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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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OPERATION HALIFAX

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 2 AUGUST 2010

AT 10.00AM

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

THE COMMISSIONER: This Commission has formed the view that in New South Wales the practice of lobbying public officers suffers from two serious problems. The first is that the regulatory systems in this state that govern lobbying are inadequate. The second is that there is a public perception that many important government and local government decisions are made corruptly by reason of the influence of corrupt lobbyists.

10 Two sources are the foundation for this view. The first source is the many complaints that the Commission has received over many years concerning allegedly corrupt practices of lobbyists. The second is the many reports in the media over many years that have alleged that various government and local government decisions have been corruptly influenced by lobbyists.

20 The Commission has investigated many allegations of this kind. In the vast majority of instances it has not found them to be substantiated. The necessary evidence was lacking. Of course it does not necessarily follow from this lack of evidence that the allegations were without foundation. A corrupt connection between the actions of a lobbyist and the making of a governmental decision, while easy to allege is often extremely difficult to prove.

The very existence however, of the large number of such allegations indicates that the existing legislation and its monitoring is inadequate. A large number of allegations of impropriety is nevertheless cogent evidence of a widespread perception that lobbyists in general exercise a corrupt influence over government. A widespread perception of government corruption, even if unfounded has the capacity to injure profoundly the proper working of our system of democracy.

30 Australia is in substance a law abiding country. An overwhelming majority of its people respect and obeys its laws and conventions. This the found for the rule of law that prevails in this land, but once citizens believe that the government is corrupt, that the very people who make the laws are corrupt and that governmental decisions are corruptly made, the belief in the rule of law will gradually be broken down. And our way of life will irrevocably alter.

40 This is not a mere rhetorical possibility. In recent times this phenomenon has been evident in more than one country and Western Europe. The perception that the practice of lobbying gives rise to corruption is not unique to New South Wales. There has been much investigation, discussion and reforms of lobbying practices in Queensland and Western Australia and in several other jurisdictions, including the United Kingdom, the United States, Canada and the European Union. There is worldwide recognition that proper care for the political health of the democratic process requires proper control of lobbyists.

By Section 2(a) of the Independent Commission Against Act, 1998, a principal object of the Commission is to prevent corruption affecting public authorities and public officials. Having formed the view that the current regulation of lobbyists is inadequate and that there is a widespread perception of corruption involving lobbyists generally, the Commission determined that in fulfilment of that principal object, it should hold a public inquiry having the following scope and purpose.

10 To consider the relationship between lobbyists and public authorities and public officials for the purpose of examining whether such relationships may allow or encourage or cause the occurrence of corrupt conduct or conduct connected with corrupt conduct and to identify whether any laws governing any public authority or public official need to be changed and whether any methods of work practices or with procedures of any public authority or public official could allow, encourage or cause the occurrence of corrupt conduct, and if so, what changes should be made.

20 The public interest criteria in holding this inquiry are as follows. Concerns over some lobbying practices and demands for transparency in decision-making by public officials have led to the inference that inadequate regulatory systems for lobbyists and the lobbied may allow, encourage or cause the occurrence of corrupt conduct or conduct connected with corrupt conduct. It is in the public interest to ascertain whether there are gaps or flaws in the current New South Wales regulatory system that might allow, encourage or cause the occurrence of corrupt conduct and if so to identify ways of addressing those gaps or flaws. Public exposure of gaps or flaws in the regulatory system is necessary to encourage public agencies to engage actively in reform and to establish public understanding of why change is necessary. Conducting a public inquiry will promote debate of the relevant issues and may cause others with relevant concerns and opinions to come forward.

40 I need to give a brief explanation as to the nature of this public inquiry. In recent years this Commission has held only public inquiries directed to establishing the existence or otherwise of corruption on the part of a particular person or persons in particular circumstances. Inquiries of this kind by their nature have an adversarial element and the affected persons are generally represented by lawyers. Persons who in such circumstances testify before the Commission are often challenged about the evidence they give and at times the Commission seeks to contradict their evidence. The present public inquiry, however, is of an entirely different kind. It does not involve any adversarial element. The Commission is not investigating any particular incident or set of circumstances involving alleged corruption. The witnesses who will be called will be largely persons with a deep knowledge of lobbying. They include journalists, academics, politicians, local councillors, lobbyists, senior civil servants, representatives of industry, commerce, charities and other interested entities.

