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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION CREDO AND SPICER

Reference: Operation E12/2107/0821

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 12 SEPTEMBER, 2014

AT 1.45PM

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

THE COMMISSIONER: Yes, Mr Watson. Mr O'Mahoney, sorry.

MR O'MAHONEY: Commissioner, just a couple of housekeeping matters before Mr Watson continues, there's a number of further things to tender. Firstly I tender a bundle of CCR records relating to Mr Hartcher dating 20 October 2011.

THE COMMISSIONER: Yes, Exhibit Z114.

10

#EXHIBIT Z114 - CALL CHARGE RECORDS OF CHRISTOPHER HARTCHER DATED 20 OCTOBER 2011

MR O'MAHONEY: And secondly, Commissioner, I tender a further bundle of CCR records in respect of Mr Hartcher dated 31 October 2011.

THE COMMISSIONER: Exhibit Z115.

20

#EXHIBIT Z115 - CALL CHARGE RECORDS OF CHRISTOPHER HARTCHER DATED 31 OCTOBER 2011

MR O'MAHONEY: That's all for the time being, Commissioner.

THE COMMISSIONER: Thank you.

30

MR WATSON: Mr Bandle produced a long affidavit. It's really entirely irrelevant but one part which is relevant is in response to a request that I made of him which was that he has set out in a document it was annexure I to the affidavit payments made by the Free Enterprise Foundation between particular dates and it's fairly self explanatory and it was something I asked Mr Bandle for. It shows payments made to places other than the Liberal Party that sort of thing, payments to Bandle McAneney & Co. and charities and the like, it's annexure I to Mr Bandle's affidavit, I'll tender it, it can stand alone.

40

THE COMMISSIONER: Exhibit Z116.

#EXHIBIT Z116 - ANNEXURE I TO AFFIDAVIT OF ANTHONY BANDLE

MR WATSON: In case they're reading the transcript I've got no intention of tendering the rest a lot of which is company searches and newspaper articles.

THE COMMISSIONER: So this is, this is annexure I to Mr Bandle's affidavit.

MR DUGGAN: Commissioner, can I inquire as to whether that affidavit is on the restricted website where we have access to it?

MR WATSON: No, it's not.

10 THE COMMISSIONER: No. But there's no reason why you can't have access to it if you want to - - -

MR WATSON: Just get in touch with - - -

THE COMMISSIONER: - - - approach Mr Bandle's legal representatives.

MR DUGGAN: Yes, I'm just concerned by - it is relevant for - we wish to ask Counsel Assisting to tender it as it may not - - -

20 MR WATSON: It's not relevant I just told you that and I'm not going to. The solicitors of Bradley Allen Love and you can ring them and get a copy of it for yourself but annexure I will go up on the website. I'll call - - -

MR DUGGAN: But, Commissioner, if we do need to tender a copy after close today then we will - - -

THE COMMISSIONER: Well if you need, if you need to do that you can write to the Commission and seek, seek leave to do that after the close of the inquiry.

30 MR DUGGAN: Thank you, Commissioner.

MR WATSON: They'll need to tender something they haven't seen. Anyway can I could call Mr Shields.

MR BROADBENT: Commissioner, my name is Broadbent.

THE COMMISSIONER: Yes, Mr Broadbent.

40 MR BROADBENT: Seek authorisation to appear on behalf of Mr Shields.

THE COMMISSIONER: Yes, that leave is granted.

MR BROADBENT: I've explained to Mr Shields the effect of section 38. He seeks a declaration in that regard.

THE COMMISSIONER: Mr Shields, just so long as you appreciate that the order under section 38 protects you from the use of your answers against

you in civil and criminal proceedings but does not protect you in the event that it's found that you've given false or misleading evidence. Do you understand that?

MR SHIELDS: Yes.

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

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

30 THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Shields?

MR SHIELDS: I wish to be sworn.

THE COMMISSIONER: All right. Thank you.

MR WATSON: Are you Richard Shields?---I am.

And Mr Shields, at one stage or another, especially around 2010/2011, you were a paid employee of the Liberal Party, is that right?---Correct.

And what position did you hold?---I was the Deputy State Director.

10

And Mr Neeham was your boss?---Correct.

And as the Deputy State Director did you have any role of fundraising?

---Sorry, can you clarify the question regarding timing - - -

Sorry?--- - - - because I have - - -

Deputy State Director, at any time you held that position were you involved in fundraising at all?---I, my role was to do Party affairs, it was not to do fundraising.

20

Not to do fundraising?---Correct.

Did you have anything to do with fundraising there?---Sorry, can you please clarify the, the timeframe?

Yes, while you were Deputy State Director?---Yes. So I was Party agent - - -

30 Right?--- - - - during, not during the time of 2010 to 2011 that you, that you asked the timeframe.

You were the Party agent?---Correct.

Meaning?---Meaning that this is a position that reports or signs off on Party returns to the Electoral Commission.

And you had that role for which period?---From the beginning of 2008 to the end of 2009, beginning 2010. My last return from recollection that I signed off on was the end of 2009.

40

And who succeeded you as Party agent?---Ah, Simon McInnes.

Right. And in your position as Deputy State Director what did you know about the Free Enterprise Foundation?---I knew that it existed, I, I didn't have a lot, a great understanding of it. I had heard, you know, I, I was of the opinion that it was an organisation that had political or philosophical allegiances with the conservative side of politics.

From whom had you heard about it?---Having worked in the Liberal Party for a number of years I can't recall, it was just something that I, I, I recollect.

In what context was it raised?---Sorry, I just said that I don't recall having heard about it in a particular instance to give you any particular example, it was just one of those things that me being around the Party working for the Party it was something - - -

10

There must have been some context, Mr Shields, I mean, did somebody say Free Enterprise Foundation is a fertile place for getting pamphlets printed or did they say the Free Enterprise Foundation is promoting individual candidates of a factional alignment, there must have been some context? ---Well, well, no, no, there wasn't.

20

You know, this is quite amazing, what, down there at the Liberal Party while you were Deputy State Director the Free Enterprise Foundation gave \$700,000, you know that don't you?---I know that from listening to this inquiry.

What, are you telling us as Deputy State Director you had no idea of where the money was coming from which was going to pay for the election?---My role was Party affairs.

No, you answer my question. Are you saying as Deputy State Director you had no idea where the money was coming from which was going to pay for the State Election?---That, that was not my job to know that if - - -

30

Whose job was it, we want to find this mythical person at the Liberal Party, somebody who knew about this \$700,000, we haven't found them yet, who do you suggest we talk to?---Well, it's - - -

Whose job was it?---Well, all I can tell you is that it was not my job.

Was it a secret, the identity of donors to the Liberal Party?---Well, it's not a secret because it's publicly disclosed.

40

And wouldn't you want to know that as Deputy State Director so at the very least you could walk over and shake hands with a generous donor?---My role was to look after Party - - -

You answer my question. Wouldn't you want to know so at the very least you could walk over and shake hands with a generous donor?---Well, considering my role was Party affairs which is to deal with branch related issues, membership related issues - - -

Wouldn't you want to know the identity of the generous donors to the Liberal Party while you were Deputy State Director, Mr Shields?---Sorry, I don't understand the, the line of questions because my role was - - -

Well, I'll try and make it simple for you, I'll reduce it. You were Deputy State Director of the Liberal Party. Correct?---Correct.

The Liberal Party needed money to mount a campaign. Correct?---Correct.

10 They got most of that money via donations. Correct?---Correct, and, and public- - -

Your pay was- - -?---And public funding.

- - -paid each week out of sums accumulated by the Liberal Party from those donations. Correct?---The- - -

Correct?---Well, I need to answer your question. The money- - -

20 Go on, is it correct or incorrect?---The money that – I understand the money that was paid, the salaries were paid by both public funding and also it was paid by fundraising from the Millennium Forum.

All right. And those people who gave funds to the Millennium Forum, would they fall into the description of the word donor?---Yes, they would.

30 Are you telling us that given your full-time paid position, Deputy State Director, you had no interest in identifying who the principal donors to the Liberal Party were. Is that what you're telling us?---It was the, the donors were people that went to Millennium Forum functions and paid to attend those functions.

And did you block out their names, did you avert your eyes so that you would never know who these people were?---Well, I would have met them but I wouldn't have suddenly said, oh, I wonder how much they have, they have donated.

40 That's a different issue. I just want to find out, I mean, did you ever meet any donors?---Yes, I did.

Did you ever retain recollection of their names?---Well, I met donors at- - -

Did you ever retain recollection of their names?---Well, I would have retained- - -

For example, if you went to one function where you were introduced to a donor, would you be able to come up and say, g'day, Phil, we met last time, that sort of thing?---I might have done so.

Yeah. You're just pulling our leg, aren't you, if you're suggesting that you didn't know about the Free Enterprise Foundation being a principal donor? Isn't that right?

MR NEWLINDS: Well, I'm going to object at this stage.

THE COMMISSIONER: All right, Mr Newlinds.

10 MR NEWLINDS: Just so a big of rigour is brought to bear before my client gets in the box.

THE COMMISSIONER: Yes, all right, no, no.

MR NEWLINDS: Can the witness be allowed to answer questions?

THE COMMISSIONER: Yes, Mr Newlinds, I agree with you. There's no need to go on. We'll just have to take it one step at a time, Mr Watson.

20 Mr Shields, regardless of your role, and you keep referring to your role in terms of the ambit of your responsibilities- - -?---Mmm.

- - -did you or did you not know that the sum of approximately \$700,000 had come from the FEF to fund the 2011 State campaign?---To the best of my recollection, no, I did not.

You did not know at any time?---No.

30 So when you signed off on the returns- - -?---Yeah.

- - -would that entry from the FEF not appear on those returns?---Well, that return – so I was Party agent from the beginning of 2008- - -

Yes, I know that?--- - - -to the end of 2009 roughly, beginning 2010.

Yes?---Um, as Party agent what you do is you sign off on the returns. So these returns are prepared by the um, the Finance Director.

40 All right. Now, just answer me this if you wouldn't mind. When you were the Party agent and you signed off on the returns for the years 2008/2009, did you notice at the time that you signed off the level of contribution that was coming to the State Party from the FEF?---No, I did not.

You didn't, you didn't look at it?---Well, I, I – it wasn't my job to prepare the donations that were being reported, that was the job of the Finance Director.

I appreciate that?---I, as the Party agent I made the question to the Finance Director, I said, "Does this return meet the objectives of, of the law?"

Well, I appreciate that, but you sign off on the return?---Yeah.

So you physically sign the document?---Correct.

10 Did you when you last physically signed that document, note the level of return that was coming from the FEF?---Um, I have no recollection of noting that but I'm not sure as to what timeframe the \$700,000 came in and whether it overlapped with my time as Party agent.

I'm not concerned with that?---Yeah.

20 I'm just concerned with whether or not when you signed off on the return you looked at the document and read the document and noted where the source of the moneys were from?---I don't recall ever seeing Free Enterprise Foundation but there was, there would have been hundreds of, of donors so it's not something that stuck out in my mind.

MR WATSON: Could the witness be shown Exhibit Z13. Z13 is a folder. Open it at page 22, please, Mr Shields. This is an email from Hugh Thomson to Chris Stone and yourself, you'll see that?---Yes.

Can you explain anything about it to us? Do you know whether you were the person who had the conversation or discussion with Hugh Thomson?---I don't recall having this conversation with Hugh Thomson.

30 Well can you shed any light on this? For example can you recall having a conversation with Chris Stone on the subject?---No, I, I didn't. Sorry, I don't recall and again sorry to get back to the original point um, my role was to look after Party affairs and so Party affairs was to um, go through a process enshrined in the constitution to get, to pre-select a candidate. Um, this, this document - - -

Yes, all right, I think that's sufficient. You don't know anything about it? ---Correct. They're the questions - - -?---Oh, yeah, yeah.

40 - - - for Mr Shields.

THE COMMISSIONER: Does anyone have any questions of Mr Shields?

MR HENSKENS: Commissioner, I just have a handful of questions.

THE COMMISSIONER: Yes.

MR HENSKENS: Mr Shields, can I ask you some questions please about your role as, in Party affairs when you were the Deputy State Director?---Yes.

THE COMMISSIONER: Oh well, Mr Henskens, I mean we've had that stated a number of times. I mean I don't understand this witness to have said that he knows anything about the donations after he left the position of Party Agent so do we need to go any further than that?

10 MR HENSKENS: No, Commissioner, this is on a different topic and it's really mopping up some things from earlier in the inquiry.

THE COMMISSIONER: All right.

MR HENSKENS: It's only about half a dozen questions, Commissioner.

THE COMMISSIONER: no, no, it's all right, go on.

20 MR HENSKENS: Mr Shields, in your role dealing with Party affairs you were involved in assisting the State Director to adjudicate on constitutional disputes?---I was.

And in that role you became very familiar with the constitution of the New South Wales division of the Liberal Party?---Yes.

And under that constitution branches and conferences are creatures of the constitution aren't they?---They are.

30 And they're constituted by Members of the Party of the New South Wales division of the Liberal Party?---Yes, they are.

And when those branches and conferences open up a bank account they're required to do so in the name of the Liberal Party of New South Wales, sorry Liberal Party of Australia New South Wales division weren't they? ---Yeah, and then they would have had to add what branch or what conference they were from.

40 Thank you. And in fact the division had special arrangements with Westpac Bank for the purposes of those bank accounts didn't they, the conference and branch bank accounts?---I seem to recollect that I'm not so sure I'm sorry.

