleblowing and complaint-handling**
- **management of gifts and conflicts of interest**
- **compliance and ethical obligations of senior party officials.**

Given the different governance arrangements in different political parties, and as a matter of good practice, it is reasonable to assume that multiple political parties would be either members of, or invited to, represent their views to the working group. As the independent regulator, the NSWEC would ultimately determine if the parties had met the governance and control standards agreed on by the working group and adopted by government. The intention is for standards to be clearly agreed on, according to the points (and principles) set out in the Commission's recommendation 3. The working group should also consider whether political parties should be able to request a review, before the NSW Civil and Administrative Tribunal, of the *consequences* of a decision taken by the NSWEC (for example, withholding administrative funding) as opposed to the decision itself.

Recommendation 3

That the newly established working group should seek input from the NSWEC to ensure the efficient administration and implementation of standards. That is, consideration should be given to:

- **applicable minimum standards**
- **whether the standards should take the form of model rules, which an individual party would be free to modify only if the NSWEC agreed that the modified rule did not adversely affect the party's governance. This would prevent small, or new, parties from incurring the expense of drafting rules from scratch**

- the limits on the type of standards that could be required. That is, in order to avoid topics and areas that the state has no legitimate interest in regulating (for example, the way a political party formulates its policies)
- the desirability, or extent to which, the standards take the form of specific rules, so as to meet the reasonable satisfaction of the NSWEC
- the need for a proportionate approach that does not unreasonably penalise small, new political parties or independents
- providing political parties with reasonable opportunities to address shortcomings in their governance and internal control frameworks before administration funding is withheld.

Recommendation 4

That the NSW Government amends the *Electoral Funding Act 2018* to provide the NSWEC with the necessary powers to assess, audit and enforce non-compliance with standards of party governance and internal control.

Recommendation 5

That the NSW Government amends the *Electoral Funding Act 2018* to require the NSWEC to publish findings regarding political parties' adherence to established governance and controls standards.

Penalties and compliance

In its 2014 report, the Commission raised concerns about the lack of effective penalties and sanctions to act as an effective deterrent against non-compliance with disclosure obligations. That year, the NSW Government established a "Panel of Experts – Political Donations" in response to public concern over the influence of political donations on the integrity of government decisions.

The panel recommended (among other matters):

- adopting a range of mid-level enforcement options available to the NSWEC, including the ability to withhold public funding entitlements from parties and candidates found in breach of the laws (recommendation 46)
- increasing the maximum monetary penalty that can be imposed by the Local Court (recommendation 43)

- simplifying the means by which the prosecution must prove knowledge, awareness or intent for offences in order to maximise the chances of successful prosecution (recommendation 45).

The *Electoral Funding Act 2018* now reflects new penalties for non-compliance with provisions relating to expenditure and donations. Recovery of up to double the value of unlawful donations and criminal prosecution for offences are two non-mutually exclusive enforcement actions available to the NSWEC. Enforcement actions are taken in accordance with the NSWEC's Compliance and Enforcement Policy.

With regard to questions of further policy and law reform arising from issues exposed in its investigation, the Commission focused principally on measures to ensure a higher level of self-regulation and compliance by political parties with the requirements of the statutory election funding, expenditure and disclosure regime.

In particular, the Commission considered whether the legislative provisions surrounding the duty to report contraventions of the *Electoral Funding Act 2018* be modified so that a senior party officer is required to report any reasonable suspicion of a contravention.

Failure of duty to report offence

Under s 100(1) of the *Electoral Funding Act 2018*, "Senior Office Holders" of a registered party are guilty of an offence if they fail to report to the NSWEC any conduct in connection with the party that the office holder knows or reasonably believes constitutes a contravention of the Act without reasonable excuse. The offence carries a maximum penalty of 50 penalty units (\$5,500).

Section 100(1) of the Act is a new offence that did not exist in the EFED Act and was not in force when the events under investigation took place. Section 100(2) of the *Electoral Funding Act 2018* states that a reasonable excuse may be if the person knows or reasonably believes a report about the conduct has already been made to the NSWEC.

There are challenges, however, in being able to prove what a senior office holder should reasonably understand about the lawfulness of the specific conduct.

Notably, the Electoral Funding Bill 2018 included a "duty of care and diligence" and a "duty of good faith" provision, which were ultimately not included in the *Electoral Funding Act 2018*. The intent of the care, diligence and good faith provisions, however, may be approximate to the general intent of a "reasonably suspected" obligation.

