FEDERAL COURT OF AUSTRALIA

Wing v The Australian Broadcasting Corporation
[2018] FCA 1340

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| File number: |  |
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| Judge: | **RARES J** |
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| Date of judgment: | 31 August 2018 |
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| Catchwords: | **DEFAMATION** – justification – whether justification of imputation that person was believed on reasonable grounds to be guilty discloses reasonable defence to imputation that person guilty – whether publisher can rely on less serious meaning as defence of justification of more serious meaning – *Polly Peck* defence – *Hore-Lacey* defence – whether differently nuanced meaning capable of providing defence of justification **DEFAMATION** – particulars of justification – allegations of party’s knowledge and state of mind – requirement of particulars providing same particularity as indictment  |
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| Legislation: | *Parliamentary Privileges Act* 1987 (Cth) s 16*Federal Court Rules* *2011* rr 16.41, 16.43*Defamation Act 2005* (NSW) ss 8, 24, 25  |
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| Cases cited: | *Adeang v The Australian Broadcasting Corporation* [2016] FCA 1200*Agar v Hyde* (2000) 201 CLR 552 *Australian Securities Commission v Marlborough Gold Mines Ltd* (1993) 177 CLR 485*Banque Commerciale SA (En liq) v Akhil Holdings Ltd* (1990) 169 CLR 279*Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519*Cunliffe v Woods* [2012] VSC 254*Crosby v Kelly* [2013] FCA 1343*Dare v Pulham* (1982) 148 CLR 658*David Syme & Co Ltd v Hore-Lacy* (2000) 1 VR 667 *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89*Favell v Queensland Newspapers Pty Ltd* (2005) 221 ALR 186*General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125*George v Rockett* (1990) 170 CLR 104*Giorgianni v The Queen* (1985) 156 CLR 473*Gutnick v Dow Jones & Co Inc (No 4)* (2004) 9 VR 369*Hamra v The Queen* (2017) 260 CLR 479*Hussien v Chong Fook Kam* [1970] AC 942*Hyams v Peterson* [1991] 3 NZLR 648*John L. Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508 *Johnson v Miller* (1937) 59 CLR 467*Lewis v Daily Telegraph Ltd* [1964] AC 234*Lloyd v David of Syme & Co Ltd* [1986] AC 350*Mickelberg v Hay* [2006] WASC 285*Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293*Nationwide News Pty Ltd v Moodie* (2003) 28 WAR 314*Polly Peck (Holdings) Ltd v Trelford* [1986] QB 1000*Rush v Nationwide News Pty Ltd* [2018] FCA 357*R v Hillier* (2007) 228 CLR 618*Trkulja v Google LLC* (2018) 356 ALR 178*West Australian Newspapers Ltd v Elliot* (2008) 37 WAR 387*Whelan v John Fairfax Publications Pty Ltd* (2002) 56 NSWLR 89*Wootton v Sievier* [1913] 3 KB 499*Yorke v Lucas* (1985) 158 CLR 661*Zierenberg v Labouchere* [1893] 2 QB 183 |
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| Date of hearing: | 27 June 2018 |
|  |  |
| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: | Other Federal Jurisdiction |
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ORDERS

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|  | NSD 1088 of 2017 |
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| BETWEEN: | DR CHAU CHAK WINGApplicant |
| AND: | THE AUSTRALIAN BROADCASTING CORPORATIONFirst RespondentFAIRFAX MEDIA PUBLICATIONS PTY LIMITED ACN 003 357 720Second RespondentNICK MCKENZIEThird Respondent |

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| JUDGE: | RARES J |
| DATE OF ORDER: | 31 August 2018 |

THE COURT ORDERS THAT:

1. Paragraphs 13.1 and 13.2 and the particulars of truth in paragraphs A1-54 of the defence filed on 6 October 2017 be struck out.
2. The respondents’ oral application made on 27 June 2018 to file an amended defence be dismissed.
3. The respondents pay the applicant’s costs of his interlocutory application filed on 21 March 2018 and of their oral application to amend made on 27 June 2018.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

# RARES J:

1. Dr Chau Chak **Wing** commenced this proceeding on 3 July 2017 seeking damages for defamation in respect of the broadcast and rebroadcast by the Australian Broadcasting Corporation (**ABC**), of its **Four Corners** television **program**, first published on 5 June 2017. He also sued Fairfax Media Publications Pty Ltd (**Fairfax**) and its employed reporter, Nick **McKenzie**, who was the presenter of the program. Dr Wing alleged that both the ABC and Fairfax republished the program by making it available on their websites for downloading and viewing. A transcript of the program is in Annexure A to these reasons.
2. The program lasted about 45 minutes. Dr Wing alleged in his amended statement of claim that it conveyed the following imputations of and concerning him (that I found were capable of being conveyed in the course of oral argument on 18 August 2017), namely:

(a) The Applicant betrayed his country, Australia, in order to serve the interests of a foreign power, China, and the Chinese Communist Party by engaging in espionage on their behalf.

(d) The Applicant is a member of the Chinese Communist Party and of an advisory group to that party the People’s Political Consultative Conference (CPCCC) and, as such, carries out the work of a secret lobbying arm of the Chinese Communist Party, the United Front Work Department.

(e) The Applicant donated enormous sums of money to Australian political parties as bribes intended to influence politicians to make decisions to advance the interests of the Republic of China, the Chinese government and the Chinese Communist Party.

(f) The Applicant paid Sheri Yan, whom he knew to be a corrupt espionage agent of the Chinese government, in order to assist him in infiltrating the Australian government on behalf of the Chinese Communist Party.

(g) The Applicant paid a $200,000 bribe to the President of the General Assembly of the United Nations, John Ashe.

(h) The Applicant was knowingly involved in a corrupt scheme to bribe the President of the General Assembly of the United Nations.

1. In addition, Dr Wing relied on the extrinsic fact that, on becoming an Australian citizen, he made the pledge of loyalty that all persons must make when becoming a citizen, to allege that the matter complained of conveyed a further imputation or true innuendo (**the extrinsic imputation**), namely:

The Applicant broke the pledge of loyalty he took to Australia on becoming an Australian citizen by secretly advancing the interests of a foreign power at the expense of the interests of Australia.

1. He pleaded the extrinsic fact as follows:

[T]he pledge of loyalty is… in the following terms:

From this time forward I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect. and whose laws I will uphold and obey.

1. On 6 October 2017, the first and second respondents filed their defence that, relevantly, pleaded justification on the basis that each of Dr Wing’s pleaded imputations including the extrinsic imputation (**Dr Wing’s imputations**) was substantially true. The respondents also pleaded variants of each of those imputations that commenced with the words “there are reasonable grounds to believe” before repeating each of Dr Wing’s imputations (the **variant imputations**). They pleaded that and that each variant imputation was both, not substantially different from, and not more injurious than, the unqualified form of the same imputation as Dr Wing pleaded and that because each variant imputation was substantially true, the respondents had a defence of justification at common law. Thus, for example variant imputation (a) read:

**There are reasonable grounds to believe** **that** the Applicant betrayed his country, Australia in order to serve the interests of a foreign power, China, and the Chinese Communist Party by engaging in espionage on their behalf. (emphasis added)

1. The respondents also relied on a defence of qualified privilege under s 30 of the Act, to which Dr Wing responded in his reply.
2. On 21 March 2018, Dr Wing filed the present interlocutory application seeking to strike out the defences of justification of Dr Wing’s imputations and the variant imputations, together with the particulars pleaded in support of them, on the basis that they disclosed no reasonable defence and or were likely to cause prejudice, embarrassment and delay.
3. The parties have served outlines of evidence and expert reports under timetables that I had ordered, with some extensions of time. On 19 February 2018, I had extended the time for the respondents to file and serve expert material on which they intended to rely to 5 March 2018. The respondents did not comply with that order and on 16 May 2018, I extended the time for compliance to 15 June 2018. I also set the interlocutory application down for argument on 27 June 2018 and gave directions for the parties to file and serve submissions.
4. On 29 May 2018, Dr Wing served his written submissions in support of his interlocutory application, and on 22 June 2018, the respondents served their written submissions together with a proposed **amended defence**. That amended defence substantially altered the particulars of justification, while maintaining the existing pleading of truth in respect of both Dr Wing’s and the variant imputations. The respondents orally applied for leave to file the amended defence. The respondents explained that the proposed amended particulars of justification reflected material that, by 21 June 2018, they had served (and or filed).
5. Dr Wing opposed the grant of leave for the respondents to file the amended defence. It was common ground that if I refused to grant that leave, the respondents’ pleading of justification and the particulars in support of them in the filed defence should be struck out under
r 16.21(1)(d) and or (e) of the *Federal Court Rules 2011*.

## The issues

1. There are two principal issues, namely, whether, *first*, the variant imputations fail to disclose a reasonable defence of justification, and *secondly*, the amended particulars of justification are so imprecise or embarrassing that they do not provide a fair indication of the case Dr Wing has to meet or, in any event, are not capable of establishing the truth of Dr Wing’s imputations.

## The legislative context

1. The *Defamation Act* *2005* (NSW) provides in s 8 that a person has a single cause of action for defamation in relation to the publication of defamatory matter about the person, even if it carries more than one imputation about him or her. By dint of s 24(1), a defence available under Div 2 is additional to any other defence available to the defendant apart from the Act. Relevantly, Div 2 contains s 25 which provides:

It is a defence to the publication of defamatory matter if the defendant proves **that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true.** (emphasis added)

1. Thus, the scheme of the Act is to create a cause of action, as does the common law, based on the publication of a matter complained of that conveys one or more imputations that are defamatory of the plaintiff. The imputations are meanings that the plaintiff identifies in the statement of claim that he (in Dr Wing’s case) alleges an ordinary reasonable viewer of the program (being the matter complained of) would understand it to convey about him and which are calculated to lower his reputation in the eyes of persons who know him and watched the program. Section 25 provides that the defendant (or respondents here) will have no liability for defamation if they can prove that the pleaded imputations, or meanings not substantially different from them, are substantially true.

## The particulars

1. The amended defence pleaded 80 main paragraphs of particulars of truth, many of which also had numerous subparagraphs that appeared under several headings that I will summarise below. In par 81, the respondents asserted that they reserved “the right to provide further particulars following discovery and interrogatories”.

### The Chinese Communist Party and the ‘united front’

1. The particulars asserted (in pars 1-6) that the Chinese Communist Party (**CCP**) had absolute political power in China, as a party-State, and had a very important role in China’s foreign policy. They asserted that the CCP conducts foreign affairs that included conduct supplementing and or overriding the work of Chinese State sector organisations. Next
pars 3-4 alleged that there is a ‘united front’ that is central to China’s foreign policy in which the CCP, its members and non-members work together to achieve the CCP’s objectives or strategy including to “get foreign political and economic elites to accept [China’s] foreign policy goals”, promote China’s agenda, gather strategic information and break up or neutralise opposition and alliances that are contrary to China’s interests. The united front strategy allegedly includes that CCP officials and their agents seek to develop relationships and promote the CCP’s goals with senior and or influential foreign and overseas Chinese persons to influence, subvert or bypass the policies of their own nations’ governments.

### The United Front Work Department

1. The particulars asserted (in pars 7-17) that the United Front Work Department (**UFWD**) was highly secretive in relation to its overseas work and reported directly to the Central Committee of the CCP. Paragraph 9 alleged: “The CCP and/or the UFWD recruit and use a range of individuals, including foreigners and Chinese expatriates living outside China (**Agents**) to promote and further the political ends of the CCP and the United Front Strategy”. Paragraph 10 asserted that Agents included persons who may act voluntarily or under coercion. Paragraph 12 alleged that wealthy individuals with significant Chinese business interests, particularly in real estate and property development in China, are susceptible to being coerced or persuaded into cooperating as Agents for the CCP because of their vulnerability to allegations, such as personal corruption, to explain how they became so wealthy, that could result in loss of status or wealth. The CCP used Agents to gather information, cultivate or influence foreign politicians, governments, universities and engage in “espionage” that par 14 defined as follows:

(14) Espionage (**Espionage**) includes, in relation to [China], attempting to advance the United Front Strategy and the interests of the CCP and [China] globally by, inter alia:

(a) obtaining confidential information or documents of another country so as to provide them to [China]; or

(b) conduct which achieves or is intended to achieve, or is intended to make possible, influencing and/or subverting and/or otherwise interfering with, covertly and/or deceptively (in the sense that the Agent’s role as such Agent is not disclosed), the policies of foreign governments and/or the political and democratic processes of foreign countries.

1. Then pars 15-17 asserted ways in which Agents seek to influence policies of foreign governments in support of the united front strategy. For example, Agents may make or promise significant donations to political parties, offer or provide current or former politicians or influential persons with free trips to China, gifts, access to Chinese political and business leaders or board or university positions, in order to encourage policies or attendances favourable to China’s or the CCP’s interests.

### The Chinese People’s Political Consultative Conference

1. The particulars asserted (in pars 18-22) that the Chinese People’s Political Consultative Conference (**CPPCC**) is a consultative body of the Chinese party-State and a core agency of the CCP that collaborates with the UFWD. Paragraph 18 asserted that the CPPCC provides funds to overseas bodies associated with the UFWD, including ones promoting the reunification of China, to facilitate making donations to foreign political parties. The UFWD must allegedly approve persons as members of the CPPCC (who need not be CCP members), which is seen as a reward for UFWD work, confers status and prestige on Agents and provides them with business opportunities. The particulars asserted in par 20 that becoming a member of the CPPCC “reduces the risk for Agents of **business and reputational damage**” (emphasis added) and in par 22, that the CPPCC sets up institutions in other countries with which the CPPCC cooperates.