And, and therefore all funds in branch or conference bank accounts were actually the property of the Liberal Party of Australia New South Wales division weren't they?---Um, I, I seemed to recall that but again it wasn't something that I was dealing with on a day to day basis.

But you're familiar aren't you with the fact that it was possible to deposit a cheque in a conference or branch account that was made payable to the

Liberal Party of Australia New South Wales division wasn't it?---Um, I, when I was an office bearer of a branch um, I do remember that happening.

And from time to time branches or conferences would send cheques to Head Office to be put in their bank account that was made payable to a conference or a branch wouldn't they?---Um, I seem to recall that.

And they would be deposited in the, in the head office account, correct?---I seemed to recall that.

10

Can I just ask you one final question, the Liberal Party of Australia New South Wales division it conducts both State and Federal election campaigns on behalf of endorsed candidates seeking election both the Commonwealth of Australia's Parliament in Canberra as well as State Parliament in Macquarie Street doesn't it?---Correct.

And it receives donations both for Federal campaigns therefore and State campaigns doesn't it?---Correct.

20 Thank you. Those are the questions. Thank you, Commissioner.

THE COMMISSIONER: Any other – yes, yes, Mr Coady.

MR COADY: Commissioner, less than five minutes.

Mr Shields, my name is Coady and I appear for Mr Nicolaou. Can you hear me?---I can, thank you.

You know Mr Nicolaou?---Yes, I do.

30 And you knew him at the time that you were Deputy State Director?---Yes.

You knew him to be the Executive Chairman of the Millennium Forum?
---Yes.

You didn't, you didn't know him to be an accountant did you?---No, I did not.

All right. So chiefly he's was a fundraising role?---Correct.

40 Was to get the money in the door?---Correct.

Did you have any experience in working with or alongside Mr McInnes and Mr Nicolaou in the campaign Headquarters?---Sorry, can you rephrase the question because working alongside, we worked in a small office so, so what do you mean?

Perhaps I'll approach it in a different way. Did you know of Mr Nicolaou ever being involved in the internal accounting affairs at the Liberal Party for example?---To the best of my recollection, no.

That wasn't his role was it?---No, it was not.

10 So for example, if I can just use an example, it wouldn't have – as far as you know it wouldn't have been part of his role to, for example, allocate funds to a particular EAC or SEC ledger or account?---Ah, I don't believe so. Generally that, yeah no, I, I don't believe so.

And for example it wouldn't be a part of his role to choose for example what seat might be a, a target, might receive a target seat package?---No, definitely not.

Those are the questions, thank you, Commissioner.

20 THE COMMISSIONER: Thank you. Anyone else have any questions of Mr Shields? Anything, Mr Broadbent?

MR BROADBENT: Nothing arising, Commissioner.

MR WATSON: There was something I should have asked in-chief, I appreciate there may be others who wish to ask questions.

We received some evidence from a Mr John Caputo?---Yes.

30 Are you aware of that evidence?---Yes, I am.

Do you know anything about what he said, that is, and it's not absolutely clear, Mr Caputo said that you may have been the person he spoke to about what he should do with certain cheques collected from a fundraising event? ---Yeah.

Do you have any recollection or knowledge?---I do not recall that conversation.

40 All right. Thank you.

THE COMMISSIONER: Thank you. Mr Shields, you may step down, you're excused?---Thank you.

THE WITNESS EXCUSED

[2.06pm]

MR WATSON: Something I should have made clear before, I think he may have even gone but I did just ask that Mr Baumann be stood down, he can be excused if he wishes that.

THE COMMISSIONER: Ah, all right. I don't know if he's still here, he doesn't appear to be.

MR WATSON: He's gone, yes. Then I'll call Ray Carter if I may.

10 MR JACOBS: Commissioner, with your permission (not transcribable)

THE COMMISSIONER: Yes, Mr Jacobs.

MR JACOBS: (not transcribable) might I seek your leave, Commissioner, to tender an affidavit?

MR WATSON: Of?

20 MR JACOBS: Mr Bandle (not transcribable)

THE COMMISSIONER: Well, if you, if you show it to Mr Watson - - -

MR JACOBS: He's seen it.

MR WATSON: I've seen that and I'm not going to tender any part of it except for Exhibit I.

30 THE COMMISSIONER: Is this the same affidavit to which the annexure which is now Exhibit Z116 is it, it's the same affidavit?

MR JACOBS: I wasn't here earlier (not transcribable) but excuse my ignorance on that score.

THE COMMISSIONER: Mr Watson referred to the affidavit, if it's the same one, shortly after we resumed at lunchtime and he has tendered the annexure I to the affidavit but has declined to tender the balance of the affidavit on the grounds that, that it is largely irrelevant.

40 MR JACOBS: Yes. So as not to take, it's my submission that it's relevant, it's the view of my instructing solicitor, so as not to take up time now would you admit it subject to relevance that can be dealt with in submissions.

THE COMMISSIONER: Well, I won't be doing that just now, Mr Jacobs, because - - -

MR WATSON: Make him write to us and try to explain it.

THE COMMISSIONER: We've got so much already there but can I suggest that you might want to make it available to other legal representatives in the room - - -

MR NEWLINDS: I've seen it, I've seen it and on a quick read through, in my submission to say it's not relevant would be an error of law.

THE COMMISSIONER: Well - - -

10 MR NEWLINDS: And I know, I know we don't know what issues one's dealing with down here but insofar as one can glean - - -

MR WATSON: Oh, that's just being rude.

MR NEWLINDS: - - - large, large amounts of are very relevant.

20 THE COMMISSIONER: I don't know what's in it, all I'm saying is that, that Mr Jacobs might need to make it available to other people in the room so that they can make an assessment as to whether or not there's material in there that they would find useful or helpful and then you can write to us, Mr Jacobs, and indicate on what grounds you say the material is relevant and other people can do the same and we'll look at the tender of the material after we've received that correspondence. All right.

MR JACOBS: I'm indebted, I'm indebted.

THE COMMISSIONER: Thank you.

30 MR WATSON: I'll call Ray Carter.

THE COMMISSIONER: Yes, is Mr Carter here? Mr Trevallion, just if you - - -

MR TREVALLION: Mr Carter is here, he's outside.

THE COMMISSIONER: Right, thank you.

MR TREVALLION: Do I need to seek leave again?

40 THE COMMISSIONER: No, your leave was granted on the last occasion, Mr Trevallion and, and I take it that Mr Carter's also wishing, excuse me, to continue to take advantage of the section 38 order?

MR TREVALLION: Yes, that's right.

THE COMMISSIONER: Mr Carter, I just wanted to confirm with you that you appreciate that the section 38 order protects you from the use of your - - -

MR CARTER: I can hardly hear you, ma'am.

THE COMMISSIONER: Oh, I'm sorry. I'll start again. I just need to confirm with you that you appreciate that the section 38 order protects you from the use of your answers against you in civil and criminal proceedings but does not protect you if it should be found that you have given false or misleading evidence. You understand that?

10 MR CARTER: I understand, yes.

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

20

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30 DOCUMENT OR THING PRODUCED.**

MR CARTER: I didn't hear a word.

THE COMMISSIONER: Do you wish to be sworn, Mr Carter?

MR CARTER: I'm sorry, I didn't hear a word you said.

MR TREVALLION: I apologise, Your Honour, Mr Carter does have hearing problems.

40

THE COMMISSIONER: No, I know. He didn't need to hear that particularly, it just needed to be recorded for the transcript..

MR TREVALLION: No.

MR CARTER: Pardon?

<RAYMOND CARTER, affirmed

[2.12pm]

THE COMMISSIONER: Yes, Mr Watson.

MR WATSON: Are you Raymond Carter?---Yes, I am.

Mr Carter, I'm sorry to bring you back but I need to ask you some questions about some particular documents. Could Mr Carter be shown Exhibit Z13.
10 Mr Carter, the same documents I show you will be put on that little computer screen next to you?---Yeah.

You have a look at whichever one is better for you. At the moment I'm going to ask you to be shown page 4. This is really good, Mr Carter, because I get to yell at you and I've got an excuse for doing it for once, you see. If you look at page 4, that's a photocopy of a Westpac cheque from Boardwalk Resources Pty Limited for \$18,000. See all of that?---Yes, I can see it.

20 And if you look now at page 6, it'll come up on the screen?---Yeah.

That's a cheque, similar source, Boardwalk Resources, and this time for \$35,000. Do you see that?---Yes.

Now, do you have any recollection of those cheques, do you recall seeing specifically any cheques from Boardwalk Resources come through the Terrigal office?---No, I don't.

All right. Well, we've got some evidence, and it came from you, Mr Carter,
30 that you would sometimes collect cheques which would be sent from the Terrigal office down to Sydney to Mr Nicolaou?---Correct.

You said that on an earlier occasion. Now, do you have any recollection of cheques coming through from Boardwalk Resources?---What are Broadwater?

Well, I'm going to take that to be no. Mr Carter, we've got some evidence from Mr Nicolaou that he had conversations with you from time to time- -
?---That's correct.

40 - - -during which you'd tell him the cheques were on their way?---That's correct.

And we've got some evidence from Mr Nicolaou which might suggest that you rang him in particular about these cheques, that is cheques from Boardwalk Resources that were going to go down to Sydney. Do you have any recollection of that?---I honestly have no recollection of that.

In saying that you've got no recollection are you saying, look, it may have happened and it's slipped my mind or are you saying in all probability it didn't happen?---I'd have to say all probability it didn't happen.

Did you ever hear about cheques which might come through- -?---I beg your pardon?

10 Did you ever hear about cheques which might come through to you which would come from Nathan Tinkler or a source associated with him?---I'm not familiar with that at all.

Or Buldev, a company from Newcastle?---I'm not familiar with that at all.

20 Now, do you remember having any conversation in which, or about cheques which were specifically devoted to a specific seat, that is it was coming through the Terrigal office but going to be used for the benefit of Tim Owen in Newcastle or Bart Bassett in Londonderry. Do you remember anything like that?---No, I, I was only ever interested in what was for the Central Coast so I would not have – that wouldn't have been discussed with me at all.

I mean if you had been given instructions of a particular task, a particular job which meant that you had to send cheques which were to be used for Tim Owen in Newcastle or Bart Bassett in Londonderry, would you be likely to remember if that had occurred?---I think I would remember that but that never happened.

30 Well, can I just show you – sorry, I'll just run a couple of names past you? ---Sure.

Are you familiar with a name, a fellow called Troy Palmer?---Toy Palmer?

Troy Palmer?---No, I'm not familiar with that name.

Or a fellow Darren Williams? You would have met him?---I've heard of Darren Williams, yes.

40 Or a David Sharpe?---David, is that, would that be Sharpe Brothers in Gosford?

No, you mean the soft drink people, don't you?---Yeah.

No, it's not Sharpe Brothers, it's another chap from David Sharpe, he was associated with Buldev?---I may, I may have.

Could I just show you something. If you look at page 10, it'll come up on the screen?---Yeah.

This is a record that we've got which was kept by Aaron Henry- - -?---
Right.

- - -and being a bit younger than you and me he's all good with this
electronic business, and it's an entry made in his diary- - -?---Ah hmm.

- - -to remind himself to send something by Express Post to Paul Nicolaou.
Just assume that for me?---I can see it, yes, yes.

- 10 Did you ever give instructions to Aaron to send things down to Paul
Nicolaou?---I gave him cheques to send, he sent the cheques down for me.

All right. Now, could I just get you to now have a look at page 13. Now,
this is the way that we've printed out what was an SMS message. Do you
do that, Mr Carter, do you use a telephone and send text messages or- - -?
---No, I don't send text messages.

But you know what they are?---Yes, yeah.

- 20 Anyway, just assume this is one that we've got and we've printed it out on
paper. It was sent by Hugh Thomson who's a fellow from Newcastle. Did
you know Hugh Thomson?---No.

And it was sent to Michael Gallacher, but that's just background. There's a
reference there to, "How's our Big Man going with the \$120,000." Do you
see that?---Yes.

- 30 Were you ever told anything about money coming into the Hunter Valley or
into the Liberal Party campaign in a lump sum like that, \$120,000?---No, I
was never told anything about that.

And were you ever told anything by Mr Hartcher about Mr O'Farrell
organising particular funding?---No, I wasn't.

And you knew Mr Gallacher very well?---I know Mr Gallacher quite well.

Were you ever told anything like that by Mr Gallacher, that is Mr O'Farrell
was going to be organising funds?---I can't recall him ever telling me that.

- 40 And I suppose you probably know Mr O'Farrell himself, is that right?
---Yes.

Did he ever tell you that there was going to be such a source of funds?
---I wasn't in a close relationship with Mr O'Farrell.

All right. Well, this text message, did you know anything about it before
you possibly read about it in the newspaper report of these proceedings?
---The first I knew about it was what I- - -

And do you know who the Big Man is?---Well, Mike Gallacher always referred to O'Farrell as the big fella, the big man, the big kahuna, those sort of names.

All right?---He never referred to him as Mr- - -

10 You've heard him use that sort of language?---Oh, yeah, definitely, yeah.

All right. All right. Thanks, Mr Carter.

THE COMMISSIONER: Mr Carter, could I just ask you, at the time that you were giving Aaron Henry these cheques to send Paul Nicolaou- - -? ---Yeah.

- - -did you know about the Free Enterprise Foundation?---Yes.

20 You did?---Yes.

And can you remember whether or not at about the same time, excuse me, did you ever have any discussion with Mr Hartcher about the Free Enterprise Foundation?---I can't recall having a specific conversation with him.