Recommendation 6

That the NSW Government, in consultation with the NSWEC, gives consideration to:

- a) amending s 100(1) of the *Electoral Funding Act 2018* to require senior office holders of political parties to report reasonably suspected contraventions of the Act
- b) increasing penalties associated with the offence under s 100(1) of the *Electoral Funding Act 2018* to bring it into line with the penalties set out in sections 141 to 146 of the Act.

Public statements about NSWEC compliance activities

The NSWEC is not presently authorised to inform the public of the outcome or conclusion of an investigation, nor to publish identifying information about any investigation.

In the current investigation, the Commission's power to hold a public inquiry was critical to obtaining truthful evidence from witnesses. The Commission's public inquiry exposed the false information given by putative donors and persons of interest to the NSWEC during its investigation of the matter. Additionally, once the NSWEC then referred the matter (as per s13A of the ICAC Act) to the Commission, some witnesses provided evidence in compulsory examinations that the Commission has now found to be false (as set out, for example, in chapters 9, 11, 20, 22 and 23 of this report).

Given the value of public exposure in this investigation and the more general positive effects of transparency, the Commission considers it necessary for the powers of the NSWEC to be enhanced to authorise it to make public statements about its compliance activities.

Subject to ensuring that political parties are afforded procedural fairness, the power to make public statements may create an additional deterrent to persons who might contemplate submitting false information to the NSWEC.

The NSWEC would require the authority to name political participants as part of any new power to undertake periodic reporting of the outcomes of its regulatory functions. As noted above, the NSWEC is not presently authorised to do this.

The Commission notes, however, that there may be a public interest in limiting any new reporting power of the NSWEC in the immediate lead up to an election so as to avoid suggestions that the timing of a report inappropriately impacted an election result.

Recommendation 7

That the NSW Government amends the *Electoral Funding Act 2018* to give the NSWEC power to publish the results of its compliance audits, investigations and regulatory actions.

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and as required by s 111E of the ICAC Act, will be furnished to the responsible minister or officer. The Commission will seek advice in relation to whether the recommendations will be implemented and, if so, details of the proposed plan of action and progress reports. The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at www.icac.nsw.gov.au.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) collusive tendering,
- (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
- (c) dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
- (d) defrauding the public revenue,
- (e) fraudulently obtaining or retaining employment or appointment as a public official.

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Subsection 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded

by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The Commission adopts the following approach in determining findings of corrupt conduct.


First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of subsections 8(1), 8(2) or 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirement of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the jurisdictional requirements of subsection 9(5). In the case of subsection 9(1)(a) and subsection 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of subsections 9(1)(b), 9(1)(c) and 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite

standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:



...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejfék v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.

Appendix 3: Summary of responses to adverse findings

Section 79A(1) of the ICAC Act provides:

The Commission is not authorised to include an adverse finding against a person in a report under section 74 unless—

(a) the Commission has first given the person a reasonable opportunity to respond to the proposed adverse finding,

and

(b) the Commission includes in the report a summary of the substance of the person's response that disputes the adverse finding if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, among other things, what adverse findings it was contended were open to the Commission to make against various parties. These were provided to relevant parties on 4 September 2020. Written submissions in response were received by 25 November 2020. Leave to make cross-party submissions was applied for, and granted to, five parties. Cross-party submissions were received by 28 January 2021.

The Commission considers that, in the circumstances, all affected parties have had a reasonable opportunity to respond to the proposed adverse findings.

Mr Huang, Mr Lin, Ms Murnain and Mr Robertson have requested the Commission include in this report a summary of the substance of their responses. The Commission did not accept all the adverse findings contended for by Counsel Assisting, or by other parties. It is not necessary to summarise the substance of responses in relation to those adverse findings not made by the Commission.

The substance of responses made on behalf of Mr Huang, Mr Lin, Ms Murnain and Mr Robertson have been set out

and dealt with, where relevant, in the body of this report. A summary of those responses follows.

Mr Huang

It was submitted on behalf of Mr Huang that the evidence supported Mr Huang's position that he was not the true source of the \$100k cash. That response is considered in chapter 12. It includes the contention that the head table at the 2015 CFOL dinner was a free table and was not available for purchase for \$100,000, demonstrated by Mr Wong's records suggesting that, from 18 February 2015 onwards, in contrast to prior records, the head table was no longer available for sale for \$100,000 or \$10,000 per seat.