### The CPPCC and UFWD in Australia

1. The particulars asserted (in pars 23-28) that one objective of the united front strategy was “to get foreign political and economic elites to accept [China’s] foreign policy goals. Australia has been and remains a significant target of CCP United Front work” (par 23). The UFWD’s overseas operations were managed in its “third bureau” (par 24). The UFWD oversees a number of other “platforms” to promote the CCP internationally sometimes with the CPPCC, including the Chinese Council for Promotion of Peaceful Reunification of China (**CCPPRC**). The CCPPRC in collaboration with the CPPCC, promoted and maintained the Australian Council for Promotion of Peaceful Reunification of China (**ACPPRC**). And par 28 asserted:

(28) The objectives of the CCP’s united front activities in Australia include the following:

(a) weakening the alliance between Australia and the United States of America;

(b) the recognition of China’s disputed territorial claims over the South China Sea;

(c) promoting and advancing Chinese economic and strategic initiatives such as the One Belt, One Road (Belt and Road) initiative;

(d) the practice of Falungong; [sic]

(e) the re-unification of China and Taiwan;

(f) promoting and advancing China-Australia relations (including trade and investment) to the advantage of China;

(g) reducing Australian official criticism of and resistance to Chinese foreign policy in the Indo-Pacific region;

(h) silencing dissent against the CCP inside the Chinese diaspora community within Australia.

(the **CCP Australian Objectives**)

### The Applicant

1. The particulars asserted (in pars 29-31) that Dr Wing:
* was also known by another Chinese name;
* had been born in eastern Guangdong Province about 70 years ago;
* had moved to Australia in the 1980s;
* was a businessman, real estate developer and philanthropist;
* owned through the **Kingold Group** a newspaper in Guangzhou, a Chinese language newspaper published in Australia, namely the *Australian New Express Daily* (the subject of further particulars in par 43), the **Imperial Springs Resort**, in Guangzhou, and “a business conglomerate based in Guangzhou” which he also operated;
* had a net worth, in 2014, of over USD1 billion; and
* resided for most of each year in China.

The particulars then asserted:

(30) On becoming an Australian citizen, the Applicant made a pledge of loyalty to Australia by taking the Australian Citizenship Pledge (**Citizenship Pledge**).

(31) By reason of the Applicant’s background, business acumen and general knowledge, he knew, and/or **it is to be inferred that he knew, the facts, matters and circumstances set out in particulars (1) to (28)** (emphasis added).

1. Next the particulars used headings to relate allegations to the various imputations. The particulars (in pars 32-59) alleged matters to support the truth of Dr Wing’s imputations (a), (d) and (e), the extrinsic imputation and the corresponding variant imputations. These particulars asserted that, in about 2004, Dr Wing had become a standing committee member of a Guangdong district CPPCC, in about 2006, he became the first president or chairman of the Guangdong Provincial Overseas Chinese Enterprises Association that was “backed by the CCP” and that he attended its first meeting with, among others, the director-general of the UFWD. They also asserted that by no later than 2010, Dr Wing had become a national committee member of the CPPCC. On that basis, the respondents alleged in par 35 that, coupled with their particulars about the CPPCC, it was “**to be inferred** that, at all material times since at least 2004, [Dr Wing] has carried out the work of the UFWD and the CCP, including seeking to implement the United Front Strategy in Australia” (emphasis added).
2. Next, the particulars asserted (in pars 36-40) that Dr Wing had served as honorary chairman of the ACPPRC in its third and fourth terms, organised or taken an active part in high profile conferences and events that nurtured the interests of the CCP, CPPCC and UFWD, including the 2011 China Australia Economic and Trade Friendship and Exchange Conference, the July 2014 China Australia Economic Forum, the October 2015 International Forum, and the May 2016 International Forum on Cities and Development, most of which were held at his Imperial Springs Resort, and the 2012 Australia-China Desert Adventurer (Australia stage) Kick-off Ceremony held in Guangzhou. Dr Wing allegedly had also established and became head of one named organisation in 2005 and became executive director of another named organisation in 2008 each of which had “close” or “deep” links with the CCP and UFWD. The particulars asserted (in par 40) that these facts justified the inference that at all material times Dr Wing “was engaged in CCP united front activities including seeking to implement the United Front Strategy in Australia”.
3. The particulars then asserted (in pars 41-43) that in 2014, the United Front of Shantou, a body that undertook united front activities, promoted Dr Wing as having met with prominent members of the CCP, including the former president, Hu Jintao and former Premier, Wen Jaibo. Then par 42 alleged that Dr Wing acquired the *New Express* newspaper in Guangzhou in a joint venture with a newspaper of the provincial government, in circumstances where the CCP controlled, and its propaganda department had to approve, media ownership in China and the CCP retained editorial control over such publications. This allegedly occurred while Dr Wing was, and continued to be, an Australian citizen. The particulars asserted that the Chinese Government’s published official policy document on foreign investment restrictions in China stated that foreigners were not permitted to publish newspapers in China. Dr Wing, while an Australian citizen, also launched, according to par 43, the *Australian New Express Daily* in about 2004, with the assistance of the CPPCC and Mr Jia Qinglin, “who is China’s fourth highest ranking leader and Chairman of the National Committee of the CPPCC”. The particulars asserted in both pars 42 and 43, that the inference should be drawn that the CCP permitted Dr Wing to own and operate the *New Express* and had assisted him in starting the *Australian New Express Daily* newspaper “because of his connections to and or membership of the CCP, the CPPCC and the UFWD”. There was no elaboration of the basis of the allegation in these paragraphs that Dr Wing was a member of the CCP.
4. Next pars 44-49 asserted:

(44)  In about February 2016, the Applicant met with senior members of the UFWD at the Applicant’s business, Kingold Group in Guangzhou, China for the purpose of, amongst other things, discussing Chinese interests in Australia and, specifically, the role that overseas Chinese leaders such as the Applicant play and can play in promoting exchanges and cooperation in countries such as Australia.

(45) Sometime prior to 27 June 2017, the Applicant participated in an interview with journalist Simon Benson, the substance of which was published in *The Australian* newspaper on 27 June 2017.

(46) In the course of the interview, the Applicant falsely denied that he had ever been a member of the CPPCC, and falsely denied any knowledge of the UFWD.

(47) In or about late 2017, the Applicant was received in Beijing (along with others) by the Chinese President and CCP General Secretary, Xi Jinping. It is to be inferred that this honour was bestowed upon him because of the Applicant’s deep connections to the CCP and/or the CPPCC and/or the UFWD as set out above.

(48) Since at least 2007, the Applicant has had a close association with Ms **Sheri Yan,** including in the circumstances outlined in particulars (60) – (80) below.

(49) **It is to be inferred from particulars (32) to (48) that the Applicant deliberately attempted to conceal his connections to the CCP, the CPPCC and the UFWD, so as to secretly advance their interests by engaging in the activities set out below**.(emphasis added)

## Dr Wing’s activities in Australia

1. In pars 50-59, the particulars then dealt with Dr Wing’s activities in Australia. Those asserted (in pars 51-52) that he had made donations, from 2007 to 2016, totalling over AUD5.16 million to various Australian political parties at federal and State level and from 2010 to 2016, totalling over $45 million to Australian universities. The particulars alleged (in par 52) that by about 2016, the Director-General of the Australian Security Intelligence Organisation (**ASIO**) had briefed at least three Australian federal political parties and the universities, to each of which Dr Wing had donated, about the national security risks posed by foreign-linked donations. The particulars then alleged:

(53) In the ASIO Briefings, the Applicant was named as a donor that ASIO was concerned about because it suspected that he engages in espionage on behalf of the CCP. Among other things, ASIO was concerned:

(a) that the Applicant was closely connected to the CCP;

(b) that the Applicant’s donations may be connected to the CCP and its objectives, including influencing Australian trade policy to the advantage of the CCP;

(c) that the Applicant had otherwise engaged in intelligence-related activities on behalf of the CCP.

1. The particulars next asserted (in pars 54-57) that those ASIO briefings were “a most unusual if not unprecedented step for ASIO to take”, and that after them, at least one of the political parties ceased to accept donations from Dr Wing. The particulars alleged that Dr Wing, prior to about 2015, had “enjoyed privileged access to, and met with, many of Australia’s most prominent politicians”, including 11 who were identified as four former Prime Ministers, other former ministers, a former Leader of the Opposition, as well as a serving Minister for Foreign Affairs and a serving Leader of the House of Representatives. The particulars baldly asserted, in par 57, that an inference should be drawn that in those meetings Dr Wing, *first*, did not disclose his connections to the CCP, CPPCC and UFWD, *secondly*, discussed and learned about the policies of the Australian Government and Opposition and, *thirdly*, attempted to influence the politicians that he met in relation to trade policy and/or in relation to the CCP’s objectives in respect of Australia so as to advance the interests of China, the UFWD and CCP in priority to the interests of Australia.
2. I should interpolate here that, despite naming nine former ministers and asserting that a highly adverse inference should be drawn against Dr Wing, the particulars did not suggest that any one of those former ministers, all of whom are alive and well known public figures, had provided the respondents with any information at all to support this suggested inference.
3. Next, the particulars asserted that in 2017 and 2018, the Australian Government and the Parliament had been considering proposed amendments to national security legislation, including a 2017 Bill, “by reason of, amongst other things, the Applicant’s activities in Australia and **ASIO’s concerns** about them, as outlined above” (emphasis added) (par 58) and that:

(59 ) **It is to be inferred that the Applicant:**

(a) made the Applicant’s Political Donations and the Applicant’s University Donations in order to establish for himself a reputation in Australia as a person able to make substantial donations to political and other causes;

(b) intended that, by making those donations and/or establishing such a reputation, he would be able to gain privileged access to politicians and businesspeople and university leaders; and

(c) made the Applicant’s Political Donations intending that the recipient political party would thereby be induced into favouring the policies and/or position of [China] and/or the CCP;

(d) intended to use that privileged access to attempt to gather information about the policies of the Australian government and opposition, and/or to influence Australian politicians and businesspeople and university leaders, so as to advance the interests of [China], UFWD and the CCP;

(e) **is an Agent of the CCP:**

(f) **has engaged in UFWD work within Australia** by making the Applicant’s Political and University Donations;

(g) **has engaged in Espionage on behalf of the CCP and/or the UFWD by, at least, attempting to influence the Australian political parties named in Schedule A in relation to Australian trade policy and/or in relation to the CCP Australian Objectives so as to advance the interests of [China], the UFWD and the CCP**; and

(h) **is loyal to, and serves the interests of, the CCP in priority to the interests of Australia**. (emphasis added)

(The Schedule A, referred to in par 59(g), identified the donations that Dr Wing or one or more of his companies made to political parties).

## Particulars as to Dr Wing’s and the variant imputations (f), (g) and (h)

1. Finally the particulars (in pars 60-80) sought to support the truth of Dr Wing’s and the variant imputations (f), (g) and (h). These particulars focused on Ms Yan and her alleged connection to Dr Wing. They alleged that Ms Yan, who was named in the matter complained of, was an Australian-Chinese businesswoman, “closely connected to the CCP as is apparent from, amongst other things, the fact that her father was an officer in the People’s Liberation Army” and closely connected to Chinese intelligence officials. She was married to an Australian career diplomat who had been an assistant secretary in the Australian Office of National Assessments and resided with him, when in Australia, although she was a citizen of the United States of America and, until her arrest and subsequent imprisonment for bribery in that nation, had resided principally in China, dividing her time between China, Australia and the United States. The particulars asserted that (in pars 61-63) Ms Yan and Dr Wing “were good friends” and she worked closely with him between 2007 and 2015 in arranging several conferences at his Imperial Springs Resort and as a business consultant, whom he engaged for remuneration to introduce him to her network of contacts in Australia.
2. The particulars next made assertions (in pars 64-68) about Ms Yan’s alleged activities in Australia. They alleged that she was one of two directors and shareholders of a Hong Kong company with Heidi Park (also known as Heidi Hong **Piao**) that operated from Australia. Between 2007 and 2015, Ms Yan allegedly had privileged access to international politicians and businesspeople in Australia and the United States and, pursuant to Dr Wing’s engagement of her services, she allegedly introduced him “to persons of influence in Australian and United States political and business circles” (none of whom, I interpolate, is named in the particulars).
3. The particulars then referred to a raid in October 2015 by ASIO and the Australian Federal Police on the Canberra apartment of Ms Yan and her husband that allegedly occurred “because it was believed … that Ms Yan was engaging in espionage on behalf of the CCP”. The particulars asserted that the raid resulted in the discovery and retrieval of highly classified Australian intelligence documents. Then par 69 alleged Ms Yan should be inferred to be an Agent of the CCP and or UFWD and to have engaged in espionage (as defined in par 14).
4. The particulars then recited a criminal **complaint** against Ms Yan, Ms Piao and others filed in October 2015 in the United States District Court for the Southern District of New York that alleged that both women had committed offences relating to the bribery, in contravention of the *United States Code,* of John **Ashe,** who was the Antiguan permanent representative to the United Nations and the President of the General Assembly from about August 2013. The particulars continued:

(72) The Complaint relevantly alleged that:

(a) Yan and Piao, together with other co-conspirators, corruptly conspired as part of a scheme to pay, and to facilitate payment of, bribes to a United Nations Official namely, Ashe;

(b) Yan and Piao arranged for a US$200,000 wire transfer to a US bank account belonging to Ashe in exchange for him attending, in his official capacity, a conference in Guangdong, Guangzhou, China on 17 November 2013 (**Guangzhou Conference**); and

(c) The wire transfer to Ashe’s bank account was made by a co-conspirator of Yan and Piao;

(d) **The Guangzhou Conference was organised by an “old friend” of Yan’s who was an extremely wealthy Chinese real estate developer only identified in the Complaint as co-conspirator “CC-3”**;

(e) Ashe received the US$200,000 by way of wire transfer **from one of CC-3’s companies**; and

(f) Ashe subsequently attended the Guangzhou Conference and delivered a speech

(**the Bribery Allegations**). (emphasis added)

1. The particulars then asserted (in pars 73-79) that the Kingold Group organised, or co-organised, the Guangzhou conference held at the Imperial Springs Resort in 2013, Dr Wing hosted that conference and Mr Ashe, as President of the General Assembly, attended and delivered a speech there. Ms Yan pleaded guilty to the bribery allegations on about 20 January 2016 and:

(76) At that hearing, Yan orally admitted in open court that:

(a) she, along with other people**, i.e. co-conspirators**, agreed to pay money to Ashe;

(b) numerous such payments (one of them being the $200,000) were made so that, in exchange, Ashe would:

(i) persuade officials in Antigua to enter into business contracts with foreign companies; and

(ii) use his position as the President of the General Assembly to assist Yan and “others”, **i.e. co-conspirators**, to promote business ventures from which they would profit. (emphasis added)

1. I again interpolate that nowhere in the particulars is there any allegation that Dr Wing had any connection to, or participation in, any activity in Antigua, whether for business or otherwise, or the actual name of the “one of CC-3’s companies” referred to in par 72(e).
2. Next the particulars asserted (in pars 77-78) that Ms Yan was corrupt and that on 29 July 2016 she was sentenced to 20 month’s imprisonment, fined USD12,500 and ordered to forfeit USD300,000.
3. Then, in breach of s 16(3)(a) of the *Parliamentary Privileges Act* 1987 (Cth), the particulars of truth asserted:

(79) On 22 May 2018, Andrew Hastie MP, Chair of the Parliamentary [Joint Committee on Intelligence and Security], revealed in a speech in the Federal Parliament that:

(a) he had travelled to the US with other members of the [Joint Committee on Intelligence and Security] with whom he had attended a meeting with a US intelligence agency controlled by the Department of Justice.