All right. What about with anyone else in, in the office?---No, I mainly kept what I did to myself there.

30 Right. Any questions of Mr Carter? Yes, Mr Coady.

MR COADY: Commissioner, I have about five minutes. But to use the time more effectively would it be possible for me to come forward?

THE COMMISSIONER: Yes, certainly.

MR COADY: Thank you. And in the meantime could the witness please be shown or given access to Exhibits S5 and 29 which are the FEF folders.

40 Mr Carter, my name is Paul Coady and I appear for Paul Nicolaou?---Oh yes.

Can you hear me okay?---Yes, yes.

I just wish to ask you some questions about the evidence that you gave last time you were here?---Right.

Okay. Do you recall being asked some questions about discussions you had with Paul Nicolaou about the Free Enterprise Foundation?---Vaguely.

Vaguely. When you gave your evidence on the last occasion you know don't you that you were being asked events that happened about three or four years ago, would you agree with that?---Yes.

Would you agree that you didn't have a clear recollection of what occurred four years ago?---Not word for word I remember having conversations with him.

But not word for word?---Four years that's - - -

10

And can I put a conversation to you with Mr Nicolaou and you can tell me whether you agree or disagree with it?---Okay.

And Mr Nicolaou gave evidence that you, you had a conversation with him that was probably on the telephone. Would you agree with that?---Could be, yeah.

20

And in that conversation you asked Mr Nicolaou whether there was any mechanism by which the Liberal Party could provide anonymity to donors. Do you recall that?---No, I don't recall that conversation.

Well do you recall that Mr Nicolaou said to you that the Free Enterprise Foundation could be used to provide such anonymity?---That's where I got the information from was Paul Nicolaou about the Free Enterprise - - -

So you got that information from him?---that's how I knew about it?

30

Do you recall also him saying that if donations were coming from prohibited donors they could only be used for the Federal campaign, do you recall that?---No, I don't remember, I, I - - -

Could he have said that?---He may have but I don't recall now.

Can I just go back to some of the cheques that you collected and sent to Mr Nicolaou?---Ah hmm.

Do you have Exhibit S5 in front of you? It's probably a large bundle?
---Yeah.

40

Could I take you to page 1320?---1320. There should be some cheques, photocopies of some cheques. Is the first cheque that you're looking at a cheque from Renlyn Bell Investments? Is that -- are we looking at the same page?---Yeah.

And it's for \$9,900?---Yeah, that's right, yeah.

You'd agree that there's nothing on that, on that cheque itself which identifies whether it is from a prohibited donor or whether it's not from a prohibited donor. Would you agree with that?---Not the first one.

No. Just, just the first cheque, just have a look at the first cheque?---Yeah.

Would you agree with that proposition there's nothing on there which identifies whether it's from a prohibited or a non-prohibited donor?---No.

10 So somebody receiving this cheque at Liberal Party Head Quarters if they didn't know who Renlyn Bell Investments were they wouldn't know whether that was a prohibited donor or a non-prohibited donor?---I suppose so yeah.

Would you agree with that?---Yeah.

Do you recall giving - can you move down three cheques to ANZ Real Estate Consultants. Do you see that cheque?---ANZ, yeah.

20 It's for \$5,000?---Yeah.

Do you recall giving evidence on the last occasion that you don't recall who was behind ANZ Real Estate Consultants?---I don't remember saying that at all.

Okay. Well for the transcript it's 3968. But would you accept that you didn't know whether these cheques were from prohibited donors or non-prohibited donors, would you accept that?---If I, if I collected the cheques I would have known who they were.

30 Right. But you wouldn't have known whether they were prohibited donors or non-prohibited donors. Would you agree with that?---If I had have collected this cheque, if I had have and sent it down I probably would have known the source of it.

Okay.

40 THE COMMISSIONER: Sorry, Mr, Mr Carter, just so that we understand the cheques that you personally collected you knew the source of the money?---Yeah.

You knew who the donors were?---Yeah.

Right. But the ones that might have come into the office by post you wouldn't necessarily know?---No, nearly all the ones I collected myself.

Right.

MR COADY: Okay. So just flick over this page and the next page. Are these some cheques that you solicited and some you didn't, is that right?---I can't recall any, any of these.

Could I ask you to go to -- okay. We'll go to 1361, page 1361?---On the other pages a few I recognise from other side there.

At the top of 1361 I'm looking at a cheque from DP Smith Enterprises for 10,000?---Yeah.

10

Do you see that cheque - - -?---DP, yeah, I collected it.

And that was a cheque that you collected?---Yeah.

And as I understand your evidence on the last occasion you understood Mr Smith to be a builder - - -?---To be a builder, yeah.

- - - but not a developer, is that correct?---Not a developer a builder. He has a, a yard that sells building material.

20

So he's a supplier of materials?---Supplier, yeah.

And yet this cheque was sent by Aaron Henry to Paul Nicolaou and it made its way to the Free Enterprise Foundation?---That's right.

Do you accept that from me?---Yeah.

And you wouldn't -- Mr Smith isn't a prohibited donor as far as you know is he?---I didn't think he was a prohibited, no, not that one.

30

So is it the case that all of the cheques that you received you just sent off to Paul Nicolaou and you didn't ask yourself whether they were prohibited donors or non-prohibited donors, is that correct?---No, I just sent them down to him.

All right. I've only got a few questions, Mr Carter, but just give me one moment. Mr Carter, could you please turn, there's another Exhibit S29 it might be in the same folder though. So Exhibit S29 can I ask you to look at page 3801?---38.

40

It should be a spreadsheet, do you see that? And at the top is a number 24 the Advanced Precision Trust on the top left box. The Advanced Precision Trust, do you see that?---Yes, I certainly do.

Okay. Just to give you some background this is a table which I believe Mr Aaron Henry compiled of the donations that you had solicited?---That's right.

Would you accept that from me?---Yeah.

Just going down the, the page. For example number 32 Swift Exhaust, do you see that one for \$1,499?---Right, yeah.

Did you solicit that or did you receive that donation?---I, I can't - - -

Can't recall?---I can't honestly recall.

10 All right then. Can I just ask you just a few more. Could you just turn over the page, up the top, All Pump Sales and Services, is that one that you, and there's a name there, Stephen Hales, did you, do you think you might have received, received that one or solicited that donation?---I had a dinner um, in that, down that area and I, it could have come from that.

It could have come from that?---Yeah, it could have come from that dinner.

Okay. But you certainly don't know Mr Stephen Hales or All Pumps Sales and Services to be prohibited donors do you?---No.

20 No. Mr Carter, on the last occasion you were suffering from some illness weren't you, is that correct?---Correct.

Do you feel, do you recall feeling unwell in the witness box?---That's right.

And do you recall at one stage either almost fainting or losing consciousness whilst in the witness box?---Yes.

30 Are you on medication that might affect your, I'm sorry to have to ask you this, Mr Carter, I don't mean any offence, but are you on any medication that might affect your memory at all or - - -?---Not, not at this - only age.

Thank you very much. Thank you very much, Mr Carter.

THE COMMISSIONER: We, we all suffer that affliction, Mr Carter. Well, some of us do anyway. I can't speak for you, Mr Coady, and I can't speak for Mr O'Mahoney. Does anyone have any other questions of Mr Carter? No. Anything, Mr Trevallion?

40 MR TREVALLION: No, no, Commissioner.

THE COMMISSIONER: Nothing arising?

MR WATSON: Nothing arising.

THE COMMISSIONER: Thank you, Mr Carter, you may step down.

THE WITNESS EXCUSED

[2.31pm]

MR WATSON: I'll call Senator Sinodinos.

THE COMMISSIONER: I take it Mr Sinodinos, the Senator, wishes to take the section 38 order, Mr Newlinds?

MR NEWLINDS: He does indeed, Commissioner.

10 THE COMMISSIONER: Senator, you need to appreciate that the order protects you from the use of your answers against you in civil and criminal proceedings but doesn't protect you if it should be found you've given false or misleading evidence.

MR SINODINOS: Yeah.

THE COMMISSIONER: You understand that?

MR SINODINOS: I do indeed.

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

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40 THE COMMISSIONER: Would you like to be sworn or affirmed, Senator?

MR SINODINOS: Sworn, thanks.

THE COMMISSIONER: Thank you.

MR WATSON: Are you Arthur Sinodinos?---I am indeed.

During 2010 and 2011 were you the Chairman of the Finance Committee of the State Executive of the New South Wales Liberal Party?---Yes.

10 And the fact that you were the Chairman of that committee, did that mean that from time to time you would report to the State Executive?---Yes, sir.

And the fact that you were Chairman, did that reflect the fact, we know from earlier evidence, that you have a background in economics and finance?---Ah, yes, I think so.

20 And Senator, you may have looked through the evidence but it appears as though during the 2011 State campaign money was provided and used, provided to the Liberal Party and used by the Liberal Party, that money coming from prohibited donors, you must have seen that evidence?---I've seen the material that's been put in evidence.

Oh, there's money there obviously from property developers, don't you agree?---There are donations from property developers.

And there also seems to be money there from property developers which came through the Free Enterprise Foundation?---Ah, yes, I think so.

30 Well, as Chairman of the Finance Committee what responsibility for that do you, do you accept?---It in, responsibility in what sense? For compliance?

Well, as Chairman of the Finance Committee what responsibility do you accept for the fact that these funds from illicit donors came through to the Liberal Party and were used by the Liberal Party in the campaign?---When you say illicit donors what do you mean?

40 Haven't you been following this inquiry, Senator? We're talking about prohibited donors, property developers, that sort of thing, you know that's what we're talking about don't you?---That's been canvassed in, in the evidence.

Yeah, sure. And it seems as though, as we agreed a moment ago, that money from prohibited donors was used by the Liberal Party in the campaign, you know that, don't you?---Which particular evidence are you referring to there?

Are you saying that we've got to this day and you don't accept that to be the case, Senator?---Well, which, which particular donors are you - - -

No, no, no, just answer my question. Are you saying we've got to this point of time, 12 September, and you don't accept that the evidence could establish that money was used by the Liberal Party which came from property developers?

MR NEWLINDS: (not transcribable)

10 MR WATSON: Is there an objection, I don't know if there's an objection.

MR NEWLINDS: Yes, there is an objection (not transcribable)

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

MR NEWLINDS: There is an objection.

THE COMMISSIONER: And to what?

20 MR NEWLINDS: Well, my learned friend, my learned friend just asked if there was an objection.

THE COMMISSIONER: And, and sorry, the basis of the objection?

MR NEWLINDS: The objection is I can tell my learned friend that we will be making a submission that there is no evidence that would justify a finding at all that any prohibited donors made donations in breach of the law.

30 MR WATSON: That's not the question.

THE COMMISSIONER: Oh no, that wasn't the question.

MR NEWLINDS: Well, what was the question, that prohibited donors - - -

THE COMMISSIONER: All right. Well, look, I'll have a go.

40 Senator Sinodinos, tell me if you don't know this but we have had evidence and in particular from Mr Nicolaou and others and, and Mr McInnes as I understand it - - -?---Yes.

- - - that, that there were donations made from prohibited donors, donors who were prohibited as at the donation was made to the Liberal Party that went into the - sorry, I withdraw that, to the Free Enterprise Foundation that went into the Free Enterprise Foundation with a request that the moneys come back to the State New South Wales campaign and each time that request was made - - -?---So which particular donors was this though?

MR WATSON: Sorry, sorry, have you not been - - -

THE COMMISSIONER: Senator - - -

MR NEWLINDS: Well, I was going to object - - -

MR WATSON: - - - reading the paper?

MR NEWLINDS: I was going to – let me object. Firstly, that’s a
mischaracterisation of the evidence. There has been evidence from people
10 that property developers made donations.

THE COMMISSIONER: Well, no, actually, that’s not right. There has
been evidence from people including Mr Nicolaou and Mr McInnes that
they appreciated that the moneys were from prohibited donors and that they
thought, and that indeed this appeared to be the view of those in the Liberal
Party at the time, that putting those donations to the FEF with a request that
they come back to some part of the Liberal Party was a legitimate way of
funding the campaign, that is, that the FEF, the donation was to the FEF and
because the FEF was a discretionary trust then in effect the exercise of
20 discretion by the trustees removed the taint of those moneys by way of them
coming from prohibited donors. Now that’s the effect of the evidence
we’ve had thus far.

MR NEWLINDS: The second half of that, the second half of that I accept
but the first half was I knew they were property developers.

MR WATSON: I’m sorry, Commissioner, but - - -

MR NEWLINDS: That’s my, that’s my objection, it’s not a fair
30 characterisation of - - -

MR WATSON: Could you just overrule the objection then and we can get
on.

THE COMMISSIONER: Yes. Look Mr - - -

MR NEWLINDS: No, but it’s not fair.

THE COMMISSIONER: No, Mr Newlinds - - -
40

MR WATSON: No, it’s just a silly objection.

THE COMMISSIONER: Mr Newlinds - - -

MR NEWLINDS: No, it’s not a silly objection.

THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: It's a serious objection.

THE COMMISSIONER: Mr Newlinds, Mr Newlinds - - -

MR NEWLINDS: Yes.

THE COMMISSIONER: You can make what submission you want to make at the end of the day - - -

10 MR NEWLINDS: I'm not, I'm not making a submission, I'm objecting.

THE COMMISSIONER: Well, if you would let me finish then you would understand what I was going to say. You can make whatever submission you want to make at the end of the day about whether or not the evidence establishes that certain people knew the moneys were coming from prohibited donors, whether certain people knew they were coming from property developers, where property developers constituted prohibited donors at the relevant time, whether there was knowledge of the fact that they were putting them through the FEF with the express purpose of having
20 money washed and then returned to the State Party, whether or not they thought that the arrangement was legal, you can make submissions about all of those things - - -

MR NEWLINDS: I will.