The response on behalf of Mr Huang contends that his withdrawal of \$100,000 in cash from The Star junket account on 3 April 2015 was a "temporal coincidence"; there being no direct evidence of a causal relationship between his withdrawal of that cash and his meeting with Mr Clements on 7 April 2015. It was also submitted that the evidence from Jonathan Yee and Ms Murnain, to the effect that Mr Wong told each of them that Mr Huang was the true source of the \$100k cash (or at least part of that cash, in the case of Ms Murnain), was unreliable.

It was also submitted for Mr Huang that he did not deliver any cash to Mr Clements on 7 April 2015. That submission, which is considered in chapter 8, contends that Mr Cheah was an unreliable witness and there is no basis to believe his assertion that he received \$100,000 from Mr Clements on 7 April 2015. In support of this contention, it was submitted that Mr Cheah's account, that it took him two days to count 1,000 \$100 bills and 20 or 21 donation declaration forms, is inherently incredible and his evidence, that he checked the forms against the Electoral Roll, is inconsistent with the objective evidence. It was submitted that the inherent implausibility of Mr Cheah's evidence is enough to dispose of the suggestion Mr Cheah received the \$100k cash on 7 April 2015.

On this issue, it was submitted that Mr Xu was a relatively independent witness of truth and any inference that he was pressured to avoid giving evidence implicating Mr Huang would be speculation. It was submitted that the absence of evidence from Mr Huang on this point would not supply the positive evidence necessary to make such a finding. It was also submitted that Mr Xu's concession of the possibility of an exchange of gifts between Mr Huang and Mr Clements on 9 April 2015 was not a sufficient basis to make a positive finding that Mr Huang delivered the \$100k cash to Mr Clements.

It was further submitted on behalf of Mr Huang that he did not know, and was not a party to, a scheme related to state elections and elected members of Parliament. That submission contends that there is no evidence of any agreement or understanding between Mr Huang and any other person regarding the 2015 CFOL dinner, the head table or the \$100k cash, and that Mr Huang must be taken to be ignorant of any scheme, if it did exist, being perpetrated by any other person. In this context, it was submitted that:

- there is no basis for finding that the \$100k cash that was banked into the NSW Labor and Country Labor State Campaign Accounts
- Mr Huang had no motive to make an unlawful donation to the ALP and had made numerous lawful donations at the federal level to both sides of politics in the past
- the evidence does not support a finding that Mr Huang possessed the subjective intention amounting to a purpose of circumventing Part 6 of the EFED Act, noting that:
 - even if it was found that Mr Huang had knowledge that the \$100k cash was “related to” a state election, while that might trigger the jurisdictional condition in s 83 of EFED Act, it would not, without more, amount to a finding as to Mr Huang's purpose
 - as a matter of logic, the fact that a person gifts money in the form of cash does not, without more, lead to an inference that the person had the purpose of concealment.

The evidence in relation to the issues raised in the list above is considered in chapters 13 and 14 of this report.

Mr Lin

It was submitted on behalf of Mr Lin that he was roped into involvement in this matter by Jonathan Yee, his employer, and was used as a pawn. It was submitted that his lies to the NSWEC and this Commission were

motivated by a desire to comply with his employer's wishes and a desire not to get into further trouble, after having lied initially. It was submitted that Mr Lin lacked any knowledge of the purpose of the scheme.

It was further submitted for Mr Lin that the Commission should exercise its discretion, with reference to the Witness Cooperation Policy, and decline to refer him to the DPP for consideration of prosecution for any offences. Those submissions contend that Mr Lin's cooperation included his honest evidence at the public inquiry, notwithstanding having given previous false evidence at his compulsory examination, and the fact that he volunteered documentary material relevant to the Commission's inquiry; namely, his copy of the s 110A(1)(c) notice bearing handwritten answers suggested by Jonathan Yee.

It was further submitted for Mr Lin that his assistance and evidence at the public inquiry were consistent with contrition, a genuine change of heart and a desire to make amends for previous acts of lying to the NSWEC and this Commission.

Throughout this report, the Commission has considered and weighed the submissions for Mr Lin against the seriousness of his conduct. The evidence in relation to such matters is set out in chapters 11, 15, 16 and 17.

Ms Murnain

Submissions were received on behalf of Ms Murnain on several matters. One matter is addressed in this appendix.

It was submitted for Ms Murnain that the Commission should find that her purpose in seeking to meet Mr Robertson after hours on Friday, 16 September 2016 (“the Robertson meeting”) was to discuss with him, and seek legal advice from him in relation to, what she had been told by Mr Wong earlier that evening; namely, that there was a person who did not donate the money that they said they had to NSW Labor and that Mr Huang was the true source of that donation (“the Wong conversation”). The Commission made related findings in chapter 18, including a finding that Ms Murnain relayed to Mr Robertson during the Robertson meeting the substance the Wong conversation.