(b) In that meeting, "CC-3" was identified by the US intelligence personnel as the Applicant.

1. Relevantly, s 16(3)(a) provides:

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or **relying on the truth**, motive, intention or good faith of **anything forming part of those proceedings in Parliament**…(emphasis added)

1. Whatever Mr Hastie MP may have been told (leaving aside that, even if he had said this outside the House, it would have been hearsay and incapable of being evidence of the truth of the assertion), s 16(3)(a) prohibited the respondents from relying on it as a submission or particular of truth that Dr Wing was the person named as CC-3 in the bribery allegation. For that reason, par 79 must be struck out and I can have no regard to what it asserted. Except as asserted in par 80(a) (set out below), there is no other matter particularised to connect the identity of CC-3 with his being Dr Wing.
2. Finally, the particulars concluded:

**Conclusion in relation to Yan and the Bribery Allegations**

(80) **It is to be inferred from particulars (70) to (79):**

(a) that **“CC-3” is the Applicant and a co-conspirator of Yan and others in the corrupt scheme to bribe Ashe**;

(b) that **the** **Applicant must have known that Yan was corrupt**;

(c) that the Applicant **knowingly participated** in the payment of the $200,000 bribe to a US bank account in the name of Ashe;

(d) that **the Applicant did so in order to profit from Ashe’s activities on behalf of the co-conspirators in return for the bribe**.

(81) The Respondents reserve the right to provide further particulars following discovery and interrogatories. (emphasis added)

## The respondents’ submissions as to the variant imputations

1. The respondents argued that the variant imputations, that there were reasonable grounds to believe the facts asserted in each of Dr Wing’s imputations, constituted a good *Hore-Lacy* defence (based on *David Syme & Co Ltd v Hore-Lacy* (2000) 1 VR 667) to Dr Wing’s imputations. They contended that the variant imputations were not imputations of mere suspicion, but were of reasonable grounds to believe. Rather they submitted, the variant imputations meant that both parties’ sets of imputations did not differ in substance from one another. The respondents argued that this position was supported by the following authorities that had held that imputations to the effect of the variant imputations were available as meanings at common law to support a defence of justification in accordance with *Polly Peck (Holdings) Ltd v Trelford* [1986] QB 1000, namely what Steytler P (with whom McLure JA agreed) had held in *West Australian Newspapers Ltd v Elliot* (2008) 37 WAR 387 at 405 [49], 410 [70], in apparent reliance on what Cooke P had said in *Hyams v Peterson* [1991] 3 NZLR 648 at 655. That was because, the respondents submitted, other authorities, including *Lewis v Daily Telegraph Ltd* [1964] AC 234 and *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293, recognised that, as Steytler P had said in *Elliot* 37 WAR at 410 [70]:

for practical purposes there can be an imputation of suspicion so strong as to be indistinguishable from guilt and that it must always be a question of fact how far the defamatory meaning goes.

1. The respondents contended that in those circumstances, their defence of justification, based on the variant imputations, could not be characterised as so obviously untenable that it cannot possibly succeed, or as manifestly groundless, relying on *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125; and *Trkulja v Google LLC* (2018) 356 ALR 178.

## The variant imputations - consideration

1. In *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 at 151-152 [135], Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ said that intermediate appellate courts and trial judges in Australia should not depart from decisions of intermediate appellate courts in another jurisdiction on the interpretation of Commonwealth legislation or uniform national legislation or non-statutory law unless they are convinced that the interpretation is “plainly wrong”: see too *Australian Securities Commission v Marlborough Gold Mines Ltd* (1993) 177 CLR 485 at 492 per Mason CJ, Brennan, Dawson, Toohey and Gaudron JJ.
2. I am of opinion that *Elliot* 37 WAR 387 is plainly wrong and inconsistent with *Harrison* 149 CLR 293, as well as *George v Rockett* (1990) 170 CLR 104 and long established principle. In *Harrison* 149 CLR at 300-303, Mason J with whom Wilson J and, with a limited reservation, each of Gibbs CJ and Brennan J (at 295 and 303) agreed, held that a report that does no more than state that a person has been arrested and charged with an offence cannot convey to an ordinary reasonable reader, listener or viewer that the person is guilty of the offence. That was because the ordinary reasonable reader (of a newspaper) is mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he (or she) is guilty (see at 300). Mason J explained the principle as follows (149 CLR at 300-301):

Although he knows that many persons charged with a criminal offence are ultimately convicted, he is also aware that guilt or innocence is a question to be determined by a court, generally by a jury, and that not infrequently the person charged is acquitted.

In this situation the reader will view the plaintiff with suspicion, concluding that he is a person suspected by the police of having committed the offence and that they have ground for laying a charge against him. But **this does not warrant the conclusion that by reporting the fact of arrest and charge a newspaper is imputing that the person concerned is guilty.** A distinction needs to be drawn between the reader’s understanding of what the newspaper is saying and judgments or conclusions which he may reach as a result of his own beliefs and prejudices. It is one thing to say that a statement is capable of bearing an imputation defamatory of the plaintiff because the ordinary reasonable reader would understand it in that sense, drawing on his own knowledge and experience of human affairs in order to reach that result. **It is quite another thing to say that a statement is capable of bearing such an imputation merely because it excites in some readers a belief or prejudice from which they proceed to arrive at a conclusion unfavourable to the plaintiff. The defamatory quality of the published material is to be determined by the first, not by the second, proposition. Its importance for present purposes is that it focuses attention on what is conveyed by the published material in the mind of the ordinary reasonable reader**. (emphasis added)

1. Critically, Mason J said (149 CLR at 303):

… any publication which goes on to say or suggest that the charge was well founded, i.e., that the plaintiff was guilty, **carries the further imputation of guilt**. (emphasis added)

1. Mason J held (but Gibbs CJ and Brennan J reserved their opinion on this point) that the publication of a report of the arrest and charge would be understood by the ordinary reasonable reader to convey that the person laying the charge suspected, with reasonable cause, that the accused had committed the offence alleged (149 CLR at 302). Brennan J quoted the
well-known passage from Lord Devlin’s speech in *Lewis* [1964] AC 234 at 285 that Gleeson CJ, McHugh, Gummow and Heydon JJ applied in *Favell v Queensland Newspapers Pty Ltd* (2005) 221 ALR 186 at 190 [10]-[11] (and see also my reasons in *Adeang v The Australian Broadcasting Corporation* [2016] FCA 1200 at [14]-[58]). In *Favell* 221 ALR at 190
[10]-[11] Gleeson CJ, McHugh, Gummow and Heydon JJ said:

[10] In determining what reasonable persons could understand the words complained of to mean, the court must keep in mind the statement of Lord Reid in *Lewis v Daily Telegraph Ltd* ([1964] AC 234 at 258):

The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs.

[11] Lord Devlin pointed out, in *Lewis v Daily Telegraph Ltd* ([1964] AC 234 at 277), that whereas, for a lawyer, an implication in a text must be necessary as well as reasonable, ordinary readers draw implications much more freely, especially when they are derogatory. That is an important reminder for judges. In words apposite to the present case, his Lordship said ([1964] AC 234 at 285):

It is not … correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, **it is the broad impression conveyed by the libel that has to be considered** and not the meaning of each word under analysis. **A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that.** They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded. (emphasis added)

1. In that passage, Lord Devlin was not saying that because suspicion could impute guilt, and in practice very often did so, an imputation of suspicion was, or could convey, the same defamatory meaning as guilt. Indeed, his Lordship said in terms (*Lewis* [1964] AC at 284 and see too per Lord Reid at 260):

Equally, in my opinion, **it is wrong to say that**, if in truth the person spoken of never gave any cause for suspicion at all, he has no remedy because he was expressly exonerated of fraud. A man’s reputation can suffer if it can truly be said of him that although innocent he behaved in a suspicious way; **but it will suffer much more if it is said that he is not innocent**. (emphasis added)

1. As a matter of ordinary experience, there is a substantive distinction between a suspicion, however well founded, and a fact, as Lord Devlin held in *Lewis* [1964] AC at 284-285 and as *Harrison* 149 CLR 293 decided as its *ratio decidendi*. An imputation of suspicion necessarily falls short of an imputation of guilt. That is because each of suspicion and belief is a state of mind, while guilt is a state of fact: *George* 170 CLR at 112 per Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ. And, they held that the facts that can reasonably ground a suspicion, may be quite insufficient to ground a belief (170 CLR at 115). Their Honours approved Lord Devlin’s advice in *Hussien v Chong Fook Kam* [1970] AC 942 at 948 that suspicion “in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove’”. The High Court said (170 CLR at 116):

The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: **the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture**. (emphasis added)

1. In my opinion, what Cooke P said when giving the reasons of himself, Richardson and Hardie Boys JJ in *Hyams* [1991] 3 NZLR at 655, does not support what Steytler P drew from it. To the contrary, Cooke P was applying the settled law that a publisher has to choose his, her or its words carefully if the publisher wants to avoid elevating an allegation of suspicion into a statement of guilt. And he held that the question of whether the matter complained conveys one or other imputation depended on what meaning it conveys to the ordinary reasonable reader (listener or viewer). Cooke P said there:

It is also plain that to say there are grounds for suspecting a person of fraud or other discreditable conducts **is, although defamatory, often different from and less serious than an assertion of his guilt**: *Lewis v Daily Telegraph Ltd* [1964] AC 234; *Truth (NZ) Ltd v Bowles* [1966] NZLR 303; *Broadcasting Corporation of New Zealand v Crush* [1988] 2 NZLR 234, 239-240; *Mirror Newspapers Ltd v Harrison* (1982) 42 ALR 487. **These judgments also recognise that for practical purposes there can be an imputation of suspicion so strong as to be indistinguishable from guilt; it must always be a question of fact how far the defamatory meaning goes**. (emphasis added)

1. In relying on *Lewis* [1964] AC 234 and *Harrison* 149 CLR 293, Cooke P was not saying that an imputation of suspicion can ever be indistinguishable from guilt; rather he was saying, albeit perhaps a little loosely, that the question of what the matter complained of actually conveys, can require the Court to decide if a suspicion is so strongly expressed that the publication is really saying that the plaintiff is guilty. The second sentence of what Cooke P said, quoted above, has to be read with his first sentence. His sentence first dealt with the **capacity** of the matter complained of to convey an imputation of a particular strength or degree – namely, suspicion or guilt. Cooke P’s second sentence discussed “how far the defamatory meaning goes” – that is, whether the imputation actually conveyed is suspicion (however strongly based or held) or guilt.
2. If (contrary to my understanding) Cooke P was saying what Steytler P held in *Elliot* 37 WAR at 410 [70], with respect, both judgments are plainly wrong. They are in the teeth of both *Lewis* [1964] AC 234 and *Harrison* 149 CLR 293, the *ratio decidendi* of both of which is that an imputation of suspicion is **never** equivalent to the more serious imputation of guilt. Both the House of Lords and the High Court dealt with the **capacity** of a matter complained of to convey an imputation of guilt by embellishing a report of police laying a criminal charge in a court against an individual following his arrest. They explained that a publisher can easily cross the line between the two levels of meaning by what the matter complained of, as published, conveys to the ordinary reasonable reader, listener or viewer.
3. But there is nothing in *Lewis* [1964] AC 234 or *Harrison* 149 CLR 293 that supports the approach taken in *Elliot* 37 WAR 387 that conflated the preliminary issue as to the **capacity** of a publication to convey an imputation of either suspicion or guilt, with the ultimate issue of what meaning in fact it conveys. The second issue, namely what the publication actually conveys to the ordinary reasonable reader, listener or viewer, the House of Lords and High Court both held depended on the judge or jury (as the tribunal of fact) assessing whether the way in which the publication is expressed actually does impute either guilt or suspicion. But, if it is found to impute guilt, that is because the tribunal of fact has decided that the natural and ordinary meaning of the matter complained of does not stop at suspicion (however strongly it is held or expressed) but crosses a substantive line of meaning to assert guilt as a fact.
4. Once a court finds on the preliminary issue that a matter complained of is **capable** of conveying an imputation of guilt, then the publisher can defend that imputation by, *first*, arguing that, in fact, it conveyed or meant no more than an imputation of suspicion (or in this case, reasonable belief) and not guilt (in other words the plaintiff failed to prove that the ordinary reasonable reader actually did not read it as conveying guilt), or *secondly*, arguing that the imputation of guilt is true. But, if the plaintiff succeeds in persuading the tribunal of fact that the matter complained did actually convey the imputation of guilt, the defendant cannot defend it as true by proving only that the plaintiff was only suspected or believed (however reasonably or strongly) of being guilty: *Lewis* [1964] AC at 286. Indeed, s 25 of the *Defamation Act* makes clear that the statutory defence of justification is directed to establishing the truth of the imputations that the plaintiff alleges.
5. One only has to consider the prefatory words of the variant imputations, namely “there are reasonable grounds to believe that” to perceive that the meaning that those words convey is of belief, or state of mind, not the existence of a fact. As Mason J said in *Harrison* 149 CLR at 300-301, a person who faces trial on a criminal charge (of whom it can be said that there are reasonable grounds to believe or suspect that the person is guilty) can still be (and not infrequently will be) acquitted. Likewise, proof of guilt is different from proof of there being reasonable grounds to believe (or suspect) guilt. Lord Reid said in *Lewis* [1964] AC at 260:

Before leaving this part of the case I must notice an argument to the effect that you can only justify a libel that the plaintiffs have so conducted their affairs as to give rise to suspicion of fraud, or as to give rise to an inquiry whether there has been fraud, by proving that they have acted fraudulently. Then it is said that if that is so there can be no difference between an allegation of suspicious conduct and an allegation of guilt. **To my mind, there is a great difference between saying that a man has behaved in a suspicious manner and saying that he is guilty of an offence,** and I am not convinced that you can only justify the former statement by proving guilt. (emphasis added)

1. The decisions in *Polly Peck* [1986] QB 1000 and *Hore-Lacy* 1 VR 667 do not lead to any different conclusion. In *Polly Peck* [1986] QB at 1023G and 1032B-D, O’Connor LJ, with whom Robert Goff and Nourse LJJ agreed, said that where a plaintiff selected part of a larger publication and alleged that this part conveyed a defamatory imputation, the defendant could rely on the whole of its publication and defend the action by pleading that a different meaning was conveyed by the whole and that that meaning was true. Thus, he said ([1986] QB at
1032B-D):

In cases where the plaintiff **selects words from a publication**, pleads that in their natural and ordinary meaning the words are defamatory of him, and pleads the meanings which he asserts they bear by way of false innuendo, **the defendant is entitled to look at the whole publication in order to aver that in their context the words bear a meaning different from that alleged by the plaintiff**. The defendant is entitled to plead that in that meaning the words are true and to give particulars of the facts and matters upon which he relies in support of his plea…

Where a publication contains two or more separate and distinct defamatory statements, the plaintiff is entitled to select one for complaint, and **the defendant is not entitled to assert the truth of the others by way of justification**. (emphasis added)

1. O’Connor LJ said that where the matter complained of made several defamatory allegations that had a common sting, the defendant could plead that it conveyed that sting and justify it as an answer to all the allegations with that common sting ([1986] QB at 1032D-E).
2. Thus, if the sting is guilt, an attempt to justify suspicion or belief of guilt is outside the common sting. To see the fallacy of the reasoning in *Elliot* 37 WAR 387 one only has to reverse the position of the parties, by assuming that the publication alleged, and the defendant proved, that the matter complained of conveyed an imputation of guilt. In such a case, the plaintiff could not recover because the publication also alleged that he or she was suspected or believed to be guilty. That is because, as *Lewis* [1964] AC 234, *Harrison* 149 CLR 293 and *George* 170 CLR 104 all establish, each state of mind, namely suspicion and belief on reasonable grounds is substantively different from one another and also, crucially, distinct from the existence of the actual facts suspected or believed.
3. At common law and under s 8 of the *Defamation Act*, a person has a single cause of action for defamation in relation to the publication of defamatory matter of and concerning him or her, regardless of how many meanings or imputations that matter carries or conveys.
4. Where a party pleads that the matter complained of conveys in its natural and ordinary meaning an imputation defamatory of the plaintiff, such an imputation is confusingly described as a “false innuendo”. Each of Dr Wing’s imputations is a “false innuendo”. A false innuendo has the purposes of specifying the natural and ordinary meaning for which the pleader contends and of narrowing the issues for trial, namely: what meanings the party or parties contend that the matter complained of conveys: cf *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519 at 532 [18]–[19] per Brennan CJ and McHugh J, 579 [139(2)] per Kirby J.
5. In *Hore-Lacy* 1 VR at 689 [63], Charles JA, with whom Ormiston JA agreed at 675 [22], 676 [24], expressly departed from *Polly Peck* [1986] QB 1000, by requiring the defendant to plead the specific imputation that it alleged the matter complained of conveyed (and, if it wished, to justify it) so that “at trial neither the plaintiff nor the defendants should be permitted to raise (nor should the defendants be permitted to justify) **a meaning substantially different from**, or more injurious than, the meanings alleged by the plaintiff” (emphasis added).
6. In other words, Ormiston and Charles JJA held that a defendant could assert a differently nuanced meaning or imputation from that asserted by the plaintiff, but not one that differs in substance (whether more or less injurious or serious in its defamatory character). That outcome, respected the common law position in which, the jury (or judge) could find for a plaintiff on the basis of a natural and ordinary meaning which was not one pleaded or alleged by the plaintiff, provided that this departure from pleadings did not create unfairness for the defendant (1 VR at 688 [58]). This is because the alternate meaning as found amounts, in substance, to another way of phrasing or encapsulating in words the same defamatory sting. However, it cannot be a substantively different sting from the plaintiff’s pleaded imputation: see too *Gutnick v Dow Jones & Co Inc (No 4)* (2004) 9 VR 369 at 372-374 [8]-[13] per Bongiorno J, whom Beach J followed in *Cunliffe v Woods* [2012] VSC 254 at [10]-[12] and cf *Hore-Lacy v Cleary* (2007) 18 VR 562 at 574-575 [50]-[54] where Ashley JA, with whom Neave and Redlich JJA agreed, at 584 [103] and [104], referred with apparent approval to *Gutnick* *(No 4)* 9 VR at 373 [11]-[12] on the substantive difference or gulf between an imputation of guilt and one of suspicion, belief or other state of mind. Indeed, as Lord Hughes JSC, with whom Baroness Hale of Richmond PSC, Lord Burnett of Maldon CJ, Lord Hodge JSC and Lord Mance agreed, said in *R v Lane* [2018] 1 WLR 3647 at 3655 [22]:

it is plain beyond argument that the expression “has reasonable grounds for suspicion” cannot mean “actually suspects”.”

1. In *Mickelberg v Hay* [2006] WASC 285 at [51]-[54], Hasluck J discussed the way in which the Full Court of the Supreme Court of Western Australia in *Nationwide News Pty Ltd v Moodie* (2003) 28 WAR 314 had dealt with *Polly Peck* [1986] QB 1000 and *Hore-Lacy* 1 VR 667. Anderson J, Stetlyer J and McLure J each found that a defendant could plead and justify meanings that were “**less** injurious and not substantively different from” (emphasis added) those pleaded in the statement of claim: *Moodie* 28 WAR at 320 [19]-[20] per Anderson J, 328 [58] per Stetlyer J at 335-336 [94] and per McLure J at [59].
2. Although, the Full Court in *Moodie* 28 WAR 314 seemed to think it was following *Hore-Lacy* 1 VR 667, in my opinion it adopted a different and, with respect, wrong test by allowing the defendant to plead the truth of an imputation of a lesser degree of seriousness, as a complete defence to the plaintiff’s claim. It is one thing to plead a defence of partial justification, as Levine J explained in *Whelan v John Fairfax Publications Pty Ltd* (2002) 56 NSWLR 89, and another to plead *Polly Peck* defence. However, Levine J also allowed the defendant there to plead a *Polly Peck* imputation of a lesser degree of seriousness (56 NSWLR at 97 [39], 100 [51]-[52]) **because of the uncertain** **state of the law**, but his Honour did not analyse what *Hore-Lacy* 1 VR 667 had held. Levine J noted that the Court of Appeal of the Supreme Court of Queensland had held in *Robinson v Laws* [2003] 1 Qd R 81 that a *Polly Peck* defence was not available under the then Queensland law (56 NSWLR at 99[44]).
3. In any event, if an imputation is less injurious than the one that the plaintiff alleges, it must be substantially different from the one it is less serious than. They just are not the same. The above review of the uncertain scope of a *Polly Peck* defence in Australia reflects what Kirby J lamented in *Chakravarti* 193 CLR at 583 [144], namely, it “shows what a muddle an over-nice attention to the pleadings of imputations has produced for defamation laws and practice in Australia. It is extremely convoluted and unacceptably confusing”.
4. Yet in the 20 years since the High Court, in *Chakravarti* 193 CLR 519, discussed *Polly Peck* [1986] QB 1000, without settling its scope (since the question did not arise on the facts in that appeal), Australian courts and litigants have struggled to know what the test is for determining what a defendant can plead as a defence of justification to imputations that the plaintiff particularises. Brennan CJ and McHugh J held that *Polly Peck* [1986] QB 1000 was wrong in principle (193 CLR at 529 [11]-[13]). Gaudron and Gummow JJ considered that a defendant could plead an alternative imputation or meaning (193 CLR at 544-545 [56]-[57]) and that such a meaning should be viewed like those that the plaintiff pleaded as “no more than a statement of the case to be made at trial”. They said (193 CLR at 546 [60]):

As a general rule, there will be no disadvantage in allowing a plaintiff to rely on meanings which are comprehended in, or are less injurious than the meaning pleaded in his or her statement of claim. So, too, there will generally be no disadvantage in permitting reliance on a meaning which is simply a variant of the meaning pleaded**. On the other hand, there may be disadvantage if a plaintiff is allowed to rely on a substantially different meaning or, even, a meaning which focuses on some different factual basis.** **Particularly is that so if the defendant has pleaded justification or, as in this case, justification of an alternative meaning.** However, the question whether disadvantage will or may result is one to be answered having regard to all the circumstances of the case, including the material which is said to be defamatory and the issues in the trial, and not simply by reference to the pleadings. (emphasis added)

1. Gaudron and Gummow JJ there encapsulated a similar test to that which Brennan CJ and McHugh J discussed for deciding whether the plaintiff could be allowed at trial to rely on a different nuance of meaning, including a less serious meaning than that pleaded (see 193 CLR at 533 [22], 534 [24]). They said that the test is to ask “whether it is prejudicial, embarrassing or unfair to the defendant” to allow the plaintiff to amend to plead a, or rely at trial on an unpleaded, new meaning different from that which the plaintiff had previously pleaded (and see per Kirby J at 580-581 [139(4)]).
2. Thus, all five justices expressed their views about the way in which a plaintiff may or may not be allowed to rely on a different or lesser meaning at trial than what he or she had earlier pleaded. However, each of the joint reasons accepted that, where a party had pleaded or asserted that the matter complained of conveyed a specified meaning (or imputation) “ordinarily… [the party will] be held to the particulars or those parts of the pleadings which specify the case to be made if **departure would occasion delay or disadvantage to the other side**” (193 CLR at 545 [58], see too at 533-534 [22]-[24] and 580-581 [139(4)] per Kirby J). Gaudron and Gummow JJ noted that it may well create a disadvantage for a defendant who had pleaded justification, if the plaintiff were subsequently allowed to rely on a less serious and substantively different meaning.
3. I am of opinion that the variant imputations are substantively less serious than Dr Wing’s imputations (including the extrinsic imputation). The respondents will be entitled to argue at trial not only that the matter complained of did not convey to the ordinary reasonable viewer Dr Wing’s imputations, but also that it conveyed only, or no more than, the variant imputations. Dr Wing will lose the proceeding if he fails to prove that any of his pleaded imputations was conveyed to the ordinary reasonable viewer, and so, there will be no remaining issue about whether the variant imputations were true. However, it would occasion delay and disadvantage to Dr Wing to allow the respondents to seek to prove that the variant imputations were true if he proved that any of his pleaded imputations was in fact conveyed by the program: *Chakravati* 193 CLR at 533 [22], 534 [24], 544-545 [56]-[57], 580-581 [139(4)].
4. Adherents of a religious faith believe in its deity just as much as atheists believe that there is no such deity. Both beliefs are ordinarily reasonable, can be strongly held and can exist together. But, if one were able to know the facts, either the theists or the atheists would be wrong. Belief is not the same, or substantially the same as fact, nor is suspicion: *George* 170 CLR at 116.

## Conclusion

1. For the reasons I have given, the variant imputations differ in substance from Dr Wing’s imputations because an imputation of belief, however reasonably based, is not capable of conveying the same or substantially the same as, one of fact.
2. An application to strike out all or part of a pleading under r 16.21(1)(d) or (e) of the *Federal Court Rules* on the ground that it is likely to cause prejudice, embarrassment or delay in the proceeding or it fails to disclose, relevantly, a reasonable defence, can only be granted in the clearest of cases: *Agar v Hyde* (2000) 201 CLR 552 at 575-576 [56]-[60]; *Trkulja v Google LLC* (2018) 356 ALR 178 at 183 [21] per Kiefel CJ, Bell, Keane, Nettle and Gordon JJ.
3. I have approached my consideration of the present issue on this basis. Because I am the docket judge and thus, the trial judge, I am of opinion that it is both desirable and necessary to determine, in advance, the purely legal question of whether proof of the truth of the variant imputations at trial provides a reasonable defence to Dr Wing’s imputations. For the reasons I have given, there is no reasonable basis to hold that proof the truth of the variant imputations at trial would be a defence to any of Dr Wing’s imputations and that that defence is likely to cause prejudice to Dr Wing, embarrassment and delay if not struck out.
4. Accordingly, the variant imputations must be struck out.