THE COMMISSIONER: - - - but at the end of the day this question has to be put because if as a finding of fact, if those findings of fact are made then the proposition needs to be put so that Senator Sinodinos isn't taken by surprise. All right. So that's where we are.

30 MR NEWLINDS: I understand, can I just develop the objection, the question - - -

MR WATSON: Commissioner, I'd ask you to shut that down.

THE COMMISSIONER: Go on, go on, Mr Newlinds, quickly.

MR NEWLINDS: And I will be quick. Firstly, the question was Senator, surely you've been following the evidence, surely you know there's
40 evidence.

THE COMMISSIONER: All right. Well, that's why I was having a go, Mr Newlinds - - -

MR NEWLINDS: I know.

THE COMMISSIONER: - - - because I'm trying to encapsulate what I understand to be the evidence so that Senator Sinodinos knows what it is he's responding to.

MR NEWLINDS: Yes.

THE COMMISSIONER: All right. So we can go back - - -

MR NEWLINDS: We can.

10

THE COMMISSIONER: - - - to square 1.

MR NEWLINDS: Yes, please.

THE COMMISSIONER: Senator - - -?---Commissioner, can I ask, are you saying that the evidence is that - I'm sorry to put it this way but I need to clarify this, that Mr Nicolaou and Mr McInnes knew that these people were prohibited donors?

20

Mr - sorry, Senator Sinodinos, I'm trying to summarise the evidence. Don't worry about what other people knew, we're worried about what you knew?--Well, I didn't know.

Well, let me put the question so you know what you're responding to. You're being asked whether or not you knew at the relevant time that there was money coming from prohibited donors that was sent to the Free Enterprise Foundation with a request that that money come back to the State Liberal Party - - -?---No, my answer to that is no.

30

You didn't know?---No.

Right. Thank you.

MR WATSON: Well, you didn't know, but you must have followed the evidence in this inquiry, Senator, haven't you?---Yes.

And you must have seen the evidence of Simon McInnes?---Yes.

40

Must have seen the evidence of Paul Nicolaou?---In summary form, I don't know that I can recite it all to you.

Look, just take it from me that at the end of their evidence there was sufficient to support this - that money which came from property developers was being used by the Liberal Party during the 2011 campaign. Would you just accept that as a proposition for the moment?---Property developers as defined by whom?

So what's your problem, don't you know what a property developer is?

---Well- - -

No, sorry, tell me, don't you know what a property developer is?

---Commissioner, my problem is this, I'm a layman. I'm not- - -

No, actually I asked you the question, you should be addressing me?

---I, I'm- - -

Don't worry about the Commissioner.

10

Senator Sinodinos, look, it is just a simple question, we're not talking about whether it fits a legal definition, we're talking about money coming from people who are in the business of developing property for profit. All right. Just accept that for present purposes. Yes, Mr Watson.

MR WATSON: Well, it seems as though there's evidence that money from property developers was used by the Liberal Party in the 2011 State campaign. Will you accept that?---I've seen some, I've seen some evidence but still- - -

20

Well, what responsibility do you take for that?---

MR NEWLINDS: Well, this is the problem, I object, because unless- - -

THE COMMISSIONER: All right. Well- - -

MR NEWLINDS: Because there's nothing to take responsibility for unless they're a prohibited donor.

30 THE COMMISSIONER: Well, no, no, it's actually not that. He doesn't take responsibility for it because he says he didn't know.

MR NEWLINDS: No, no, that's, no, a person cannot know and perhaps take responsibility, but the point is what, what is it he's being asked that he takes responsibility for.

MR WATSON: I'll make it clear.

40 THE COMMISSIONER: Well, I thought the question was made clear but you can put it again.

MR WATSON: I'll make it clear. Incidentally, did you work at the National Australia Bank?---Yes.

Did you ever lend or organise for money to be lent to property developers?
---Ah, not me, I wasn't in that section.

Wasn't in – but you do know what a property developer is, don't you?
Have we got any difficulties with the concept? I mean you were a banker?
---No, but my, my concern, Counsel Assisting, is I'm being asked to define
who a property developer is in legal terms?

Oh, no, no, no, no not at all.

10 THE COMMISSIONER: No, you're not, Senator, I just disabused you of
that a short time ago, you are not being asked to turn your mind to whether
or not it fits a particular legal definition. It's very simple, that they are
people who are in the business of developing land for profit. All right. Go
on.

MR WATSON: Well, if it be the case that the Liberal Party was using
money which came from property developers during the 2011 State
campaign, do you accept any responsibility in relation to that?

MR DUGGAN: I object. Commissioner, the money didn't come property
20 developers, it came from the Free Enterprise Foundation.

THE COMMISSIONER: Oh, yes, I know. Look- - -

MR DUGGAN: But that's not the way it's being put to this witness and in
my submission it should be. The full suite of facts should be put to this
witness.

30 THE COMMISSIONER: Well, sorry, look, I'm sorry, but I've heard a
number of different variations of what I think is going to be asserted in
relation to this evidence and they're not all consistent. Some people seem to
be suggesting that because these cheques went to the FEF it was perfectly
legal for them to come back to the State campaign, some people seem to be
suggesting that they didn't come within the definition of prohibited donors,
some people seem to be suggesting that it was simply something that some
rogue member of the Liberal Party engaged in and nobody else knew
anything about it. I don't know, but the propositions have to be put because
at the end of the day we don't know whether or not we're going to make a
finding in the terms that you suggest. So can we please get on with it.

40 MR WATSON: I'm sure you think you can handle it Senator, but I'm just
asking you some simple questions. If money from property developers was
used by the Liberal Party in the 2011 State campaign, as the Chairman of
the Finance Committee of the Liberal Party what responsibility do you
accept for that?---Are you asking me about compliance responsibilities?

Oh, no, just tell us what responsibility, if any- - -?---Are you asking me
about- - -

- - -do you accept?---Well, are you asking about fundraising responsibility to- - -

No, I'm just asking you what responsibility that you accept. Maybe you don't accept any. Just you tell us what responsibility you accept?---Well, the problem I have with that question, it's a very general question.

Oh, it's deliberately general, Senator. If I say to you in terms of fundraising you'll probably say, no, I don't accept responsibility for that, blah blah blah.
10 I'm asking it generally?---I don't accept- - -

What responsibility do you accept?

MR NEWLINDS: You don't have to shout at him?

MR WATSON: Well, apparently I do.

MR NEWLINDS: No, you don't.

20 MR WATSON: What responsibility do you accept?

MR NEWLINDS: You don't have to shout at him. I won't have him shouted at and nor should you, Commissioner.

THE COMMISSIONER: Yes, well, Mr Newlinds, he's obviously becoming frustrated. I accept that he shouldn't be raising his voice.

THE WITNESS: Well, can I answer the question, would that help?

30 THE COMMISSIONER: Yes, go ahead.

THE WITNESS: I don't accept any responsibility for money being raised from prohibited donors.

MR WATSON: It would have meant that the Liberal Party broke the electoral funding laws, wouldn't it?---Well, I'm not in a position to make a -- I'm now being asked to make a legal conclusion.

Well, sorry, what did you understand as the Chairman of the Finance
40 Committee was the legal position in respect of taking money from property developers?---Are you talking about 2009/2010?

Yes, of course?---Well, there was the Nathan Rees bill at the end of 2009 which prohibited taking money from property developers.

All right. And so- - -?---And we implemented a policy within the Liberal Party to prohibit that at both Federal and State level.

Well, that's good?---Through my letter and other mechanisms- - -

Thank you?--- - - -in which we tried to train people to ensure compliance with the legislation.

All right. But I just want to direct you back toward my question. What responsibility do you accept if those things that you tried to do failed and eventually the Liberal Party used money from property developers?
---I don't accept responsibility because I made my best endeavours for that not to happen.

10

Well, tell me, who was it, if not the Chairman of the Finance Committee of the Liberal Party, whose responsibility was it?---The way compliance had been designed within the Party – and I started to answer this before – after we put out a letter in 2009 we then updated our Finance and Treasurer's Guidelines to make it clear that when donations were being solicited they could not be solicited from prohibited donors. We said that, actually we put on all invoices and receipts for functions ah, and for invoices for donations
- - -

20

You must have misunderstood me, I'm not talking about that, I'm talking about a name, a human being, maybe it's a position in the Party?---You mean- - -

If the Chairman of the Finance Committee of the Liberal Party doesn't have any responsibility in that respect, who did?---In a formal sense responsibility for disclosure and compliance lay with the Party agent.

Right. And did that mean all moral responsibility as well?

30

MR NEWLINDS: Oh, I object.

MR WATSON: Why?

MR NEWLINDS: Well, firstly there seems to be a premise in the question that every time something goes wrong, someone or some people are responsible. That premise is not justified.

THE COMMISSIONER: Well, all right, no, I accept that.

40

MR NEWLINDS: And secondly we've now drifted to moral responsibility?

THE COMMISSIONER: Yeah, all right, I accept that, I accept that. But, Senator Sinodinos, you see the problem that we're facing and what we're trying to grapple with is this – we have called as many relevant people from the Liberal Party as we have been able to find who were in relevant positions at the relevant time to ask each and every one of them how this could have occurred, who was actually paying attention, who was

responsible for complying with the law, and to date we haven't been able to find anybody who says to us that it was Joe Bloggs' role or it was somebody else's role or it was a combination of the Finance Committee and the State Executive. We just haven't been able to get to the bottom of it. So what we're asking you is, who would take responsibility for that non-compliance if it occurred?---The Party agent.

Right.

10 MR WATSON: And only the Party agent?---In a formal sense, yes.

So it would only be the Party agent, that person would be isolated and would be the only person in the Liberal Party who would have responsibility for determining compliance with the law.

MR NEWLINDS: I object. There is a problem here. There's legal responsibility and there is- - -

20 THE COMMISSIONER: Well, I thought we were only talking about legal responsibility.

MR NEWLINDS: Yes, well then, Your Honour, Commissioner, you know the law and the answer's correct legally.

THE COMMISSIONER: Well, I don't understand the question to be put in any other term.

MR NEWLINDS: Right.

30 THE COMMISSIONER: In any other way.

MR WATSON: Well, it would only be the agent, the agent would be the only person who had any responsibility in the Liberal Party for ascertaining compliance with the law. Is that what you say?---In, in that formal sense, yes.

40 So what if it came to your attention that there had been non-compliance with the law, what would you do then?---Well, first and foremost I'd check with someone who knew the law to make sure that we knew whether there had been non-compliance or not.

All right. So what if there had been non-compliance what would you do?---Well the first step as I said was to check with someone and what we often did, our practise was often through Simon McInnes the Party Agent to go to the EFA to get them to make a decision.

Do you know Robert Webster?---Yes.

He served on the Finance Committee didn't he?---Yes, he did, sir.

He told us that the Finance Committee had a governance function that involved ensuring that funds were raised lawfully. Did you disagree with that?---I – run that by me again.

Mr Webster told us that the Finance Committee had a governance function that involved ensuring that funds were raised lawfully. Do you accept that? ---He meant in the sense of an oversight function?

10

THE COMMISSIONER: A governance role?---A governance role. Well the way it would have exercised that governance role would have been to receive - - -

MR WATSON: No, do you accept what Mr Webster told us?---Well I'm not, I'm not sure I would accept it in those terms.

20

All right. Well are you saying that the Finance Committee of the Liberal Party had no governance function in determining whether funds raised had been raised lawfully?---What I can tell you is that the Finance Committee of the Liberal Party and through the Finance Committee of the State Executive would have received reports from the compliance department through Simon McInnes about the preparation of Party returns and associated compliance issues.

30

Sorry, just focus. Are you saying that the Finance Committee of the Liberal Party had no governance function that involved ensuring that funds raised were raised lawfully?---And I'm telling you that was the function that the Finance Committee undertook and through it the, the State Executive.

So it did have a governance function in that respect, is that right?---Well in the sense I've described.

Yes, okay. So what did the Finance Committee do under your chairmanship to ensure that the funds raised for the 2011 State Election were raised lawfully?---We were provided with reports by the Party Agent.

40

All right. But beyond that did you do anything to attempt to determine whether the funds which had been raised were raised lawfully?---And if at any stage - - -

No. But did you do anything? The answer is yes or no?---If there any queries about a particular item they'd would be referred to the EFA that was the practise.

All right. So did that happen, did you look at the source of the funds which the Liberal Party was going to use in the 2011 State Election?---Do you mean fundraising before it was received or after? What do you mean?

You're the Chairman of the Finance Committee, Senator, did you look at the source of the funds which the Liberal Party raised and which were to be used in the 2011 Election?---Based on reports provided by the um, Party Agent, yes.

Can you tell us whether that involved looking at the source of the funds, that is the identity of the donor?---Not, not of individual donors from memory.

10 Well then how could you undertake the governance function which involved ensuring that funds raised were raised lawfully without knowing the identity of the donor?---Well if there were any concerns from the Party Agent or whatever they could be raised and referred to the EFA.

20 No, I'm not talking about the Party Agent I'm talking about you. How could you engage with a governance function that involved ensuring that funds raised were raised lawfully if you did not know the identity of the donor?---Well given the way in which information was provided it wasn't necessarily the case you'd see each individual donor, some of the information would come up in the form of reports from the State Electorate Assistance Committee for example.