However, it was further submitted on behalf of Ms Murnain that the Commission should also find that, during the Robertson meeting, Mr Robertson advised Ms Murnain that, given Mr Wong had provided no evidence for what he had said in the Wong conversation, there was no need for her to take any action in relation to the content of the Wong conversation, and that she should not do so. The Commission reported in chapter 18 that the state of the evidence does not support such a finding.

To the extent that this determination may amount to a finding adverse to Ms Murnain within the meaning of s 79A(1) of the ICAC Act, the substance of her submission on this point is summarised below.

On Ms Murnain's account, Mr Robertson advised her on 16 September 2016 that, in circumstances where Mr Wong had given her no proof, she did not need to take any action in relation to the Wong conversation, she should forget she had met with Mr Robertson, and she should not record the meeting in a diary or talk about it with anyone. Counsel Assisting submitted that Ms Murnain's evidence on this issue lacked sufficient cogency, because it would be extraordinary or scandalous for someone of Mr Robertson's standing to advise Ms Murnain to conceal evidence of potential wrongdoing and that strong evidence would be necessary to satisfy the Commission that Mr Robertson gave Ms Murnain such advice.

In response, it was submitted on behalf of Ms Murnain that her evidence about the Robertson meeting, in general, and in particular about the advice that she said Mr Robertson gave her, was both strong and cogent; in that, it was clear, logical and convincing and that it should be accepted by the Commission. It was noted that Ms Murnain's evidence about the Robertson meeting was the only (direct) evidence as to what was said during that meeting. Mr Robertson gave evidence that he could not recall the meeting and provided no alternative account, instead speculating that it may have concerned completely unrelated matters.

It was submitted that Mr Robertson's general denial of the entire meeting with Ms Murnain about the Wong conversation was implausible and should be rejected.

The submission for Ms Murnain was that her evidence in relation to the Robertson meeting was logical, on three bases. First, given that Mr Robertson's task as a solicitor for NSW Labor was to provide legal advice, the context and purpose of the Robertson meeting necessarily demanded that he give advice to Ms Murnain in response to the communication by her of the fact and substance of the Wong conversation. It was submitted that the possibility that Mr Robertson did not do so is highly unlikely.

Secondly, it was submitted that it is highly implausible that Ms Murnain would have gone away from that meeting without any advice from Mr Robertson in circumstances where the evidence shows she was highly distressed by the Wong conversation and had urgently procured and attended the Robertson meeting in order to obtain advice about it.

Thirdly, it was submitted that, once it is accepted that Mr Robertson must have given Ms Murnain some advice

in relation to the Wong conversation, her evidence is the only plausible account of the content of that advice, for the following reasons:

- it is the only reasonable available explanation of why Ms Murnain behaved the way she did after the Robertson meeting. Prior to the Robertson meeting, the evidence is that Ms Murnain was distressed and uncertain about what to do, having urgently sought the advice of Mr Dastyari and Mr Robertson and suggested to the latter about returning the money or referring the matter to the NSWEC. After the Robertson meeting, Ms Murnain did and said nothing about the Wong conversation. The submission is made that it is unreasonable to infer that, in doing so, she acted contrary to what she was told in the Robertson meeting, particularly given that she trusted and relied on Mr Robertson. It is submitted that the only reasonable conclusion is that she did as Mr Robertson advised
- Ms Murnain's evidence regarding the substance Mr Robertson's advice is also consistent with:
 - the fact that no record can be found of the content of the Robertson meeting
 - Mr Robertson's subsequent conduct in relation to his approval of the NSW Labor and Country Labor responses to the NSWEC notices and his review of the transcript of Mr Cheah's NSWEC interview
 - Mr Robertson's conduct in relation to the search warrant executed by this Commission at NSW Labor head office on 18 December 2018 and his subsequent letter to the Inspector of the ICAC on 6 May 2019. On neither of those occasions did Mr Robertson say or do anything in connection with the Wong conversation.

It was further submitted on behalf of Ms Murnain that the advice that she said that Mr Robertson gave her on 16 September 2016 was in two parts. The first part of the advice was given, on her account, in response to her comment that "we should return the money or talk to the NSWEC". That part of the advice was said to have been given in the form, "Well, we don't have to do that just yet. Has Ernest given you any real evidence?". It was submitted for Ms Murnain that this part of the advice was no more than an orthodox admonition against acting on serious allegations in the absence of any real evidence. It was submitted that there is nothing scandalous or extraordinary about such advice – a position to be contrasted with the second part of the alleged advice, which is to the effect that Mr Robertson encouraged

concealment of the Wong conversation and the Robertson meeting, which could, if given, be described as scandalous and extraordinary.