## The sufficiency of the particulars – the respondents’ submissions

1. The respondents argued that, even if the variant imputations were struck out, the particulars in the amended defence identified the basis on which they will seek to prove the truth of Dr Wing’s imputations. They contended that Dr Wing also had now received the outlines of evidence of their only three lay witnesses, being Mr McKenzie, Chris Uhlmann and Sashka Koloff and reports of four (being “most of the”) expert witnesses whom the respondents intend to call. (I note there is no order, at present, that allows the respondents to file any further expert or other lay evidence). They submitted that the particulars now linked or supported the plea of truth for each of Dr Wing’s imputations in the manner identified in the table below that they included in their written submissions:



1. The respondents argued that the purpose of particulars was to indicate, not the outer limits of what may be proved, but rather, the topics on which evidence may be led. And, they contended, Dr Wing could understand the case against him based on the particulars in light of the outlines and expert reports that the respondents had served. They submitted, however, that there may be more material revealed once Dr Wing gave, what they termed “proper discovery”, and they alleged (without tendering any evidence of this) that he had not complied with his obligations and had “provided only cursory if not derisory discovery”.
2. They argued that the matter complained of itself explained that the nature of the activities that Dr Wing’s imputations distilled were notoriously opaque. They submitted that those activities could be proved by inferences to be drawn at trial from what will be mostly indirect evidence of Dr Wing’s involvement. However, they contended that the evidentiary material that they had served and the particulars would enable Dr Wing to know how the respondents would seek to prove their justification defence.

## The sufficiency of the particulars – Consideration

1. Relevantly, rr 16.41 and 16.43 provide a supplement to the requirement of r 16.02(1)(d) that a pleading must “state the material facts on which a party relies that are necessary to give the opposing party fair notice of the case to be made against that party at trial, but not evidence by which the material facts are to be proved”. Thus rr 16.41 and 16.43 provide:

**Division 16.4 - Particulars**

**16.41 General**

 (1)  A party must state in a pleading, or in a document filed and served with the pleading, the necessary particulars of each claim, defence or other matter pleaded by the party.

Note: See rule 16.45.

(2)  Nothing in rules 16.42 to 16.45is intended to limit subrule (1).

Note 1: The object of particulars is to limit the generality of the pleadings by:

(a) informing an opposing party of the nature of the case the party has to meet; and

(b) preventing an opposing party being taken by surprise at the trial; and

(c) enabling the opposing party to collect whatever evidence is necessary and available.

Note 2: The function of particulars is not to fill a gap in a pleading by providing the material facts that the pleading must contain.

Note 3: A party does not plead to the opposite party’s particulars.

Note 4: Particulars should, if they are necessary, be contained in the pleading but they may be separately stated if sought by the opposite party or ordered by the Court.

**16.43 Conditions of mind**

(1)  A party who pleads a condition of mind must state in the pleading particulars of the facts on which the party relies.

(2)  If a party pleads that another party ought to have known something, the party must give particulars of the facts and circumstances from which the other party ought to have acquired the knowledge.

 (3)  In this rule:

***condition of mind***, for a party, means:

(a)  knowledge; and

(b)  any disorder or disability of the party’s mind; and

(c)  any fraudulent intention of the party.

1. In *Dare v Pulham* (1982) 148 CLR 658 at 664, Murphy, Wilson, Brennan, Deane and Dawson JJ held that pleadings and particulars had, among others, the following functions, namely:
* to furnish a statement of each parties’ case that should be sufficiently clear to allow the other party a fair opportunity to meet it (citing *Gould and Birbeck and Bacon v Mount Oxide Mines Ltd (In liq)* (1916) 22 CLR 490 at 517 per Isaacs and Rich JJ); and
* to define the issues for decision and thereby enable determination at the trial of the relevance and admissibility of evidence.
1. A defendant must specify the particulars of truth to support a plea of justification with the same precision as in an indictment. In *Wootton v Sievier* [1913] 3 KB 499 at 503, Kennedy LJ, giving his and Cozens-Hardy MR’s reasons, said (and see also *Crosby v Kelly* [2013] FCA 1343 at [35]-[36]):

In every case in which the defence raises an imputation of misconduct against him, a plaintiff ought to be enabled to go to trial with knowledge not merely of the general case he has to meet, but **also of the acts which it is alleged that he has committed and upon which the defendant intends to rely as justifying the imputation**. (emphasis added)

1. The reason for this principle is that a person who publishes a serious allegation that he or she seeks to defend as true, must know, at the time of publication, the facts that justify the charge that the publisher makes about the plaintiff in it. In *Johnson v Miller* (1937) 59 CLR 467 at 489-490 (see too: *John L. Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508 at
519-520 per Mason CJ, Deane and Dawson JJ and cf: *Hamra v The Queen* (2017) 260 CLR 479 at 488-489 [18]-[20], per Kiefel CJ, Bell, Keane, Nettle and Edelman JJ), Dixon J stated the principle for ascertaining whether a criminal charge is properly particularised, saying:

a defendant is entitled to be apprised not only of the legal nature of the offence with which he is charged **but also of the particular act, matter or thing alleged as the foundation of the charge. The court hearing a complaint or information for an offence must have before it a means of identifying with the matter or transaction alleged in the document the matter or transaction appearing in evidence**. (emphasis added)

1. It is an abuse of process to plead justification in order to use discovery to elicit such facts from the plaintiff: *Zierenberg v Labouchere* [1893] 2 QB 183 at 186 per Lord Esher MR with whom Bowen LJ agreed, 190 per Kay LJ. Lord Esher MR explained that mere assertions of the truth of a charge or imputation in general terms will not amount to sufficient particulars of justification. He said ([1893] 2 QB at 187):

The libel is in effect that the plaintiffs are “charity swindlers and impostors and the home is a monstrous swindle.” That is a general statement, and he is asked for particulars, that is, for the instances on which he relies to justify that statement, and he says: “The instances are that they appropriated for their own purposes monies received for, or earned by, the home, and they caused statements to appear in the annual balance-sheets of the home of cash supplies by the female plaintiff, and loans made by the male plaintiff, which were not, in fact, supplied or lent out of their own monies, but in reality out of the monies of the home.” Is that answer sufficient? **No doubt it states the way in which the defendant means to justify; but it is almost as general as the statement in the alleged libel. It does not give the instances, nor does it state the times or occasions on which the swindles are alleged to have been done, nor does it give the names of the persons whose money is alleged to have been misappropriated.** In old days a plea that did not give such particulars of justification would have been bad, and at the present time particulars that fail in this respect are insufficient. (emphasis added)

1. As I noted in *Crosby* [2013] FCA 1343 at [36], this principle is also reflected in the general principle that the pleadings and particulars must identify with sufficient clarity the case the parties have to meet and that conduct, such as fraud, must be pleaded specifically and with particularity: cf *Banque Commerciale SA (En liq) v Akhil Holdings Ltd* (1990) 169 CLR 279 at 285-286 per Mason CJ and Gaudron J, 290 per Brennan J. I agree with what Wigney J said in further explaining the application of this principle in *Rush v Nationwide News Pty Ltd* [2018] FCA 357 at [52]-[54] and [172]-[174].
2. These principles are applicable to assessing the sufficiency of the respondents’ particulars of justification in the proposed amended defence that they seek leave to file. They argued that the amended defence is supported by proposed evidence in the outlines of their three lay witnesses and their expert reports. Of course, the expert reports were not available when the matters complained of were first published. This context, however, reveals that the particulars in pars 1-80 are based on all the evidence that the respondents are now able to marshal in support of their pleas of justification.
3. As appears in [16] above, the respondents gave their own, bespoke definition of the word “espionage” in par 14 of their particulars for the purposes of the allegations that they made. However, Dr Wing’s imputation (a) used the word “espionage” in its natural and ordinary meaning, namely:
* the practice of spying (or of employing spies) (*Oxford English Dictionary Online*)
* the practice of spying on others (*Macquarie Dictionary*: sense 1)
1. The dictionaries define spying as “is to act as a spy or to make secret or stealthy observations”. And a spy is someone who spies upon, or watches, someone secretly or who is employed by a government to obtain information or intelligence relating to the military or naval or governmental affairs of one or more other countries, or to collect intelligence of any other kind.
2. It may have been that par 14(a) would be unobjectionable were it not accompanied by the alternative in (b), which is not a natural or ordinary meaning of “espionage”. That is because par 14(b) used a concept of “conduct which achieves or is intended to achieve, or … make possible, influencing and/or subverting and/or otherwise interfering with, covertly and/or deceptively (in the sense that the Agent’s role as such Agent is not disclosed), the policies of foreign governments and/or the political and democratic processes of foreign countries”. That concept is equally capable of applying to a dual citizen or foreigner who exercises his or her right publicly to criticise, or lobby to change, government policy. Indeed, apart from the adjective “foreign” and the words “covertly and/or deceptively (in the sense that the Agent’s role as such Agent is not disclosed)” the concept in par 14(b) is descriptive of the activities of the Opposition, other minority parties and independents in our parliamentary system, as well as those of the media and any member of the population who seeks to influence or change a government’s policy. The bespoke definition of espionage included a meaning that went well beyond its ordinary meaning of intelligence gathering.
3. Particular 14 is embarrassing. It does not describe espionage as pleaded in Dr Wing’s imputation (a). Rather it seeks to expand that well known everyday word to encompass vague and imprecise concepts so that the activity can also be what the respondents call “espionage” because the person has not disclosed his or her connection to China. Such alleged conduct may be characterised as objectionable, but it is not within the natural and ordinary meaning of espionage. Nor are the activities alleged in pars 15 to 17 of the particulars, such as the making of donations, offers, provision of trips or access to persons of influence in China. Rather that conduct is typical of a lobbyist. And, the fact that the conduct is alleged to encourage the donee or beneficiary of the largesse to favour China’s interests, reinforces a conclusion that the supposed “Agent” is acting overtly as a lobbyist for China as opposed to acting covertly as a spy, gathering intelligence.
4. The respondents argued that the ordinary reasonable viewer would have understood “espionage” in the sense defined in par 14 because of the way in which the respondents expressed the matter complained of. However, although I do not consider that the respondents can justify an imputation of “espionage”, used in its natural and ordinary meaning, by redefining that word in their particulars and then use that bespoke sense to justify the imputation as redefined, particularly in par 14(b), it is not necessary to decide this question. The particulars have more fundamental flaws.
5. The allegations conveyed in Dr Wing’s imputations and the extrinsic imputation are very serious. Thus, imputation (a) asserts that Dr Wing is, in effect, a traitor to Australia because he spied on it for China and the CCP.
6. Yet, the particulars did not identify one occasion on which Dr Wing is alleged to have engaged in a specific act of espionage or what he did on any specific occasion to amount to espionage (in its natural and ordinary meaning as conveyed in the imputations). The high point of the espionage particulars appears in pars 53 to 57. Despite asserting there that Dr Wing had met with 11 present and past prominent Australian politicians, the respondents have pleaded not one word of what was said, done or gleaned in those meetings. Instead, their particulars suggest that, because Dr Wing made large donations to political parties and ASIO had suspicions about him, one can draw an inference that, somehow, he must have spied on, or betrayed, Australia and advanced some interest of the Chinese State at each of those meetings.
7. There is no basis to draw such an inference. That is because the particulars reveal that the respondents have no information about what happened in any of those meetings. They have simply asserted that, somehow, just because the meetings occurred (and ASIO had suspicions), an inference should be drawn against him that he concealed his connections to the CCP (and other entities), and, attempted to influence each politician “so as to advance the interests of China … in priority to the interests of Australia”. Perhaps one could infer that the participants in the meetings exchanged pleasantries but, beyond that lies only speculation, since the respondents have not served any outline of evidence of any witness present at, or particularised anything that occurred in, any of those meetings. Those particulars are embarrassing because they are conclusory and have no content or substance.
8. In par 31, the respondents asserted that Dr Wing knew, or “is to be inferred” as knowing, the facts, matters and circumstances in the sweeping and imprecise particulars in pars 1 to 28, simply because of his alleged background, business acumen and general knowledge. That allegation as to his state of mind does not comply with r 16.43(2) or the principles in *Dare* 148 CLR at 664 and those summarised in *Rush* [2018] FCA 357, because it fails to identify any facts, matters or circumstances from which Dr Wing ought to have acquired the supposed knowledge of the various alleged roles of the CCP, UFWD and CPPCC set out in pars 1-28, or how Dr Wing engaged in espionage simply because he “knew or is to be inferred” to have known some or all of what pars 1-28 asserted. Those paragraphs cover a vast range of matters and are expressed in vague and general terms. Thus, par 28 sets out what it defined as “the CCP Australian objectives”, which included aspects of China’s publicly advocated foreign policy (as in par 28(b), (c) and (f)) apparently, and surprisingly, also included the practice of Falungong” (par 28(d)) as well as other asserted objectives. The link that the particulars attempt to draw between Dr Wing and his knowledge of the array of matters alleged in pars 1-28 is that he was born in China, is a successful and wealthy businessman, media proprietor, and philanthropist, who owned a resort and Guangzhou based business conglomerate and is a naturalised Australian citizen who resides mostly in China. That is less a link and more a thread that is hanging in the wind.
9. Next, the particulars asserted in pars 32 and 34 that Dr Wing was a member of the standing Committee of the Guangdong Tianhe District CPPCC and the National Committee of the CPPCC without identifying any facts, matters or circumstances to support that allegation. Then, par 35 asserted an inference, that Dr Wing carried out the work of the UFWD and CCP in seeking to implement the united front strategy in Australia, based on the earlier particulars in pars 18-22 about the CPPCC. In other words pars 32 and 34 and pars 18-22, like much of the balance of the particulars, are conclusory, circular and unrevealing of any facts, matters and circumstances to support the drawing of an inference to connect Dr Wing to the CPPCC: *Zierenberg* [1893] 2 QB at 187 (see [80] above).
10. Next par 37 referred to five conferences that Dr Wing allegedly organised or in which he took part “that further the interests of the CCP, the CPPCC and the UFWD”, but again identified no facts or matters to support that bald assertion. The same kind of conclusory assertions appeared in pars 38-39, about Dr Wing having a role in associations that had “close links” or “deep connections” to the CCP or UFWD, before par 40 asserted that it was to be inferred from his leadership roles in those associations “that at all material times he was engaged in CCP united front activities including seeking to implement the United Front Strategy in Australia”.
11. I am of opinion that the particulars to this point do not fulfil the respondents’ obligations to specify the facts, matters and circumstances from which Dr Wing ought to have acquired the alleged knowledge as required by r 16.43(2). The particulars in many instances make bare assertions of a connection or association that a body had with what they alleged was an organ of the Chinese State, which pursued some agenda of that State and that, somehow, Dr Wing, was or must have been, aware of both that connection or association and that it did advance the asserted agenda. But, having read and re-read the particulars, in light of the respondents’ submissions, they do not give a meaningful indication of the respondents’ case or the facts and circumstances with any particularity so as to enable Dr Wing to have a fair, or any real, opportunity to meet it: rr 16.41 and 16.43; *Dare* 148 CLR at 664; *Zierenberg* [1893] 2 QB at 187; *Johnson* 59 CLR at 488-489.
12. Another example of the substantive inadequacy of the particulars appeared in par 42. There, for the first time, the particulars asserted that Dr Wing was a member of the CCP. That was a critical allegation in Dr Wing’s imputation (a). But the respondents never specified, anywhere in the 80 paragraphs, including par 53, any fact or circumstance on which that allegation was based. Given that justification of Dr Wing’s imputation (a) requires that the respondents establish that he was, indeed, a member of the CCP, he is entitled to be apprised of the facts and circumstances on which they rely to assert those facts, such as when, where and how he acquired the membership or what demonstrated that he had it.
13. Similarly par 44, that I have set out at [24] above, asserted in the most general terms that Dr Wing attended a meeting with unnamed “senior members of the UFWD” for the alleged purpose of having discussions. Yet, there is not even an allegation that there were any discussions at this meeting or more relevantly, what was the substance of what was said that is in any way relevant to establishing that Dr Wing had acted in a way to betray Australia or advance China’s interests for the purpose of justifying Dr Wing’s imputations (a), (d) and (e) or the extrinsic imputation.
14. Next par 47 asserted that the reason that President Xi met Dr Wing and unnamed others, was because of an inference that he had “deep connections to the CCP and/or the CPPCC and/or the UFWD as set out above”. Given that the respondents alleged that Dr Wing is a very rich businessman with large commercial interests in China, the asserted inference is speculative and, like much of the particulars, is based on circular inferential reasoning that begins with an assertion that, in effect, is the very conclusion later stated. That circularity commenced with the allegation that Dr Wing was a member of, or deeply implicated in, the work of the CPPCC and UFWD. The particulars then asserted that he, somehow, must also have been a member of the CCP and that these conclusions supposedly explain all, or many, of the other assertions covering much of his adult lifetime of 40 or 50 years, as Lord Esher MR observed in *Zierenberg* [1893] 2 QB at 187.
15. While such conclusions could be drawn from properly framed particulars, these are not adequate to the task. Dr Wing is entitled to have the case he has to meet specified with some appropriate precision. Instead, the respondents stated in par 49 that the inference should be drawn that Dr Wing “deliberately intended to conceal his connections to the CCP, the CPPCC and the UFWD, so as to secretly advance their interests by engaging in the activities set out below”. This paragraph is a non-sequitur. The particulars asserted that Dr Wing launched a newspaper in China, chaired or participated in all the associations alleged, in 2014 met the former President Hu and Premier Wen and held large meetings at his resort. All of those activities appear to have been public and open, as was his meeting with President Xi (at an unspecified time in 2017, which may have been after the first publication of the matters complained of). And, the earlier particulars asserted that these activities were bases on which it could be inferred that he was a member, or associate of, or connected to, the CCP, CPPCC and or UFWD. Yet par 49 made the opposite allegation, namely, that he had deliberately concealed those alleged connections.
16. The preceding particulars do not give Dr Wing a meaningful statement of the respondents’ case that is sufficiently clear to allow him a fair opportunity to meet it. The respondents cannot elide the earlier lack of any sufficient pleading or particularisation of the facts and circumstances that could support the conclusion that he had, in fact, something to conceal, by asserting that he deliberately concealed his connections as they have done in par 49.
17. In par 53, the respondents alleged that ASIO had concerns about Dr Wing and in par 58 that the Government and the Parliament also had concerns. At best, those particulars, like the earlier ones, can be seen as relevant to support the variant imputations that I have struck out. Even assuming that the respondents proved at trial that ASIO had the alleged concerns, that would not be capable of establishing any more than ASIO had conveyed its suspicions about Dr Wing, as opposed to proving that Dr Wing had actually done what ASIO suspected, which is what proper particulars of truth must provide: *Harrison* 149 CLR 293. The inferences asserted in par 59 (c) to (h) are equally speculative.
18. It is one thing to point to facts that, objectively, enable an inference to be drawn when considered with other facts or evidence or the totality of the evidence. Indeed, in a circumstantial case, all of the evidence must be weighed together in order for the tribunal of fact to be satisfied whether or not the case has been proved: *R v Hillier* (2007) 228 CLR 618 at 638 [48] per Gummow, Hayne and Crennan JJ. But it is not reasonable to allege, as the respondents repeatedly have, that the Court will, or should, infer that, for example, in par 57, Dr Wing had conversations with 11 named, living persons in which he said or did something to support what is alleged, when the respondents do not, and cannot, give particulars of any facts or circumstances that occurred in any of those meetings.