Then how could you ensure that funds were not being raised from prohibited donors?---Well ultimately people who were collecting donations at branch and conference level the State Electoral Assistant Committee which might see individual donations would have been the first port of call on that.

30 No, I'm talking about the last port of call, I'm talking about the Chairman of the Finance Committee. What did he do?---The last port of call was the Party Agent.

No. What did you do to ascertain the identity of the donors to ensure they were not property developers?---I didn't do anything specifically myself.

Does not doing anything specifically mean you did nothing?---(No audible reply)

What did you so when you say you didn't do something specifically?

40 MR NEWLINDS: I object.

MR WATSON: Sorry, okay. I'll put it again, I'll withdraw that question.

What did you do to ascertain the identity of donors to make sure that money wasn't coming in from property developers, anything?---Nothing.

THE COMMISSIONER: Senator Sinodinos, what was the nature of the reports that the Committee would get from the Party Agent, was it just, was it a report that just said we've reached our target or we've raised this much

or - - -?---No, no. Um, if we're talking about compliance what would happen would be that Simon would say that we're about to do say the six monthly report particular period to the EFA um, I have the information from Central Headquarters, we also need to get members of the Lower House and the Upper House to put in their returns, members of State Executive were given the responsibility to follow up any Members who had not put in their returns. So if you like he was assisted in that way and then those returns were put together by Simon based on the information he had on his systems but if you're asking me what reporting did the Finance Committee and
10 through us the State Executive get on funding it was normally done according to the administration part of the Party, Federal campaign fundraising, State campaign fundraising, Millennium Forum fundraising and they were essentially in aggregate form and also a report from the State Electorate Assistance Committee if we're talking specifically about the State Election and that would have by each SEC by the Members of the Upper House their progress against their targets. So we were not monitoring individual donations because we would have had thousands of donations coming in from across the State finding their way into the system.

20 All right. But, but you said that you, that Finance Committee was provided with, with reports from the Party Agent?---Yes. About the progress with the, preparing the compliance returns.

And that's what I'm interested in knowing. So the content of that report was simply to the effect that the collection of the information required - - -?--Yes.

- - - for the returns is ongoing and we expect to complete it by x date?---And he would also have in there the date when he would meet with the auditors
30 from KPMG who would go through the return and we saw that as an another gateway if you like to make sure that compliance was being met.

All right. So at the end of the day the Finance Committee saw nothing at any stage which actually identified individual donors, is that what you're saying?---In, in terms of receipt of funds. Most of it was done in that aggregate form.

Right. And that didn't identify where those funds came from?---And, and you would see from the minutes if you've had access to the minutes how
40 that was structured. And I'm happy to supply minutes if you don't have them.

MR WATSON: Were you aware that there was a feeling within the New South Wales Labor Party that due to Mr Rees law changes - - -?---Within the Liberal Party you mean I think.

Yes. But – within the Liberal Party, that due to Mr Rees law changes that the Liberal Party funding would take a hit?

UNIDENTIFIED SPEAKER: Actually both parties.

THE WITNESS: I beg your pardon?

MR WATSON: I'll start again. As a result of the ban on political donations from property developers it was thought in the Liberal Party that the Liberal Party's coffers would suffer they wouldn't get as much money, is that right?---That is correct.

10

And that was thought to be a serious problem wasn't it?---Yes, it was, sir.

And you wrote a letter about it didn't you?---Yes, I did.

And could the witness be shown Exhibit S5 page 1262?---1262.

Yes. Would you open that up?---Yeah.

20 That's the first part of the letter, just accept it from me that you signed it on the second page?---And can we show the second page as well?

Not all at once on the screen but you can look at it to your heart's content. Have a look at what - - ?---Yeah, "Once the bill is law you must not receive or solicit any donation alone from a property developer."

Goodo, thanks a lot for that, Senator. Now just have a look at the subject of the letter it's called ban on political donations from property developers? ---To all MPs and Senators Federal and State.

30 Yeah. Hold on, what's a property developer, what did you mean when you put that there? You must have had something in mind?---Well we were repeating what was in the bill.

So did you or didn't you understand it when you used that expression in your letter in the title of your letter?---And the guidance we send out to people is that if they have any concerns they should take them up with the Secretariat staff, I mean branch and conference treasurers or people raising money on the ground.

40 And if you have a look at it, it doesn't seem as though you had too much trouble understanding what a property developer might be in that letter. Is that right?---Well, we took a belt and braces approach and in fact said that Federal and State- - -

No, no, no, no. I'm asking you about- - -

MR NEWLINDS: Let him answer the question.

MR WATSON: I thought we were struggling here earlier on.

MR NEWLINDS: Let him answer the question.

MR WATSON: You didn't know what a property developer might be.

MR NEWLINDS: Let him answer the question.

MR WATSON: He wasn't answering.

10

MR NEWLINDS: Yes, he was.

THE COMMISSIONER: Well, he's- - -

MR NEWLINDS: He said he took a belt and braces approach.

THE COMMISSIONER: Yes, he- - -

20

MR NEWLINDS: And when you read the letter it's much wider than anyone could possibly think the Act is.

THE WITNESS: Because I thought it covered both Federal and State, the ban, at the time.

THE COMMISSIONER: Well, in any event, Senator Sinodinos, there's something- -?---Commissioner, can I just add something- - -

30

Yes?--- - - -just parenthetically. "We will write to you again when we have further details." And that was also in respect of how the ban, as it were, would be administered and how they could get guidance from the Secretariat about it.

And I just wanted to raise something with you. In this letter you set out the terms of the definition from the bill?---Yes.

40

You see that. And underneath that you say, "While this is a bill to ban political donations from property developers, it goes much further than that and affects many of our traditional supporters." So you seem to be acknowledging there that there was a possibility that a property developer might be a prohibited donor in a very very broad sense, more broad than what people would normally understand by the term property developer? ---Well, I, I thought potentially anybody in building and construction.

Well, that's my question. My question is that you were obviously concerned that the definition for the purposes of the legislation was very broad?---So we took a capital C Conservative approach.

Right. And what you were trying to convey to all of the State and Federal members was that because this was such a broad definition, if there was any doubt at all about whether or not a donor might fit that description- - -?
---Absolutely.

- - -they had to come and get advice from somebody?---Absolutely.

Right.

10 MR WATSON: Well, you wanted to show us something from page 12. I mean we can read that but is there something you wanted to say – sorry, I shouldn't say page 12, 1263?---We've been through that, Mr Watson.

All right. Okay.

MR NEWLINDS: He wants to ask why you didn't read it out in opening.

MR WATSON: Right. You want to ask why I didn't read that out in opening. Is that right?---No.
20

Right. Okay?---Let's just move on.

Right. Were you aware that it was a suggestion by Paul Nicolaou that the Free Enterprise Foundation could be used as a means whereby otherwise prohibited donors could still make donations to the State Liberal Party?
---If there were such a suggestion it went over my head.

Right. Well, I just want to get a clear answer to it. Are you aware of a suggestion made by Paul Nicolaou that the Free Enterprise Foundation
30 could be used as a means whereby otherwise prohibited donors could donate money to the State Liberal Party?---No.

You must be aware of the evidence of Mr Nicolaou on that point?---Ah, yes, I think I am in broad terms.

And Mr Neeham on that point?---What did Mr Neeham say?

The same. And Mr Photios on that point?---Look, look, I mean- - -

40 No, sorry, just answer the question?---My best- - -

You must be aware of Mr Neeham's evidence?---My best answer is no. I mean that doesn't rule out me being wrong but that, that is the best of my recollection, I have to say.

You must be aware of Mr Photios, he was quite explicit about it, he said he was the one when he heard it said, we've got to get legal advice on that?
---No.

You can't remember anything like that?---No.

What did you know about the Free Enterprise Foundation?---I'd heard of it years ago when I worked in Canberra.

And what did you know of the Free Enterprise Foundation?---Well, it was a body that um, to which people could donate and in turn donated to um, right of centre political parties, including the Liberal Party.

10

And why would it be used like that?---Well, I mean um, to get a definitive answer you'd have to ask one of the donors, but I assume- - -

Oh, we have, we have, we have, but I'm asking you, why would it be used like that?---Well, I think when it was first set up it was on the basis that some people didn't want to be seen to be donating directly to a political party.

20

Is that a good thing or a bad thing in your book?---Well, you'd have to see what the motives of a person are.

Do you- - -?---I cannot- - -

Do you know- - -?--- - - -look into their heart.

- - -that during the period 2010/2011 up to the date of the election the Free Enterprise Foundation donated \$700,000 to the State Liberal Party, did you know that?---I've seen that in the returns in, in the evidence, yes.

30

Well, I'm only talking about you. You were Chairman of the Finance Committee of the Liberal Party, were you aware that the largest single donor to the Liberal Party in the lead-up to the 2011 Election was the Free Enterprise Foundation?---No, not of the totality of the donations.

What goes on at the Liberal Party in terms of finding out who is donating money, who knows, anybody on the Finance Committee?---Can I explain something about- - -

40

No, you answer the question. Would anybody on the Finance Committee of the State Liberal Party know where their finances were coming from?
---It's clear from the evidence that some of that money was distributed through the general ledgers of the Liberal Party to various SECs, so it didn't show up as donations from the FEF, it showed up as donations to various SECs. So when we were getting the aggregate statements we were seeing an increase in particular SECs for example as opposed to it all being one clump of FEF money.

You said that you were aware, and you qualified and you said not of the totality of the donations. Were you aware while you were Chairman of the Finance Committee that the Free Enterprise Foundation was donating at all? ---Not while I was Finance Chairman but after I think when, particularly when we've seen the evidence.

What, the evidence from this inquiry?---Including the evidence from this inquiry.

10 Well, when did you first find out that the Free Enterprise Foundation was donating to the State Liberal Party?---I can't specifically remember.

You were President after you were- - -?---Yes.

- - -Chairman of the Finance Committee?---Sure.

Was it during your Presidency?---I, I'm not entirely sure.

20 Has anybody in the Liberal Party ever come to you and said, look, we've got a funny thing here, \$700,000 came from one source, the Free Enterprise Foundation?---Not that I can remember, no.

Isn't there some kind of audit and compliance committee?---Um, Audit and Governance Committee.

30 Right. What do they do?---Um, when the annual returns are put together they also meet with the auditors um, I suppose to audit their work, audit the auditors, and I'm aware when I was president they were given a number of jobs around implementation of the OCER system, our disclosure obligations and the future fund as work topics. They report to the State Executive or specifically the President, they don't report to any other committee.

Well, did they have any role in determining whether or not money was coming from otherwise prohibited donors?---Not that I can ah, recall.

What's your position on it now?---On what, sir?

40 I'm coming to it. What's your position on it now, what do you say is the legality or otherwise of a property developer giving money to the Free Enterprise Foundation and the Free Enterprise Foundation giving that back to the Liberal Party?

MR NEWLINDS: I object.

THE WITNESS: Am I being asked for a legal opinion?

MR WATSON: No.

THE COMMISSIONER: No.

MR WATSON: You're being asked a question.

THE COMMISSIONER: What's the problem?

MR NEWLINDS: Well, the question was specifically what do you say about the legality.

10 MR WATSON: Sorry, I'll make it clear, I'm not asking you for a legal opinion. What do you say about that, is that acceptable, that money from a property developer would be given to the Free Enterprise Foundation which would then donate the money straight back to the State Liberal Party. Would that be acceptable to you?---Are you talking now not legally, on other words you're not asking me for a legal opinion?

I'll ask you the question again.

20 MR NEWLINDS: But doesn't he have to assume whether it's legal or illegal?

MR WATSON: No, not at all.

MR NEWLINDS: Of course he does.

THE COMMISSIONER: Well, no, not necessarily.

MR NEWLINDS: So he must have to assume that what he thinks about- - -

30 MR WATSON: But these are facts.

THE COMMISSIONER: Well, I don't know about that, Mr Newlinds, in fact- - -

MR NEWLINDS: He's been given advice as to what the law is, I mean I don't mind waiving privilege, but what's the point of that?

40 THE COMMISSIONER: Well, I'll tell you what the point it. Senator Sinodinos, one of the things that Mr McInnes told us was that while this practice was going on, that is the money going from- - -?---Yeah.

- - -property developers to the FEF and coming back again, he was uncomfortable out that practice- - -?---Yes.

- - -and he actually said that he was assured by someone that it was all right, but he always felt that it was not within the spirit of the law?---The spirit of the law, yeah.

Right. So bearing that in mind, what is your position now in relation to that practice?---Well, am I allowed to, am I allowed to answer that as a scenario? For example, if Simon had come to me- - -

MR WATSON: No, no, just you, you just, you know this.

THE COMMISSIONER: No, no, we're just, we're just asking about your position now.

10 MR WATSON: Somebody who you know is a property developer gives a cheque to the Free Enterprise Foundation, the money comes back to the Liberal Party, you're still Chairman of the Finance Committee, you know about it. Is that acceptable?

MR NEWLINDS: Well, is he to factor in that it's been in front of ICAC and on the front page of the newspaper for the last six months or not?

MR WATSON: Well, he can if we wants.

20 THE COMMISSIONER: Well, I don't know that that - - -

MR NEWLINDS: Because that's not going to be helpful is it?

THE COMMISSIONER: - - - I don't know that that matters.