On this basis, the submission was made for Ms Murnain that, if (contrary to the primary submission) there was some hesitation to find that Mr Robertson gave the second part of the advice, there is no reason not to find that he gave the first part of the advice.

Mr Robertson

Submissions were received on behalf of Mr Robertson in relation to several matters. The matter addressed in this appendix concerns the content of the Robertson meeting. The Commission's findings in relation to this issue are reported in chapter 18.

It was submitted for Mr Robertson that the Commission should not make the finding proposed by Counsel Assisting that, during the Robertson meeting, Ms Murnain mentioned to Mr Robertson that she had recently spoken to Mr Wong who had told her that there was (or possibly was) at least one person who did not donate the money that they said that they had to NSW Labor and that Mr Huang (who, at the time, Mr Robertson understood to be a prohibited donor as a matter of state law) had some actual or possible connection with that donation. The submission was made that the Commission could not be satisfied of such matters to the required *Briginshaw* standard.

It was submitted for Mr Robertson that the Commission should find instead that the subject matter of the Robertson meeting was the advice that Mr Robertson was working on concerning Mr Lalich. It was submitted that the urgency of the Lalich Advice, demonstrated by contemporaneous records, proved the likelihood that the after-hours meeting between Ms Murnain and Mr Robertson on Friday, 16 September 2016 concerned the Lalich matter.

In this regard, the submission for Mr Robertson noted evidence of telephone and email contact on 16 September 2016, in the hours prior to the Wong conversation, between Ms Murnain, Mr Robertson, Mr Foley and his chief of staff, and senior NSW Labor officers regarding the Lalich matter. Also noted was an email on 17 September 2016 from Mr Robertson to his personal assistant asking her to record 10 units of time on the ALP General File on 16 September 2016 for "telephone conversations and meeting with Ms K Murnain concerning political donation issues" and a Holding Redlich tax invoice issued to NSW Labor for legal fees including an entry for 16 September 2016, "meeting with Ms K Murnain concerning political donation issues".

The submission was made that the changes to the draft Lalich Advice and final Lalich Advice, settled by Mr Robertson on 17 September 2016, were material changes and that those changes supported the likelihood that Ms Murnain provided further instructions to Mr Robertson regarding the Lalich matter at the Robertson meeting. Those changes are considered in chapter 18.

It was further submitted on behalf of Mr Robertson that the Commission should reject the evidence of Ms Murnain with respect to the subject matter of, and what was said at, the Robertson meeting. In this regard, it was contended that Ms Murnain was not a witness of credit given that she failed to disclose the Wong conversation to the NSWEC or to this Commission in her first compulsory examination.

The submission for Mr Robertson highlighted tensions between Ms Murnain's evidence and telephone records as to the timing of Ms Murnain's communications and meeting with Mr Dastyari following the Wong conversation. In substance, the submission was that Ms Murnain's and Mr Dastyari's evidence, that they met in his car after the Wong conversation whereupon Mr Dastyari told Ms Murnain that she should get advice from Mr Robertson, was inconsistent with telephone records, which establish that, while there was a telephone conversation between Ms Murnain and Mr Dastyari shortly after the Wong conversation, they did not meet in person until after the Robertson meeting. It follows, on this submission, that their recollections, that Mr Dastyari told Ms Murnain in the car that she should get advice from Mr Robertson, could not be accurate and that the Commission should find that Ms Murnain's evidence was false in this regard.

It was further submitted for Mr Robertson that the Commission should find that Mr Robertson gave truthful evidence in the public inquiry when he said that he had no recollection of the Robertson meeting and that his stated belief, at the time that he gave evidence, informed by his review of contemporaneous records, was that there was discussion at the Robertson meeting of the Lalich matter.

The submission was also made for Mr Robertson that the Commission could not be satisfied that he was an "affected person" for the purpose of s 74A(3) of the ICAC Act. In support of this submission, it was argued that there were no "substantial allegations" made against him. As "substantial allegations" required both substance and probity, it was argued that Ms Murnain's evidence regarding the subject matter of, and what was discussed at, the Robertson meeting was of "substantially limited probative value" and was therefore an inadequate basis for the Commission to form the requisite opinion in s 74A(3).



INDEPENDENT COMMISSION
AGAINST CORRUPTION

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