## Dr Wing’s imputations (f), (g), and (h) and particulars 60-80

1. The final series of allegations in pars 60-80 purport to particularise the plea of justification of Dr Wing’s imputations (f), (g) and (h). The respondents argued that they had provided sufficient particulars in pars 60-80 because of the repetition of the Complaint and Ms Yan’s guilty plea, coupled with the allegation that Dr Wing was CC-3. They contended that those gave him a sufficiently clear statement of the respondents’ case to allow him a fair opportunity to meet it. During oral argument, the respondents asserted that the particulars could not be struck out at this stage because Dr Wing had yet to give discovery
2. I reject that argument. There is no properly particularised basis for the serious allegations against Dr Wing in par 80. There is no articulated basis to connect Dr Wing to the allegations in par 76 (see [33] above) that he or his companies had any interest, or plans to invest, in Antigua or through, or assisted by, Mr Ashe’s largesse or influence as President of the General Assembly. Nor do the particulars identify the company of CC-3 (let alone the date and transaction) referred to in par 72(e).
3. The Complaint and Ms Yan’s plea are hearsay, generalised allegations that do not provide a basis on which Dr Wing has a sufficiently clear statement of the case alleged against him. This defect is particularly serious because Dr Wing’s imputations (f), (g) and (h) assert that he is guilty of criminal conduct – infiltrating the Australian Government on behalf of the CCP, paying a bribe to Mr Ashe and being knowingly concerned in a corrupt scheme to bribe Mr Ashe.
4. The allegations made in pars 60-80 against Ms Yan and her husband do not identify how Dr Wing had any knowledge or involvement in either of Ms Yan’s or her husband’s alleged wrongdoing. The allegations in pars 72 and 80 are conclusory. They do not identify any fact, matter or circumstance relating to any transaction, meeting, statement or interaction in which Dr Wing had any, let alone, specific, involvement. Thus par 72(c) asserted that **a** co-conspirator of Ms Yan and Ms Piao made the wire transfer to Mr Ashe’s bank account. Then par 72(d) asserted that CC-3, was a co-conspirator. But, par 72(e) did not suggest that CC-3, made the impugned wire transfer, only that it came at an unspecified time from an unspecified company of CC-3’s. Paragraph 80 asserted that Dr Wing was CC-3 and a co-conspirator with Ms Yan and others in a corrupt scheme to bribe Mr Ashe.
5. The particulars do not specify in any way how Dr Wing, whom the particulars also asserted was a billionaire who owned and operated a business conglomerate, even knew that Mr Ashe was to be paid any amount or why he was to be paid. There is no indication in the particulars of whether Dr Wing, or some company he controlled knew about, let alone made or agreed to, that payment, what the payment or its source was, when it was made or how, or even if, one of his companies was involved in it far less, that Dr Wing knew all of the essential matters to establish that the payment was to be made and what its purpose was.
6. The striking feature of the particulars is the absence of any allegation about what Dr Wing did, when he did it or how he knew anything about any of the matters alleged. Moreover, the particulars of Dr Wing’s alleged state of mind in par 80 do not comply with r 16.43. Perhaps this is why par 80 then asserted, without any basis, that Dr Wing “must have known that [Ms] Yan was corrupt” and that he somehow “knowingly participated” in the payment of the USD200,000 bribe.
7. However, if he were to be accused of having “knowingly participated” in that payment, the respondents had to particularise facts and circumstances to establish that Dr Wing, himself, had knowledge of each of the essential matters that went to make out that the payment occurred and that it was a bribe: *Yorke v Lucas* (1985) 158 CLR 661 at 667 per Mason ACJ, Wilson, Deane and Dawson JJ; *Giorgianni v The Queen* (1985) 156 CLR 473.
8. The particulars in pars 60-80 are not reasonably capable of supporting the respondents’ plea of truth to any of Dr Wing’s imputations (f), (g) and (h): *Zierenberg* [1893] 2 QB 183; *Wootton* [1983] 3 KB at 503; *Johnson* 59 CLR at 489-490; *Yorke* 158 CLR at 667. They are embarrassing and must be struck out.

## Conclusion

1. For these reasons, I am of opinion that particulars 1-81 that the respondents seek to rely on, were they given leave to file their amended defence, cannot reasonably support their plea of truth in respect of Dr Wing’s imputations. They do not disclose any reasonable defence or basis for such a defence and are embarrassing. They must also be struck out as a whole.
2. Since, the defences of justification in pars 13.1 and 13.2 of the filed defence (which the amended defence repeats) are unsupported by any particulars (because the respondents relied only on those in the amended defence) those defences must also be struck out.
3. Accordingly, I will order that the defences of justification and the particulars in support of them in the current defence be struck out. I refuse the respondents leave to file the amended defence. The respondents must pay Dr Wing’s costs of the interlocutory and oral applications.

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| I certify that the preceding one hundred and twelve (112) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rares. |

Associate:

Dated: 31 August 2018

# ANNEXURE “A”

## Transcript

## Power and Influence - Monday 5 June 2017

CHRIS UHLMANN: For six months, the world has watched the unfolding story of how the Russian government and its agents sought to subvert the US election, and possibly helped deliver the presidency to Donald Trump.

Extraordinary though that story is, it is not unique. America is not the only democracy to have been targeted in this way, and Russia is not the only country accused of such subversion.

Just ten days ago, the head of Australia's peak intelligence agency ASIO warned that espionage and foreign interference are occurring here on an unprecedented scale, with the potential to cause serious harm to this nation's sovereignty, it's security and, he added, the integrity of our political system.

Duncan Lewis did not name the key suspect. But we can tonight - the Chinese Communist Party.

A joint investigation by a team of journalists from 4 Corners and Fairfax Media has exposed a concerted campaign by the Chinese government and its proxies to infiltrate the Australian political process to promote its own interests.

Its targets include our universities, local student and community groups, the Chinese language media, and - most disturbing of all - some of our nation's leading politicians.

This investigation reveals that business leaders allied to Beijing are using millions in political donations to the major parties to buy access and influence, and in some cases to push policies that may be contrary to Australia's national interests.

Nick McKenzie has the story.

NICK MCKENZIE, REPORTER: In the early hours of a cold morning in October 2015, a team of counter espionage officers breaks into a Canberra flat.

Their target is a Chinese born woman, who is married to a former high ranking Australian intelligence official.

ASIO suspects the woman is involved in spying for the Chinese Government.

PROF. RORY MEDCALF, NATIONAL SECURITY COLLEGE, ANU: For such an action to be taken you would assume that it would need the authorization of the Attorney General, it would need a warrant, and it would need essentially a decision involving many parts of the Australian National Security Community.

So it would reflect deep and real concern about Chinese espionage in Australia.

NICK MCKENZIE, REPORTER: The woman's name is Sheri Yan … a socialite with connections to the senior levels of government, here and abroad.

Did you think she might be a Chinese intelligence operative of some sort?

PROF. JOHN FITZGERALD, THE FORD FOUNDATION, BEIJING, 2008 - 2013: I understand that Sheri Yan is very closely connected with some of the most powerful and influential families and networks in China.

Once you know that you don't need to know much more.

NICK MCKENZIE: Yan's husband, Roger Uren, was until 2001 Assistant Secretary at Australia's Office of National Assessments, the agency which provides secret intelligence briefings to the Prime Minister.

During the raid, ASIO seized computers and documents.

They discovered classified Australian government files on the work of Chinese intelligence.

Uren is being investigated for the removal of these files, which may have been illegal.

PROF. RORY MEDCALF: This material is normally held very tightly held.

Presumably it relies on intelligence sources and methods, which can't be compromised.

It also could potentially reveal some of the deepest intelligence and analytical judgements of either Australia or indeed of Australia's allies and partners.

So it's material that has to be protected at all costs.

NICK MCKENZIE: In the weeks before the raid, ASIO analysts had been tracking links between political donors in Australia and the Chinese Communist Party.

The donations provided access to the most powerful politicians in the land.