MR NEWLINDS: Well, obviously the answer to that - - -

THE COMMISSIONER: I don't know why, I don't know - look - - -

30 MR NEWLINDS: would be I wouldn't be very happy because I'd be on the front page of the newspapers and stand down from job for six months so we need to know what's the - if he's being asked at the time was he told that's a reasonable question but to say what do you think now - - -

THE COMMISSIONER: Well, I think he does, I think it is about what he thinks now and I'll tell you why, Senator, you would be aware that over half, in fact seven of the 11 principal functions that this Commission has is to actually be in a position to make recommendations as to changes in the law and policy - - -

40

MR NEWLINDS: (not transcribable) yes, we know that.

THE COMMISSIONER: - - - and particularly around issues like electoral funding so, you know, don't think that we're just in the business of trying to trap people into admitting that they've committed offences. We are genuinely interested in knowing what policy considerations should come out of this inquiry and you would know that there is already - - -?---Well, well, can I give you a - - -

- - - there is already an inquiry - - -?---Can I give you – yeah.

- - - that is looking at this and we are being asked to feed the results of this inquiry into the process?---Can I give you a two part answer? Can I give you a two part answer?

10 Go for your life?---The first part of my answer is this, and I go back to where I started. If Simon had said I've got qualms about this practice, I've looked at it, I think it's legal but I just don't think it's with the spirit of the law I would have said I think two things, the first is what is the legal position, right, just so, in case something's already happened, right - - -

20 Well, you would have had to have asked someone to go out and get legal advice?---And then the second thing would have been if we're going to look at getting legal advice I would, I would have said go to the EFA to get the legal advice because apart from this Commission I'm not sure what other body in New South Wales could give a definitive answer on that or maybe the EFA is the only one that can give you a definitive answer on that but that's what I think I would have done if – and I had an open enough relationship with Simon who I regard as an honest, straightforward person that if he had raised something with me and can I give you a political reaction as well?

Sure?---I don't think it would have passed the pub test. It wouldn't have passed the pub test.

In other words it doesn't look right, does it?---It, it, it doesn't look right.

30 No?---And, and can I then go on to the second bit which is the corruption prevention thing? I think the only way around that is, is to go down the route that O'Farrell started to go down which is to lower the amount of donations that individuals can provide, get rid of corporates, make sure trade unions and others can't donate, because that was the big beef in this letter I sent out, and do this in a way which is consistent obviously with the implied freedom of speech and the constitution. In other words what I'm saying is get rid of specific prohibitions by making the total amount that people can donate so low that it's no longer a salient matter in terms of potentially influencing a decision-maker.

40 One of the problems with that, Mr Sinodinos, is that you will simply get a proliferation of false individuals making donations in small amounts that ultimately add up to \$100,000 so I'm not convinced that that's necessarily the answer but one of the things I think that stands out if you don't mind me saying from this inquiry is that there should be, and we thought there was, complete and utter contemporaneous disclosure of where this money was coming from and that is something that does not seem to have occurred?

---I, I think, on, on that point, maybe it was the Greens that first raised this, but I think that is actually, if we can implement it properly, because we're talking about continuous real time disclosure - - -

That's right?--- - - - across the whole State.

That's right?---But there's another element to this. The other element is the link between national legislation and State legislation.

10 All right. Well - - -?---So you avoid regulatory arbitrage.

All right. Well - - -?---You've got to have a nationally consistent set of laws.

All right. Well, you'll appreciate we can't go into that space but anyway - - -?---Well, if you're happy to I'll make a submission to you in that regard because I think that is important to getting this right.

20 No. All I'm saying is that's beyond our remit, that's all, Senator Sinodinos?
---I understand.

Anyway?---I'll take it up in the Senate.

All right. Go on, Mr Watson.

MR WATSON: Now we've got, now we know the right test. What about this for a pub test, just run the pub test over this one, that the Chairman of the Finance Committee of the Liberal Party didn't know the identity of the single largest donor to the Liberal Party in an election campaign, what do
30 you think about that? It sounds crook doesn't it?---Well, I can only answer that in the terms I answered it earlier.

And, and - - -?---In terms of how the information was presented.

Let's apply the pub test to this. That donor was giving \$700,000 in the lead up to a campaign and it appears that nobody of any seniority in the Liberal Party knew about that or tried to test from what the source of those funds were. How does that go with the pub test?---I can only reiterate what I said before.
40

What was that? What was it you said before?---About the responsibility of the Party agent.

It's the responsibility, so you wipe your hands do you?---No, but what I'm saying is - - -

Well, if you don't wipe your hands what responsibility will you take?

MR NEWLINDS: Morally, legally, what?

THE COMMISSIONER: Well - - -

MR WATSON: You tell me, Senator, pub test?

MR NEWLINDS: (not transcribable)

MR WATSON: Pub test, you were the one who used it. What
10 responsibility will you take, any?---I can only answer in the terms I've
answered before.

And that was?---That the responsibility for compliance rested formally with
the Party agent.

All right.

THE COMMISSIONER: Senator, can I, can I just ask you this and we
perhaps need to close of this particular line of inquiry but doesn't this
20 suggest to you that there is a real problem with accountability mechanisms
in the, in the State Executive at around this time?---You mean in the Liberal
State Executive?

Yes?---No, because at any time Simon or whoever could have said look, this
is a problem, I need you people to look at this and say this is outside the
spirit of the law, something should be done about it.

But that's relying on one individual to raise his concerns and if you have for
example an individual who is less than conscientious or less than honest and
30 less than a person of integrity such as Mr McInnes is as you say, then
you've got all of that knowledge which is one person and no checks and
balances within the State Executive to determine whether or not you're
actually breaching the law?---And if Simon had said I've looked at these, I
think there's a problem with them we would have sent them as we have on
other occasions to the EFA.

Yes, I know, but the point I'm making is you're relying on just one person
to bring those things to your attention and what seems to have come out of
this inquiry is that there's all these committees and nobody's looking at
40 what anybody else is doing, that, that seems to have been the outcome?
---And the State Executive as a whole should probably have been more
focussed on all these things but the point is it was doing a whole variety of
things and if you diffuse responsibility it falls between the cracks.

MR WATSON: And incidentally, doesn't it compound the problem when
you've got a fundraiser who's on a commission of percentage of funds
raised?---Compound the problem in what sense?

Well, the problems pointed out by the Commissioner, I mean if you've got only one person in charge and the person who's out there raising the funds is under that kind of incentive well, these things get out of hand don't they? ---But that's no guarantee they'll break the law.

THE COMMISSIONER: But it does provide that person with an incentive to take funds from an otherwise prohibited source if they, if they want to make sure that they get paid a good percentage of what they raise?---Well, that's the end of capitalism then isn't it.

10

Oh, I don't know about that.

MR WATSON: Oh, I think that's taking a fairly extreme view. Thanks, Senator.

THE COMMISSIONER: Well, I think you better -- does anyone else have any questions of Mr Sinodinos?

20

MR DUGGAN: Yes, Commissioner, I have a couple of questions.

Senator, my name is Duggan and I appear for Mr Simon McInnes. If the witness can please be shown Z90, Exhibit Z90?---Thanks.

Senator, if I can ask you to please turn to page 137 in the top right of that bundle?---137, the Finance Code of Practice?

Yes, I think you might have mentioned that earlier?---Yes.

30

Is that the document you're referring to?---Yes.

And - - -?---And there's Treasurer's Guidelines as well.

Yes, I'm just about to take you to those, if you can go to 147?---Yeah. 147. Yeah.

Yes, those are the Treasurer's Guidelines you were referring to?---Yes, updated in 2010, yeah.

40

And if I can take you to page 149?---Yes.

There's a paragraph there (iv) and then under the subparagraph (2)? ---That's right.

And there's a blurb there about receipts - - -?---In my inarticulate way I was trying to get to that one before, yeah.

Yes, so that was what you were referring to?---Yes.

Is that something that you recommended or included into that document?---
Yes.

And that was a blurb that should be included on receipts which were issued
for cash donations?---That's correct.

And it contained reference to property developers being banned from
making donations?---Yes.

10 Can I also take you to page 1 of that bundle.---Page 1.

Yes. That, as I understand it, is a financial disclosure return for the
Willoughby SEC, do you see that?---I do.

And is it your understanding this is the type of return that branches and
conferences of the party return to head office at the end of each financial
year?---Absolutely.

20 And there would have been, I think, probably five or six hundred returns
when you included all the branches and conferences and candidates and the
like, is that correct?---It was a tsunami.

Yes. And this one, for example, is about a hundred pages with receipts
attached for expenditure and donations?

MR WATSON: Sorry, what's Mr McInnes' positive case on this?

30 MR DUGGAN: Mr McInnes's' positive case is that there was a procedure
in place that related to disclosure with respect of political donations.

MR WATSON: Well then that would compound Mr McInnes's' problems
wouldn't it because that would mean that he was disobeying an internal
process?

MR DUGGAN: Well, that's - - -

MR WATSON: That's part of the problem when you're appearing for the
Liberal Party and for Mr McInnes's I guess.

40 THE COMMISSIONER: I know. It is a bit of a problem I would have
thought Mr Duggan, anyway, can we, can we just keep going until - - -

MR DUGGAN: There's about two more questions Commissioner.

THE COMMISSIONER: Yes.

MR DUGGAN: And were you aware in 2010/2011 of this process in which
disclosure returns were - - -?---Yes.

- - - forwarded to head office. And you see there that in this case it is signed by the president and the treasurer - - -?---Yes.

Were you aware of any reports in your position in 2010/2011 where someone had falsely declared or there were concerns that someone had falsely declared one of these?---I can't recall.

No further questions Commissioner.

10 THE COMMISSIONER: Senator Sinodinos, as I understand your evidence thus far, you wouldn't know would you?---About these?

You wouldn't know if someone had returned a false return?---No.

No. All right. I mean, I'm only asking because the question was put in terms of were you ever aware?---Yes, yes.

But the fact is, you would never been in a position to know one way or the other?---Yes.

20

Thank you. Any other questions of Senator Sinodinos? No. Mr Newlinds.

MR NEWLINDS: Senator, you have no doubt reflected on whether what you did when, in the period that you were chairman of the Finance Committee could have been differently or better in light of the impact that the publicity surrounding this inquiry has had, not just on you, but on the Liberal Party, is that fair?---Yes.

30 And having reflected and looking back to those times, can you think of anything that you could have differently or better that might have stopped what you understand is suggested to have happened?---I think the only way to have done that was to in effect was micro-manage other peoples roles.

And is that possible in a real sense?---Not in a real sense no.

The Commissioner asked you some questions - - -?---But that's with the benefit of hindsight.

40 The Commissioner – so what you're saying is well you could be the party agent for example?---But I was a volunteer, I mean, I wasn't a full time person.

Now you were asked some questions about the information residing but just one person, firstly, I think you already touched on this, Mr McInnes's, you were satisfied that he was an appropriate person to fulfil the role?---He, he took it very seriously and I can remember a meeting with the Electoral Commissioner and with Barry O'Farrell when he was Premier and Peter McGorran, the Chairman of the Finance Committee after me, I was State

President, where we sat down in Barry's office and Simon was there as well and we went through, you know, the implementation of Barry's changes and Simon followed up with a note to Barry which he copied to me saying, "As the party agent, I know at the end of the day that, my responsibility for making sure that the de-centralised units obey the law," because the Commissioner was making the point to us there'd been some instances where obviously there'd been infractions, they'd been referred to the EFA, they may have come to us via the press or we found out about them and the Commissioner was saying, well, given you've got all these de-centralised party units how do you make sure that everybody's obeying the caps? For example, because the caps were quite low, \$5,000 or whatever for individual. If you gave to a branch or conference and you also then gave centrally you had to make sure you weren't exceeding the \$5,000 to the party or whatever. And Simon, and I'm happy to tender that, made the point I know I take the wrap for this and I'm very keen to make sure through OCER and other mechanisms we're meeting our requirements in this regard for co-ordination.

Did you consider him a competent operator?---Yes I did, he took the job very seriously in my view.

Did you consider that he was honest?---Yes.

And what about Mr Neeham, competent and honest?---Yes.

And Mr Nicolaou?---Mr Nicolaou I found to be a very energetic person who would you know, so service orientated he'd give you the shirt off his back if he could. He was very assiduous in following up his role.

Now the finance committee had regular meetings, am I right?---Yes.

And formal minutes were taken of each meeting?---Yes.

And at the next meeting those minutes were reviewed and approved?---Yes, we're never short of paper in the Liberal Party.

All right. And before such meetings, would you be sent out by either Mr Neeham, Mr McInnes or the office, a board pack?---Yes.

Which would be the minutes - - -?---Or sometimes he would say, here it is on the computer you can just pick it up in hard copy when you come to the meeting.

And I take you have an agenda for the meeting?---Yes, and we'd have the previous minutes.

Various reports from various people?---Yes, yes.

Including reports from Mr McInnes in writing sometimes?---Yes, he wrote a number of reports.

Including reports from Mr Nicolaou?---Yes.

Sometimes - - -?---On the progress he was making, yes.

Reports from Mr Neeham?---Not for the finance committee.

10 All right. And at least Mr McInnes's and Mr Nicolaou generally come to finance committee meetings?---Mr McInnes's was there for all of them, Mr Nicolaou for quite a few of them.

And did they usually speak to their reports?---Yes, they did.

And were they available to answer questions?---Yes.

20 And during the whole of that process, was there ever a suggestion from anyone McInnes's, Neeham, Nicolaou or anyone else in management to the effect that there was a suspicion that the law was either being broken or perhaps the splitting of the law had been breached?---No, no.

Did you – now in relation to those minutes, do you assume that ICAC has a full set of the minutes?---I don't assume anything but I think it would be a good idea.

It would be a good idea if Counsel Assisting tendered them.

30 MR WATSON: I tendered what we were given by the Liberal Party Commissioner.

THE COMMISSIONER: Yes.

MR WATSON: And I believe that we've had great co-operation from the Liberal Party.

MR NEWLINDS: All right. Now, Senator Sinodinos, do you have a set of your papers from the time of the board?---Yes.

40 And are those the minutes with some notes on it that you made usually during the meeting?---Yes.

Has ICAC ever asked you for those documents?---No, but I'm happy to - - -

MR WATSON: Have you ever volunteered them ICAC?

MR NEWLINDS: And the answer to that is what?---Yes.

MR WATSON: You have volunteered them?

MR NEWLINDS: Yes.

THE WITNESS: We wrote a letter.

MR NEWLINDS: There was a letter written by your solicitors during Operation Credo was there not, where your possession of those documents was revealed - - - ?---Yes.

10

- - -and it was stated that ICAC was welcome to see them if they wanted them?---Sure.

Is that right?---Sure.

Has ICAC ever followed up?---Not that I'm aware of.

Now, can I ask you this.

20 MR WATSON: Well, I'll follow up now, I'll call for them.

MR NEWLINDS: They're not here. Now, can I ask you, some of them are.

MR WATSON: I see. So we get selected Commissioner.

MR NEWLINDS: I mean, really and truly Geoffrey, do you think we're going to finish at 4 o'clock.

30 Now, there were auditors involved were there in relation to compliance with the Electoral Laws?---I think it was KPMG who also audited our books more generally.

So when you were asked the question, what did you do to ensure compliance, does the answer include the fact that you understood there were auditors as well?---Well, I mentioned the auditors, I mentioned the updated finance and treasurers guidelines, the training that was provided, the secretariat for people once the new changes had come in, yes.

40 And the declarations that had to be made by all candidates?---Yes, the candidates declaration was something that was remodelled over elections and the one for 2010/2011 was ticked off by the state executive, it was on the motion of state executive and that had to be signed by all members and candidates running in that state election.

And the candidates had to declare that they understood the electoral laws and would not breach them?---And it had to be counter-signed I think, by their campaign managers and treasurers or whatever.

And the Commissioner asked you questions about well, declarations by people, candidates or the various treasurers of the - - -?---Yes.

- - - various branches are only as good as far as the integrity of the person signing them you accept that don't you?---Well yes, I do.

But can you think of anything that could be done short of you going around the State and eyeballing each and every person?---And putting electronic bracelets on candidates, um - - -

10

But no, seriously, can you think of what can be done?---Well to the Commissioner's point before it is very difficult in a decentralised Party.

Now in relation to the Electoral Funding Commission in relation to the conduct of Ray Carter on the Central Coast and the Eightbyfive invoices, you know that topic?---Yes.

20

Is it right that when that topic came that that topic was brought to your attention during the period I think when you were President?---In early 2012, yeah, that's correct.

And did you, did you instigate an inquiry to try and get to the bottom of what was going on?---Mr Neeham and I instigated an inquiry and that was carried out by Mr Bran Black I think who was the manager of the voluntary party.

30

And did you form the view that certain people weren't cooperating with that inquiry?---Well Mr Carter and Mr Koelma refused to cooperate, they refused to turn up.

Now of course - - -?---In fact Mr Carter reminded me of that as he went past me today.

Now it's right isn't it that no matter how powerful people might think it is the Liberal Party New South Wales branch doesn't have subpoena powers? ---Not yet, no.

40

And can't call people before it and make them give evidence under oath? ---Not as yet, no.

So absent cooperation was that the end of the inquiry?---Well what we did then was, to us that was evidence of there's something funny going on here and it was referred to the EFA and then I think subsequently it ended up here, I received the letter from your predecessor Justice Ipp about the matter and, and then we started to get notices at the Liberal Party to provide information.

So without wanting to make you too much of a hero if we were talking about whistle-blowers you were the whistle-blower that provoked this inquiry, is that right?---Well I think a successful inquiry has many fathers and mothers.

Fair enough. Now – oh yeah, well. Now obviously if one pays a person for any job on a commission basis that is designed to incentivise them to work as hard as they can and produce the best result for their employer?---Well hopefully within the law, yes.

10

Well that was my point?---Yeah.

Now commissions are paid to all sorts of people in this society to do all sorts of jobs, is that your understanding?---I've just been through a very bruising encounter on that with FFAR Future Financial Advice Reforms, yeah.

20

And ultimately unless one bans commissions, commission payments to anyone in any sector of society there will always be the prospect that someone might choose to break the law - - -?---Sure you - - -

- - - so as to feather their own nest?---You can't legislate for morality.

Thank you very much, Commissioner.

THE COMMISSIONER: Anything arising, Mr Watson?

30

MR WATSON: Yes. Just on this micro managing issue did you realise that the whole of the money raised by the Liberal Party for the 2011 campaign just came in round figures \$2 million, did you know that?---It'd be more than that.

All right. Well just on this micro managing if you'd taken one peek at who the donors were and seen that the Free Enterprise Foundation had donated \$700,000 just if you've taken one little peek and seen that what would you have done?

40

THE COMMISSIONER: In other words would that have rung any alarm bells, Senator Sinodinos?---Not necessarily if it was in the run up to an election.

MR WATSON: Right. So you would just accept that the Free Enterprise Foundation could have donated \$700,000 and it wouldn't have rung any alarm bells for you, is that what you're telling us?---Well we might have had a discussion of the Finance Committee about well there's been this up surge in FEF donations um, is there more information on this, what, where does this come in.

Thanks, thanks, Senator.

MR NEWLINDS: Can I just ask one other question?

THE COMMISSIONER: Yes.

MR NEWLINDS: And I know this is beyond the remit, can I just ask it and then before Senator, before the Commissioner rules.

- 10 Talking about corruption prevention or law reforms, Senator, when one is dealing with the major political parties in this country and our Commonwealth system we know that there are, there's a Federal Party generally elects the Liberal and Labor Party and then they each have branches in each State, correct?---Sure.

And is the current position that the electoral laws are applying to who can and who can't donate politically and limits as to what people can donate are different between the various States and are different between all of the states and the Commonwealth?---Yes.

- 20 And obviously the Federal Party whether it be Labor or Liberal as things currently stand are perfectly entitled to take money from property developers in New South Wales?---For the Feds?

Yeah?---Mmm.

And this was a topic that was - - -?---Yeah.

- - - we can see in the minutes was a topic of debate and in the first instance
30 Mr Loughnane that no money that came from New South Wales property developers would be remitted from the Federal Party at all?---Ah hmm.

Later that was relaxed a bit so that it could be remitted to the State Party but only for use in Federal campaigns?---Yeah.'

Just, it's just an instance of how difficult it would be to have a workable law relating to these topics unless it covered the Federation, is that fair?---Well I don't want to get in trouble with Mr Abbott but that's certainly my view.

- 40 THE COMMISSIONER: Thank you, Senator - - -

MR COADY: Commissioner, I'm sorry, I have two or three questions following Mr Newlinds questions in relation to commission it wasn't really a matter that was raised in-chief by Mr Watson but it did seem that there was some pointed questions particularly Mr Nicolaou's direction and I just ask that two or three questions be asked in reply.

THE COMMISSIONER: All right. Yes, go on.

MR COADY: Senator Sinodinos, have you ever seen a copy of Mr Nicolaou's services agreement between him, sorry, between Solutions R Us and Bunori Pty Limited?---No, I don't think I have. It predates my time.

Could I suggest to you that the, that all three agreements the 2003, 2005, 2008 agreements were in fact proposed by the Liberal Party. Would you be a in position to accept that or to deny it?---I'm not aware but I'm happy to accept your point of view if that's what you're saying.

10 No, if you have no knowledge of it, I have no further questions.

THE COMMISSIONER: Thank you. Yes, thank you, Senator Sinodinos, you may step down you're excused?---Thank you.

THE WITNESS EXCUSED

[3.37pm]

20 MR NEWLINDS: Commissioner, this morning we went through as accordance with the practise note - - -

MR WATSON: No, no, in - - -

MR NEWLINDS: Perhaps the first time.

MR WATSON: No, this was in disobedience of the practise note - - -

MR NEWLINDS: But we're getting better.

30 MR WATSON: - - - at lunch time today - - -

MR NEWLINDS: But we're getting better.

MR WATSON: - - - we got a 128 page document much of which is duplicating things which are already in evidence and it's really becomes tricky doing that.

THE COMMISSIONER: Well, look, well - - -

40 MR NEWLINDS: No, but the point – the plan was to take the Senator through the folder and that's why some are already in evidence and some aren't.

THE COMMISSIONER: Right.

MR NEWLINDS: Can I ask Counsel Assisting to consider tendering it as a whole or - - -

MR WATSON: Well I haven't even had time to look at it.

MR NEWLINDS: - - - but if he wants to think about that's fine can I just -
- -

THE COMMISSIONER: All right. Well, can I suggest, Mr Newlinds, that you adopt the same practise that I recommended to Mr Duggan and that is that we - - -

10 MR NEWLINDS: Well Mr Watson, just let us know if there's a problem and then we'll take it up.

MR WATSON: Well no, I prefer it if people are doing this that they would write, tell me something roughly about the relevance.

THE COMMISSIONER: If you can do that and then we can - - -

MR WATSON: This one I must say on the face of it does look to be relevant but there are other ones - - -
20

MR NEWLINDS: To be fair to Mr Watson just so we have selectively as you would accept put in minutes but the entire set of minutes is available either from us but I think, I think what's happened is I think my learned friend was going to tender all the witness, the minutes, the Liberal Party had a confidentiality claim and it seems to have just dropped off the radar but anyway I'll leave that to my friend.

THE COMMISSIONER: Well as I said, well as Mr Watson said a short time ago we thought that we had everything that the Liberal Party had
30 provided but anyway.

MR NEWLINDS: Yeah.

THE COMMISSIONER: Look you would appreciate the level of duplication in these exhibits can we just try and sort out - - -

MR NEWLINDS: No, I do, I do. I just for our part we would certainly like the Commission to see the full set of minutes only so we can make a submission that it all looks professionally run and the like and of course
40 there's nothing in the minutes to suggest anything about any knowledge.

THE COMMISSIONER: Yes, Mr Coady.

MR COADY: I'm sorry, Commissioner. May I ask a procedural question in relation to evidence?

THE COMMISSIONER: Yes.

MR COADY: Is evidence officially closed in this matter? If there are documents that didn't need to be put to a witness but are documents that might still assist the Commission, I assume that evidence isn't closed this afternoon?

THE COMMISSIONER: Well, no, it's, can I just say this. I anticipate, subject to an extraordinary development I anticipate that the viva voce evidence is closed. As you would appreciate, we're closing this now because we simply can't physically remain in the building. I'm quite
10 prepared to accept exhibits if people can justify their relevance and that can be done through correspondence with the Commission, so I'm not making any formal order at this stage that the evidence is closed.

MR COADY: No. Thank you, Commissioner.

THE COMMISSIONER: Now, can I just say, can I just say for everybody's benefit, as you would all be painfully aware, this inquiry has gone for two weeks longer than originally scheduled and we have to move premises and we will have a significant part of our functions curtailed for a period of time
20 before we have IT systems back up. For that reason I need to make everyone aware that the report on this inquiry is unlikely to be published before January of next year. I know that at the beginning of the inquiry there was an expectation that we could publish by the end of 2014, frankly that is just not going to be physically possible and I'm putting everybody on notice that it will be later rather than sooner. So I apologise but that's, we are where we are.

Yes, Mr Moses.

30 MR MOSES: Yes, Commissioner, there was just five matters we wished to raise. The first relates to the proposed directions. We sent correspondence in yesterday in respect of the issue, there are only two main points that we just want to emphasise and that is the question of reserving the right for us to apply to you in respect of increasing any page limit that you may seek to impose in respect of submissions by parties who are appearing in this matter because we'll need to see what is being said in the submissions of Counsel Assisting.

THE COMMISSIONER: All right.
40

MR MOSES: So we'd want leave. The second issue is we think this is a matter, subject to your views, Commissioner, where you would be assisted by the parties making oral submissions in respect of this matter. There was a practice with your predecessor of taking oral submissions and of course submissions being made public on some matters rather than being the subject of any suppression order, the public- - -

MR WATSON: I think Commissioner Ipp only ever did that once.

THE COMMISSIONER: Mmm.

MR MOSES: Yeah, well, and- - -

MR WATSON: And I think he regretted that. But I must say the barrister was Sandy Street so- - -

10 THE COMMISSIONER: Well, anyway, anyway- - -

MR MOSES: If I can, if I can- - -

THE COMMISSIONER: Yes, but- - -

MR MOSES: If I can just finish.

THE COMMISSIONER: Yes, go on.

20 MR MOSES: It's important in a matter like this that where allegations have been made publicly that those who have been the subject of those allegations have the opportunity to present their submissions publicly and orally seek to persuade you by taking you through material that might be of assistance to you in respect of dealing with matters that may arise in submissions, and we would seek that be considered by you. The only other matters we wanted to raise was we would like four weeks to respond to any submissions by Counsel Assisting. I think under the current timetable we get 10 working days to prepare- - -

30 THE COMMISSIONER: Did you say four weeks?

MR MOSES: Four weeks, yes. At the moment we have 10 working days.

MR WATSON: Six weeks, sorry, we get four weeks, they get six weeks.

THE COMMISSIONER: Mmm.