ASIO chief Duncan Lewis was so worried, he organised meetings with the Directors of the Liberal and National parties, as well as the Federal Secretary of the ALP, to warn them that the donors could compromise the major parties.

NICK MCKENZIE: How unusual is it for a directed general of ASIO to take such a step?

PROF. RORY MEDCALF: Oh it's certainly unusual.

If that is indeed the case, it would reflect very real, very real concern.

NICK MCKENZIE: When he briefed the party officials, Lewis said the donors being examined by ASIO were breaking no laws.

But he warned their strong connections to the Chinese Communist Party meant their donations might come with strings attached.

ASIO briefed then Prime Minister Tony Abbott.

PETER JENNINGS, EXECUTIVE DIRECTOR, AUSTRALIAN STRATEGIC POLICY INSTITUTE: I think that this type of, frankly, naked influence buying, is something, which is damaging to Australia's political system.

I would far rather have a regime in place whereby we, the tax payer, pay for the cost of our elections than relying on parties to get donations from foreign sources, where ever they may come from.

Notably those foreign sources are primarily linked to Chinese business.

NICK MCKENZIE: ASIO singled out two billionaire donors with especially close ties to the Chinese Communist Party.

The first was enigmatic property developer Dr Chau Chak Wing, a man who keeps a low profile except when it comes to his big donations.

PETER MATTIS, FORMER CIA CHINA EXPERT: He sort of appeared out of nowhere.

There's very little in his biography that predates his appearance and his entry onto the Australian and China business scene.

NICK MCKENZIE, REPORTER: Dr Chau's extraordinary generosity has given him access to Australia's political elite.

Dr Chau donated $20 million dollars to build a Frank Gehry designed building at the University of Technology Sydney, which was opened by the Governor General in 2015.

At the unveiling of the Dr Chau Chak Wing building, the billionaire politely posed with the famous architect.

Not content with having a building named after him, Dr Chau splashed $70 million dollars on Australia's most expensive home in 2015.

A six story mega mansion he bought from James Packer.

Dr Chau's money allowed him to regularly rub shoulders with the great and good of Australian politics.

He's donated more than $4 million to the major parties over the past decade.

The question ASIO has been probing is what he wants from his donations?

PROF. RORY MEDCALF: We don't know whether donations are somehow driven, or centrally encouraged, by the Chinese Communist Party, or whether in fact you've got enthusiastic individuals freelancing to make donations that they think will resonate well when they report back to China, or if they report back to China that these donations were made, and that there is a change taking place in the Australian political discourse.

NICK MCKENZIE: Dr Chau is an Australian citizen.

Back in his homeland China, he was also a member of a communist party advisory group known as a people's political consultative conference or CPPCC.

This group carries out the work of an opaque lobbying arm of the Party called the United Front Work Department.

PROF. RORY MEDCALF: We have to assume that individuals like that have really deep, serious connections to the Chinese Communist Party.

Even if they're not receiving any kind of direction, they would feel some sense of obligation, or indeed some desire to make the right impression on the powers that be in China, to demonstrate that they're being good members of the party, that they're pursuing the party's interests.

PETER MATTIS: In a sense, you could say in Australia that with wealth comes responsibility, and that responsibility is to respond to the party when they ask you to do a favour for them.

GEOFF RABY, AUSTRALIAN AMBASSADOR TO CHINA, 2007 - 2011: Well I think it's mainly to do with their own business interests in Australia.

Also, it's very much in the nature of the way Chinese do business, making gifts.

And most of these business developers and sorts of people who are doing this, they crave the prestige and the status of being photographed standing next to politicians, on both sides of politics.

So, it's about their influence and status and image.

Which they see as helping their business first and foremost, giving their family respect.

It's very much a traditional Chinese way of operating.

NICK MCKENZIE: Four Corners has learned ASIO's interest in Dr Chau arose partly from his association with a woman described as an 'old friend - the socialite and lobbyist Sheri Yan.

It was Sheri Yan who ASIO suspected of spying and whose Canberra apartment the agency raided.

PETER MATTIS: Sheri Yan, or Yan Shiwei, is an Australian-Chinese businesswoman who's made her livelihood out of building connections between China and the outside world and acting as a go-between between foreign businessmen, foreign government officials who are trying to get things done in China, or find their way among the bureaucratic and political land mines that are there.

NICK MCKENZIE: Dr Chau used Sheri Yan as a consultant, somebody able to open up the right doors.

GEOFF RABY: She's a very active person.

Many people come through the place, through Beijing.

She's a, you know, dynamic, active person, speaks both languages perfectly, is charming, and comes from a well-connected background, which I don't know what those connections are, I only understand that's the case.

PETER MATTIS: It appears her father was a PLA officer at one point in the very early days, so she's connected to the core of the CCP in a sense.

No one can really explain where her original money, original connections, her original ways of opening the doors in China comes from.

NICK MCKENZIE: Sheri Yan divided her time between New York, Beijing and Canberra, and moved with ease among the A-listers.

Her contacts included high flying businessmen and Australia's former New York consul general Phil Scanlan.

She was also close to the President of the United Nations General Assembly, John Ashe.

PETER MATTIS, FORMER CIA CHINA EXPERT: Someone who knows how to work that landscape is useful not only for getting things done, not only for injecting Chinese perspectives into it, but also for being able to say, "Here are the players. Here are the people who are important.

"Here are their personal foibles."

NICK MCKENZIE, REPORTER: As Sheri Yan relentlessly networked, her husband Roger Uren was often proudly by her side.

Uren's previous work as a high ranking Australian intelligence official with top security clearance meant he was trusted in Canberra.

But not everyone trusted Sheri Yan.

PROF. JOHN FITZGERALD: In times, past I was advised to stay well clear of Sheri Yan.

NICK MCKENZIE: Why?

PROF. JOHN FITZGERALD: I'm not entirely sure why.

I was advised by an old friend in Australia's security establishment.

NICK MCKENZIE: To stay clear of Sheri Yan?

PROF. JOHN FITZGERALD: To stay clear of Sheri Yan.

NICK MCKENZIE: In October 2015, the Sheri Yan story took a sudden and dramatic twist in New York.

PREET BHARARA, NEW YORK ATTORNEY GENERAL: Today, together with our law enforcement partners, we expose yet another wide-ranging corruption scheme, one that is simultaneously local and global and it is centred at the United Nations.

NICK MCKENZIE: At the same time her Canberra apartment was being raided, Sheri Yan was arrested in the US, accused of bribing the UN general assembly president.

Yan's arrest stunned her associates, including former Australian ambassador Geoff Raby.

GEOFF RABY: Well I was obviously very surprised. I couldn't believe it when I heard it. But she had been out of Beijing largely for a couple of years.

JOURNALIST: Can I just ask if you are aware of Sheri Yin? She was arrested in the US last week for bribery allegations in the UN.

She is a bit of a mystery, it seems that she lives here in Canberra, or at least may be a dual citizen, but no one is quite sure.

Is it a consular case?

JULIE BISHOP, MINISTER FOR FOREIGN AFFAIRS: I have been briefed on the matter, it is a matter that the Department of Foreign Affairs and Trade is focussing on but I'm not going to go into individual cases at this point, but it is a matter upon which I've been briefed.

JOURNALIST: Can you say if she's an Australian-Chinese?

JULIE BISHOP, MINISTER FOR FOREIGN AFFAIRS: I'll leave that sort of detail to our consular staff.

It's a fairly complex issue, I don't want to compromise any of the investigations which are underway.

Thank you.

NICK MCKENZIE, REPORTER: One of the events that led to Sheri Yan's arrest unfolded at the luxury Imperial Springs Resort, which is owned by none other than the Australian political donor Dr Chau Chak Wing.

The FBI alleged Yan bribed the UN general assembly President to speak at the resort, at a conference hosted by Dr Chau.

A sealed indictment from a New York Court against Sheri Yan refers to Dr Chau using a codename - CC3.

Sheri Yan was alleged to have told the UN President

SHERI YAN: [CC3's] office emailed me with the invitation.

I will ask $200,000 for this trip...

NICK MCKENZIE: A draft invitation sent to the United Nations president and allegedly approved by Dr Chau stated his desire to make the UN chief his "sincere friend in Guangdong Province"

DRAFT INVITATION: And your friend here has the pleasure to offer you a permanent convention venue for the UN meetings...

NICK MCKENZIE: The UN president's bank account was then wired $200,000 by one of Dr Chau's companies.

Under US bribery law it was illegal for Ashe as UN official to receive this payment.

There is no suggestions Dr Chau knew it was illegal.

PETER MATTIS: At least some of the money that was moving through Sheri Yan, or that she was facilitating, came from him.

It doesn't mean that there was necessarily anything untoward about it, but just the fact of large amounts of money being moved or paid to people because of introductions or the activities of Sheri Yan make it, make it somewhat suspect.

NICK MCKENZIE: Sheri Yan pleaded guilty to bribery charges and was jailed last year.

Dr Chau has never been charged with any offence and denies any wrongdoing.

ASIO's interest in Sheri Yan is just one of many suspected foreign interference and intelligence cases being probed by Australia's agencies, and which lead back to Beijing.

PROF. RORY MEDCALF: it's fair to say that agencies like ASIO are really quite alive and alert to these issues.

The challenge for them is that their mandate is essentially to monitor, and to report to government what's happening.

They don't have a mandate, it's not clear who within the Australian system has a mandate to act on this information.

NICK MCKENZIE: In Washington, concerns about the Chinese Communist Party interfering in Australian politics is growing.

There, senior officials believe Australia is open to compromise, including through foreign donations.

MIKE MCCAUL, CHAIRMAN, HOMELAND SECURITY COMMITTEE: Well, you know, in the United States we prohibit that expressly.

I think there's a reason for that.

We don't want the influence of foreign money in our elections and foreign governments to influence our elections.

I think that's a wise policy.

Quite frankly, I was a bit surprised that Australia does allow foreign contributions, and if you look at the numbers, which I was privy to, a lot of these donations are coming from China.

China has a very strong influence in the region.

They want to influence Australia.

They want a stronger presence in Australia, and what better way to do that then to influence political figures through, through foreign contributions.

NICK MCKENZIE: Republican congressman Mike McCaul is chairman of the Homeland Security Committee.

In the 1990s while a prosecutor at the US Justice Department, he investigated a scandal known as 'China-gate'.

Chinese spies funnelled donations into the Clinton presidential campaign.

MIKE MCCAUL: It's almost like out of a spy novel.

I mean, it's the most interesting case I ever prosecuted.

These are very dangerous, clandestine figures in Chinese intelligence and there was a concerted effort to influence our elections.

NICK MCKENZIE: McCaul warns Australia is badly exposed, unless our laws are changed.

MIKE MCCAUL: The critical issue here is allowing a foreign government to influence your elections.

I think at a minimum, closing off foreign contributions from a foreign government to influence elections, and in this case, China is the biggest offender.

NICK MCKENZIE: Chinese Premier Li Keqiang's visit here in March came as Australia grapples with a shifting world order post the election of Donald Trump, and an emboldened Chinese Communist Party no longer content to hide its strength and bide its time.

In Australia's diplomatic and security community, debate is raging about why and to what extent the one-party state is seeking influence in Australian institutions.

In Canberra, local students were bussed in by the Chinese Embassy, to welcome Premier Li

NICK MCKENZIE: The young patriots drown out those there to protest against the Chinese government.

Lupin Lu is President of the Chinese students' association at the University of Canberra. She organised 200 of her classmates for the rally.

LUPIN LU, PRESIDENT, CHINESE STUDENTS AND SCHOLARS ASSOCIATION, UC: The Chinese Embassy, they support us or sponsor us by providing flags, food.

NICK MCKENZIE: The flags?

LUPIN LU: Yes.

NICK MCKENZIE: The food?

LUPIN LU: Transportation.

NICK MCKENZIE: Transportation.

LUPIN LU: And legal help as well, lawyer.

NICK MCKENZIE: For the event, for the day?

LUPIN LU: Yes, because there is politics involved.

Sometimes there may be conflict with the police.

NICK MCKENZIE: The Chinese government and its proxies monitor Chinese student associations at most Australian universities.

This oversight has a dark side.

Students organising anti-communist party protests may be reported to the Chinese Embassy.

LUPIN LU: I guess as the president of Chinese Students Scholars Association and as a Chinese, I would do this for the safety of other members, other students.

NICK MCKENZIE: You would tell the embassy that some students were organising a human rights protest, for instance?

LUPIN LU: Yes. I would definitely, just to keep all the students safe and to do it for China as well.

NICK MCKENZIE: Brisbane student and democracy activist Anthony Chang believes he is being monitored by the Chinese Government.

He fled China three years ago after he was arrested and interrogated for putting up posters supporting independence for Taiwan.

ANTHONY CHANG, STUDENT ACTIVIST: When they took me to the police station, I was still frightened.

I had my hands over my head, and I said, "I will absolutely obey you, just make sure you don't shoot me".

As you can see, I was scared of them.

NICK MCKENZIE: He didn't expect to come to the attention of the Chinese authorities, here too.

But after he spoke in Brisbane at this pro Hong Kong democracy rally, his parents back in China were visited by state security officials, who demanded their son cease his Australian activism.

ANTHONY CHANG: My parents, are very worried.

They are worried that it might affect them, for example their work.

They could lose their job.

They could be jail because of my activities.

NICK MCKENZIE: One of the fiercest critics of communist party interference in Australia is Sydney academic Dr Feng Chongyi.

While Premier Li was being feted in Australia, Dr Feng was back in China to meet with human rights lawyers - work he knew would draw attention.

DR FENG CHONGYI: We know that it's an open secret that we are, our telephone is tapped, we are followed everywhere but that is a routine that we have to accept if we want to work in China.

NICK MCKENZIE, REPORTER: But Dr Feng did not expect what happened next.

At his hotel in the city of Kunming, he was tracked down by agents from the Ministry of State Security.

Over the next 10 days he was subjected to intensive videotaped questioning … for up to 6 hours a day.

Many of the questions involved his activities in Sydney.

NICK MCKENZIE: They wanted to know about your democracy activism in Sydney.

DR FENG CHONGYI: In Sydney, yes that's right.

NICK MCKENZIE: They wanted to know about your associates in Sydney?

DR FENG CHONGYI: That's right.

NICK MCKENZIE: They knew about your family in Sydney?

DR FENG CHONGYI: That's right.

NICK MCKENZIE: They knew specific details about names?

DR FENG CHONGYI: Actually, for my family members they, they got everything.

They got everything.

NICK MCKENZIE: Dr Feng was accused of endangering state security.

Only after the intervention of the Turnbull government was he told he was finally free to return home to Sydney.

He believes he was targeted by the Chinese Communist Party as a warning to others in Australia not to challenge the party.

DR FENG CHONGYI, ASSOCIATE PROFESSOR, CHINA STUDIES, UTS: there are several messages they are sending on.

One is directly related to my work, that the academics better stay away from sensitive issues or sensitive topics, otherwise they can get you into deep trouble, detention or other punishment.

NICK MCKENZIE: While Dr Feng was trapped in China, back in Australia, Premier Li was the guest of honour at a Chinese community event held at the Sydney Town Hall.

Sitting at the head table opposite Premier Li was Dr Chau Chak Wing.

A couple of seats over from him was another Chinese billionaire - Huang Xiangmo.

Like Dr Chau, Mr Huang has come to the attention of ASIO.

Mr Huang is the second donor named by ASIO in its secret warning to the Coalition and Labor about the danger of Chinese Communist Party interference in Australian politics.

PROF. JOHN FITZGERALD: When we look at other business people contributing say to Australian political parties, we can go back through the company records and establish where that money came from.

In the case of Mr Huang it's not quite so clear.

NICK MCKENZIE: Mr Huang's rise is a classic rags to riches story.

From a poor rural family, he built his billion-dollar fortune as a property developer in provincial China.

Mr Huang arrived in Australia in 2011 in near total obscurity.

But that didn't last for long.

NICK MCKENZIE: Mr Huang, and his property development firm Yuhu, began donating millions of dollars to health and education initiatives, earning the praise of politicians from both parties

ANDREW ROBB, MINISTER FOR TRADE AND INVESTMENT, 2013 - 2016: I thought I'd just say a couple of words about Mr Huang.

I think it's important to get a sense of the man.

He is a man of many dimensions from what I've already been able to determine.

Thoughtful, he's a very thoughtful cerebral fellow.

He's a man who thinks, about life and about how we can improve it.

He's a man comfortable in his own skin, he's a man with a sense of humour which is a good thing.

He's a visionary.

NICK MCKENZIE: Mr Huang became a major political donor too.

Getting to know Tony Abbott - he gave $770,000 to the Liberals before the 2013 election.

A big chunk of that went to Julie Bishop's home state of Western Australia.

Mr Huang and his associates also gave to the Trade Minister Andrew Robb …. $100,000 to his campaign fundraising vehicle, as Robb signed off on the China Australia Free Trade deal.

And $1.8 million went towards an Australia China Research Institute. Mr Huang became its chairman, its director - former Foreign Minister Bob Carr.

PROF. JOHN FITZGERALD: First, he's seeking to establish his position, his status in the Chinese Australian community.

Secondly, I think he's trying to secure some standing for the Chinese Australian community with various Australian governments at state federal level and third through those community organisations, to secure outcomes that are favourable to the Chinese State Policy.

NICK MCKENZIE: In the right company, Mr Huang makes no secret of his devotion to the Chinese Communist Party.

At an event celebrating 66 years of one party rule in China, Mr Huang took to the stage

HAUGN XIANGMO: We overseas Chinese unswervingly support the Chinese Government's position to defend our nations sovereignty and territorial integrity.

We support the development of the motherland always, and take on an important role in building One Belt One Road.

NICK MCKENZIE: Mr Huang oversees a communist party aligned Council which supports Beijing's territorial claims over Taiwan, Hong Kong and the South China Sea.

It's called the Australian Council for the Promotion of the Peaceful Reunification of China, and Mr Huang is President.

DR FENG CHONGYI: That means he's a key member supported by the Chinese authorities including the Embassy or the consulate here.

That as I said is the most influential organisation or association in the Chinese diaspora community in Australia.

Whoever took the position as the head of that organisation means he can be identified as the leader, the most influential figure in the Chinese community.

Enjoys very high status.

NICK MCKENZIE: Mr Huang's Council is dedicated to pushing the Communist Party's interests in China and abroad.

PROF. JOHN FITZGERALD: Well every government of course has an interest in promoting itself abroad to extending its soft power.

I guess what's different about China is the way in which its run through these clandestine operations.

It's just not out there and open.

Secondly, it's really not out to win an argument, it's out to silence dissent and other countries generally don't operate that way.

They expect to win an argument on its strengths, not to silence all opposition.

The way the Chinese Government or Party through the United Front Department and the Overseas Chinese Bureau operates is effectively to control and silence dissent.

NICK MCKENZIE: Mr Huang chaperoned the top Communist Party official in charge of Overseas Chinese, and who was accompanying Premier Li on his Australian visit.

QUI YUANPING: Of course, as we say, "a mother always worries about her traveling child." To all our overseas Chinese, including students, you will always be an important member of the global Chinese family.

NICK MCKENZIE: Mr Huang has made something of an artform of juggling his Chinese Communist Party ties with his cultivation of Australian political figures.

DR FENG CHONGYI: Obviously, he has two identities.

One of course is a businessman, quite a smart businessman.

Then again, the other identity he's trying to be a political figure.

He does have his own political ambition.

NICK MCKENZIE: One of Mr Huang's advisors on the peaceful reunification Council is NSW Labor politician Ernest Wong.

A close ally and friend, the pair travelled to Taiwan together on Reunification Council business.

In November 2012, Mr Huang and two other reunification council members, donated half a million dollars to the NSW ALP.

Six months later, the ALP put Ernest Wong into the NSW Upper House seat formerly held by Labor's Eric Roozendaal.

Roozendaal went on to get a job with Mr Huang.

PROF. JOHN FITZGERALD: Well Mr Huang is very generous to all parties.

He could hardly be called partisan; he contributes to the Liberal Party as well as to the Labor Party.

He's also a very generous employer of former party operatives.

NICK MCKENZIE: Another of Mr Huang's political allies, and a fellow member of the Peaceful Reunification Council, is active ALP identity Simon Zhou.

Zhou was given the last place on the Labor party's senate ticket at last year's election, a month after two of his business associates donated $60,000 to the ALP.

Mr Huang was at the announcement.

HUANG XIUANGMO: As China's power keeps rising, the status of overseas Chinese is also rising.

Now Overseas Chinese realise that they need to make their voices heard in politics.

To safe guard Chinese interests, and let Australian society pay more attention to the Chinese.

This is a very good thing."

NICK MCKENZIE: Within Labor, Sam Dastyari was Mr Huang's key contact.

As the Party's NSW general secretary, and then as a Senator, Dastyari has welcomed hundreds of thousands of dollars in donations from Mr Huang.

SAM DASTYARI, LABOR SENATOR: A demonstration MR Huang of how highly you're respected, how much all of us respect you and the work you do.

NICK MCKENZIE: An incident that occurred in June 2016 leaves little doubt that Mr Huang expects something in return for his donations.

In the lead up to the federal election, he promised the ALP 400 thousand dollars in donations.

But then, at the National Press Club, Labor's defence spokesman Stephen Conroy criticised Beijing over its land grabs in the South China Sea, flagging the ALP would take a more aggressive approach in the disputed territory.

STEPHEN CONROY, LABOR DEFENCE SPOKESMAN: When it comes to regional security challenges like the south china sea the Turnbull government are sitting behind ambiguous language while refusing to be upfront with the Australian people.

By contrast, we believe our defence force should be able to conduct freedom of navigation operations consistent with international law.

NICK MCKENZIE: After this speech, Mr Huang reacted decisively to this apparent attack on one of the Chinese Communist Party's core policies.

Four Corners has learned, that Mr Huang called the ALP and told them that because of Conroy's comments, he was cancelling his promised $400,000 donation.

PROF. RORY MEDCALF: It's precisely the kind of example of economic inducement being turned into economic leverage or coercion.

In other words, it's a classic example of a benefit being provided, but then withheld as a way of punishment, and as a way of influencing Australian policy independence.

NICK MCKENZIE: Just one day after Stephen Conroy's comments, Mr Huang appeared at a press conference alongside his Labor mate.

Contradicting his Party's position, Senator Dastyari told the Chinese media that Australia shouldn't meddle with China's activities in the South China Sea.

When his comments were reported several weeks later, he tried to explain.

JOURNALIST: Why did you hold that press conference and make those comments on the south china sea?

SAM DASTYARI: This is a separate matter and I want to get to this.

I support the Labor Party position on the south china sea.

I support the Labor Party position. I support an international rules based system with international norms, where the rule of law is applied.

Now that has been my position.

That remains my position, that is the Labor Party position on the issue of the South China Sea.

JOURNALIST: Then why did you say that it's a matter for china?

SAM DASTYARI, LABOR SENATOR: Now, while I can't be held directly to words there were held at a press conference that I don't have a transcription of in front of me, now let me clear, I support the labor party position on this issue, no no no no no, Andrew, Andrew.

JOURNALIST: Why did you hold a press conference then?

NICK MCKENZIE: Amid the media storm, the press seized on Mr Huang's previous payment of $5000 to Senator Dastyari to pay an ALP legal bill.

Another Chinese donor had given him $1600 for a travel bill.

The senator fell on his sword.

SAM DASTYARI: So I am going to be making a short statement, and I won't be taking any questions.

This has been a difficult week and this afternoon I have made a difficult decision.

Today I spoke to my leader Bill Shorten and offered my resignation from the front bench, which he accepted.

NICK MCKENZIE: Last year Mr Huang sought more political help.

He had applied for Australian citizenship, but his application had stalled.

It was being secretly scrutinised by ASIO.

Mr Huang began lobbying his political contacts for assistance.

Four Corners has learned of one politician who agreed to help.

Labor Senator Sam Dastyari.

NICK MCKENZIE: Four corners has learned that after multiple requests from the billionaire donor, Dastyari's office called the immigration department to question the progress of Mr Huang's citizenship application.

In the lead up to the election, Dastyari's office made four separate approaches to the Department.

It's understood Senator Dastyari made two of these calls himself.

NICK MCKENZIE: In a statement, Mr Huang said he took strong objection to any suggestion he had linked his donations to any foreign policy outcome.

Mr Huang's citizenship application is still being reviewed by ASIO.

The signing of the China Australia Free Trade Agreement cemented our vital relationship with the world's new economic super power.

As Trade Minister, Andrew Robb spent years negotiating the deal.

His position brought him in contact with another Chinese billionaire - Ye Cheng, head of the Landbridge Group.

NICK MCKENZIE: Landbridge recently spent $506million to secure a 99-year lease for the Port of Darwin, a hugely controversial deal in light of the company's close ties to the Chinese Communist Party.

PETER JENNINGS: I think Chinese companies understand that if they can actually help to satisfy the strategic and political objectives of the communist party that will insure their prosperity.

It will give them access to cheap finance and it's something, which makes the senior leadership of those firms more prominent and successful in the context of Beijing politics.

NICK MCKENZIE: Before Last year's election, Andrew Robb stepped down from Government, and his final senior position as Australia's Special Envoy on Trade.

A few months later it was revealed he'd been appointed as an economic advisor to Landbridge.

JOURNALIST: And what about your own role at Landbridge because the Prime Minister said that he hadn't been notified?

ANDREW ROBB, FORMER TRADE MINSTER: No why should I? I'm sorry I've now left politics.

JOURNALIST: Well we've now got the Australian Defence Association and the opposition are jumping up and down.

Questions about ministerial conduct and that sort of thing.

ANDREW ROBB: Again, they're implying that I will act unethically and where's the evidence?

I mean, I've been a senior cabinet Minister, I know the responsibilities that I've got.

I've got no intention of breaching those responsibilities.

NICK MCKENZIE: Andrew Robb's confidential consulting deal can now be revealed.

Robb was on the Landbridge payroll from July 1 - the day before the election.

From that date, he's be paid $73,000 a month, or $880,000 a year, plus expenses.

Andrew Robb declined an interview, but told Four Corners he has acted in line with his obligations as former Trade Minister.

PETER JENNINGS: I respect as the Prime Minister said, Mr Robb has a right to go out and earn a living once he's left parliament but he was a cabinet minister for many years and I think now providing advice to the leadership of the Landbridge Group was possibly a step too far too quickly in terms of his departure from politics.

NICK MCKENZIE: Questions around how Australia and its leaders manage the relationship with China are central to the nation's most important foreign policy debate.

Australia must maintain its growing ties to its most important economic partner.

But we also must confront the fact that some of the interests and practices of the authoritarian one party state conflict with our own.

PROF. RORY MEDCALF: There's an awareness of a problem, but the agencies themselves don't have the mandate or the wherewithal to manage the problem.

All they can do is sound the alarm and alert the political class.

The political class needs to take a set of decisions in the interest of Australian sovereignty, in the interest of Australia's independence policy making, to restrict and limit foreign influence in Australian decision making.

CHRIS UHLMANN: After being briefed on the Four Corners-Fairfax investigation, the Attorney General sent us a statement revealing the Prime Minister has asked him to conduct a major inquiry into Australia's espionage and foreign interference laws.

Senator Brandis said, "the threat of political interference by foreign intelligence services is a problem of the highest order and it is getting worse."

Senator Brandis says he will examine whether the espionage offences in the criminal code are adequate and expects to brief Cabinet on possible changes to the law before the end of the year.

We will watch with interest. Good night