MULTIPLE INTERJECTIONS: No. No. No.

40 MR MOSES: No, we get 10, 10 days.

MR WATSON: Well I mean you've got the four weeks we're working presumably.

MR MOSES: No, no, no, but we don't know what the allegations are till we get them.

THE COMMISSIONER: All right. Well, look anyway- - -

MR MOSES: And that's the issue. We don't know.

THE COMMISSIONER: All right.

MR MOSES: We've been, we've been asking for particulars.

THE COMMISSIONER: All right, all right, Mr Moses, but you know, you will appreciate that what you're now proposing is going to make it even more difficult for us to produce a report within, within a timeframe that
10 would be acceptable for the purposes of events next year.

MS MOSES: But we want to assist, but we want to assist the Commission as well and- - -

THE COMMISSIONER: All right. Well- - -

MS MOSES: - - -and the parties may not be in a position where they can assist you if they're given 10 days because I would apprehend that a lot of us here don't yet know what is going to be alleged against our clients and
20 the particulars of them and there have been complaints that have been made about that, in respect of that matter, so we don't want just 10 days to spin around, we've got other practices that we're involved in as well and other cases, so we need to have sufficient time to deal with these matter. So we would seek 20 days rather than the 10 working days to respond. That, that's all I wanted to say on the other directions, Commissioner.

THE COMMISSIONER: Well, can I just say in relation to the proposed page limits and in relation to the timeframe for submissions to be filed after the receipt of Counsel Assisting's submissions, I would appreciate it if those
30 matters were addressed in correspondence to the Commission so they can be dealt with.

MR MOSES: They have been.

THE COMMISSIONER: Well, not just by you, Mr Moses, but everybody else because I can't consider one request in isolation, I have to see, I have to actually get a sense of what everybody is proposing because at some stage we have to draw a line under this.

40 But can I just say in relation to the proposal that the written submissions be supplemented by oral submissions, Mr Moses, that's going to put me in the position of having to sit for at least another three weeks because anybody who wishes to take advantage of that suggestion is going to have to respond to what everybody else says. It's simply going to, as I said before, not only increase the period of time within which we can produce a report but to be honest with you, I don't really think oral submissions are going to assist the Commission. The occasion that you refer to where the previous Commissioner did allow oral submissions to be made was a very very

simple public inquiry that went for two days and the reason why oral submissions were made was because it simply wasn't worth the trouble of people going away and committing the submissions to writing. Other than that, and that's the only matter of which I'm aware, submissions have always been in writing and they have always been suppressed from publication and there's a very good reason for that, Mr Moses, and the reason is this. Regardless of what might be said in Counsel Assisting's submissions, there will be other allegations made in the course of other people's submissions that should not be made public because they may not ultimately be the subject of any finding. So- - -

MR MOSES: But the difficulty here is that allegations have been made publicly in this forum where- - -

THE COMMISSIONER: Well, I know that because that's part of a public inquiry.

MR MOSES: Quite, quite, and therefore the person who's the subject of those allegations should be able to respond to them publicly as well. But I put the submission to you, Commissioner, if you're not minded to accept it, that's a matter for you, but I've put the submission.

THE COMMISSIONER: Well I'm not for two principal reasons we simply don't have the time but on a more principal basis, Mr Moses, frankly I, I know that everybody who's appeared at this inquiry is highly skilled and written submissions I think are much more helpful much more focused and, and much more responsive to Counsel Assisting's submissions then allowing those things to be supplemented by oral submissions, I just don't think it really helps, it doesn't advance, it doesn't advance that the, the submissions any further.

MR MOSES: I've made, I've made the application. The next issue relates the tender of documents. You may recall that on 4 September I requested a bundle of documents that had been provided to the Commission that they be tendered. As I understand it there was an objection raised, we've sent correspondence dated yesterday for consideration and I'm not aware, Commissioner, as to whether that matter will be dealt with. I think I wasn't told because I've been in another place today but Counsel Assisting may deal with that issue today. Is the Counsel Assisting in a position to deal with that?

MR WATSON: No.

THE COMMISSIONER: No.

MR MOSES: Okay. Could we be - - -

THE COMMISSIONER: I think there, there were some documents
tendered this morning but I don't think it's the ones that you're referring to -
- -

MR MOSES: No, they weren't ours. So the, so the folder that we provided
on the 4 September as we understand the process will now be that Counsel
Assisting will consider that, if he declines to tender them then we will make
an application to you under the practise directions I understand.

10 MR WATSON: Yes. What I'd really appreciate is if people indicate what
the relevance of certain things - - -

MR MOSES: We have.

MR WATSON: Well I saw the letter and you did but so if they can do that
that will be helpful to us because by golly there's enough paper already to
read.

20 THE COMMISSIONER: No, I know.

MR MOSES: Commissioner, then the third issue relates to request for
documents. We again have written correspondence about this, we renew
our request for three categories of documents, the records of interview and
draft statements of Mr Thomson. Secondly what was said on the 6 May to
be the sworn testimony from a reliable person which it was said during the
public hearing implicated Mr Gallacher that was on page 3376 of the
transcript. We have requested that on a number of occasions and have not
been provided with it and been unable to discern from any material where
that is and what it's referring to.

30 MR WATSON: Is the point being made there, are they – is he suggesting
that I made that up? Is he suggesting I made it up? You should answer that.

THE COMMISSIONER: Well, Mr Moses - - -

MR MOSES: Commissioner, may I address you? What we seek - - -

40 THE COMMISSIONER: Mr Moses, Mr Moses, I know that that, I know
that you've made that request several times and the request has been refused
and it will continue to be refused because as I've said a number of times we
will not depart from the practise that compulsory examination transcripts
and interviews and things of that nature that are taken in private remain
suppressed and they remain private and there is no exception to that rule.

MR MOSES: Commissioner, can I just deal with it this way. We've raised
in our correspondence dated 11 September related to procedural fairness
here in that an allegation was made publicly, and it was said publicly, that it
was based on the sworn testimony from a reliable person, we seek that, that,

that document and we put in our letter the reasons why, it's procedural fairness and I'm not going to get into a debate about what, what's being alleged, it's about the public interest here that here an allegation was made publicly, it was said to be based on something and we want it, now I've said what I want to say on it.

10 THE COMMISSIONER: Well, Mr Moses, can I assure you that anything that is not a public exhibit or even for that matter a partially suppressed exhibit in this inquiry, if it's been entered as an exhibit in this inquiry and anything that has emerged by way of evidence from witnesses in this inquiry, that is the material upon which we base findings. We do not base findings on material that remains suppressed and that is not part of the inquiry. It is simply not material that's taken into account.

MR MOSES: Yeah, but the problem is, Commissioner, we haven't had access to it and we don't know what it is and who's had access to it but we've put our submission about that. The third issue relates to the EFA investigation into a donation received from David and Ruth Dosser, D-o-s-s-e-r (as spelt), who were said to be property developers to Mr Owen's 2011 campaign so we've, we, we'd sought those documents and - - -

UNIDENTIFIED SPEAKER: (not transcribable)

MR MOSES: No, it's not.

MR WATSON: That was dealt with, they were determined immediately not to be property developers.

30 THE COMMISSIONER: Yes, I thought that was determined, Mr Moses, that that, that that's not something that comes within the, the ambit of the inquiry.

MR MOSES: Yeah, it's a different point. We've dealt with that at page 2 of our letter where we've dealt with this in terms of the, the investigation documents because we've, we've referred, we've averted to that page 2, I'm not going elaborate on that further with that, that's what we request. The, the next issue, Commissioner, if I can tender – you might recall there was a request for 17 December telephone records, if we can hand those up to you, of Mr Gallacher, there was a request made by Counsel Assisting about this.

40 MR WATSON: I should tender that.

MR MOSES: There are three copies we can provide to the Commission.

THE COMMISSIONER: What – I'm not sure, what, what date is it?

MR MOSES: You might, you might recall – 17 December, there was a request for these telephone records that were made during the course of examination and these, this is at page 7024 of the transcript.

THE COMMISSIONER: 17 December of 2010?

MR MOSES: 2010. Counsel Assisting on 4 September, 2014 sought that these documents be obtained from Mr Gallacher in respect of the telephone records for that day, if I could provide them.

10

THE COMMISSIONER: All right. Exhibit - - -

MR WATSON: Well, we'll have a look at those, I don't know what they are yet, we'll deal with those in due course.

20

MR MOSES: Having, having been produced to the Commission what we would respectfully request that they be tendered, if Counsel Assisting determines not to then we will be making an application to you for it to be tendered. The phone numbers we respectfully say should be the subject of the same pre-existing suppression order that we understand is in place in relation to personal information, Commissioner.

THE COMMISSIONER: Yes.

30

MR MOSES: And then, Commissioner, the final issue is, and we're happy to reduce this to writing in terms of submissions so that you may properly consider it, and can we just provide you with a decision of the, provide you with a copy of the decision of the Full Court of the Supreme Court of the ACT, do you have copies of that? This just relates to an issue, and it's arisen in other inquiries, and if you wish we can provide you with written submissions, the relevant passage appears at paragraph 165 and this relates to the writing of the report. What, what we, what we assume is that Counsel Assisting will play no role in the writing of the report by the Commission other than the provision of written submissions in respect of the matter because we respectfully submit that this is a matter where there should be a clear delineation between Counsel Assisting's role of identifying and presenting the evidence and you, Commissioner, in assessing and making the conclusions, especially where you've indicated quite fairly that some of the matters in this case will determined, be determined based on who you believe in terms of evidentiary matters and - - -

40

THE COMMISSIONER: Well, Mr Moses, I don't understand that it's ever, ever been disputed that Counsel Assisting has a role in relation to summaries of evidence.

MR MOSES: That's a different issue.

THE COMMISSIONER: Well, I mean that, that takes up a considerable part of the report in terms of laying out the foundation for the findings.

MR MOSES: Yes.

THE COMMISSIONER: So I don't know that - - -

10 MR MOSES: It has been – within the PIC there was an issue that arose during the investigation of the Crime Commission and in that matter Counsel Assisting played no role in the writing of a report because of the position that was taken by the party that I acted for, the Crime Commission, in respect of that matter so what we'd ask is that maybe if it would assist you if we provide you with written submissions that deal with this issue and some of the relevant cases for your consideration and ultimately all we can do is put the submissions before you as a matter for you to consider.

THE COMMISSIONER: All right. Well - - -

20 MR MOSES: Thank you.

THE COMMISSIONER: - - - you can send those submissions - - -

MR MOSES: We can do that.

THE COMMISSIONER: - - - through. Mr Watson, have you had a chance to - - -

30 MR MOSES: Well, if we can undertake to do that by no later than Tuesday of next week.

THE COMMISSIONER: All right.

MR MOSES: Thank you.

THE COMMISSIONER: Have you had a chance to look at the phone records of 17 December?

40 MR WATSON: I'm not sure, there's a whole bundle of things here which are heavily, very heavily redacted and I just don't know what we've been given. I've got no idea. They're very heavily, I just don't – I'm not sure what, what is it supposed to prove? Sorry, I don't know whether my learned friend heard me, what did this, does this document prove?

THE COMMISSIONER: I don't know, Mr Watson. Mr Moses - - -

MR MOSES: Sorry, is it the telephone record?

THE COMMISSIONER: Yes.

MR MOSES: Oh, yes. My learned friend, you might recall that he asked questions of the witness concerning SMS messages on 17 December, what this demonstrates is that on that day a number of text messages were sent at the same time by Mr Gallacher, you might recall he made reference to the Deputy, the Deputy Commissioner of Police and others.

THE COMMISSIONER: All right. Exhibit Z117.

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**#EXHIBIT Z117 – PHONE RECORDS TENDERED ON BEHALF OF
LEGAL REPRESENTATIVES OF MICHAEL GALLACHER**

MR HARDCASTLE: Commissioner, can I just raise a related matter?

THE COMMISSIONER: Yes.

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MR HARDCASTLE: And it's, its short and just to inquire whether it's the intention of the Commission to hand down its report in relation to the related inquiry into Operation Credo at a separate time to Operation Spicer?

THE COMMISSIONER: Look, I think it's too early to tell. They are, they are closely related in some respects, it may be that it just pans out that way, that they're handed down together but we'll certainly keep everybody up to date but at this stage I really couldn't tell you, I couldn't give you any definite timeframe.

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MR HARDCASTLE: Thank you, Commissioner.

MS HOGAN-DORAN: Commissioner, I have one, one matter I was provided with access to and I have Exhibit Z103 which I wish to return to the Commission but I wish to seek an identification as to the author of the documents in the nature of a submission that the author is not identified.

MR WATSON: The author is the Commission.

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UNIDENTIFIED SPEAKER: The Commissioner is the Commission isn't it, under the Act?

MS HOGAN-DORAN: So is it the Commissioner's document?

THE COMMISSIONER: I don't know, I haven't seen it. What is it?

MS HOGAN-DORAN: (not transcribable) your document (not transcribable)

UNIDENTIFIED SPEAKER: According to Counsel Assisting it's the Commissioner's document.

MR WATSON: No, no, it's the Commission's document - - -

MS HOGAN-DORAN: No, the Commission, the Commission.

MR WATSON: - - - in the sense that - - -

10 MS HOGAN-DORAN: I see.

MR WATSON: - - - it's been prepared by officers of the Commission.

THE COMMISSIONER: Oh, yes, it was, it was prepared by, by the officers on this inquiry. All right. I'll adjourn. Thank you and – thank you for Counsels' assistance.

20 **AT 3.58PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[3.58PM]