The witnesses have a considerable experience in regard to lobbying practices and are eminent in their respective fields. The Commission has asked these persons to testify so that the Commission and through it the general community can benefit from their knowledge and experience. No witness will be compelled to give answers about issues he or she regards as confidential to themselves to their occupations. The Commission will not seek to contradict any witness in an attempt to show that the evidence of that witness is false. Of course, this does not mean that some witnesses will not express opinions that differ from the opinions of others. It should not be necessary for any witness to be legally represented although the Commission will ordinarily accede to any request by a witness for him or her to be allowed legal representation.

The purpose of the Commission in holding this inquiry is simply to investigate the general practice of lobbying in New South Wales with a view to making a set of recommendations that will represent the most appropriate means of regulating lobbying in this state and indeed elsewhere for those who might be interested. It is not intended in this inquiry to expose the conduct of any specific individual or entity to a probing.

Mr Gormly.

MR GORMLY: Commissioner. Put broadly, the aim of the inquiry then is to find out what might be going wrong with lobbying. Lobbying is currently presenting itself as a dilemma, not only in New South Wales but in jurisdictions across the world. The dilemma is that while lobbying is part of the fundamental processes of government, it has become the subject of bad perceptions, complaint and suspicion. There is ample evidence for both sides of the dilemma. As to its benefits, constitutional commentators, political scientists, those who are lobbying, lobby, those who do the lobbying, those who use lobbyists, assert not only the value but the necessity of lobbying.

Examples are in the Commonwealth of Australia Lobbying Code of Conduct 2008 which says: "Lobbying is a legitimate activity and an important part of the democratic process." The major OECD report published in January this year said: "Lobbying can improve policy-making by providing valuable data and insights." A Queensland Government discussion paper of August last year, brought out with Queensland's detailed lobbying regulation system said: "Lobbying is, by its very nature, a part of the democratic system of government. Every person, organisation or interest group has a right to be heard by those in government who make decision that affect them." Another example is in the preamble to the Canadian Lobbying Act of 1985, much amended since then, which says: "Whereas free and open access to government is an important matter of public interest and whereas lobbying public office-holders is a legitimate activity", and goes on to make various other provisions. Senator Guy Barnett of Tasmania in his just-published book on lobbying says: "Lobbying is the imparting of information to key decision-makers. The

opportunity to lobby is open to all.” In essence, then, lobbying is said not only to be a right but a necessary part of the process of consultation and of effective government. That is certainly consistent with some reports made in the investigation so far that routine good lobbying can marshal facts and figure of value to government and can often do it better than an unassisted client. Looking at the other side of the dilemma of lobbying, there are numerous examples where lobbying behind closed doors has moved to corruption. In the USA the gaoled Jack Abramoff was a recent and famous example, but the system of government and the structure of lobbying in the
10 USA is radically different from parliamentary democracy such as the various Australian jurisdictions, Canada, New Zealand and the United Kingdom. Nevertheless, there have been numerous instances involving corrupt lobbying in most of those jurisdictions. In Britain, for example, in March this year, four MPs, former ministers, were promising for a fee to arrange access to current ministers. In the previous year, 2009, also in Britain, the cash for amendments episode occurred in which two peers were suspended from parliament and two more had to apologise for inappropriate lobbying. In Queensland in 2006 a Minister for Industrial Relations, Mr
20 Gordon Nuttall, was convicted of receiving secret commissions. They were paid by mining interests in exchange for him pressing their interests in cabinet. In Western Australia from October 2007, there have been allegations examined and wide public controversy concerning the lobbyist and former premier, Mr Brian Burke, and former minister, Mr Julian Grill, as well as various ministers and local government officers in respect of land development issues. In New South Wales it has not been a stranger to lobbying problems frequently leading to corrupt conduct either. For example, commencing in July 1990, this Commission investigated allegations from the north coast of New South Wales that councillors and
30 members of parliament were supporting developments in exchange for gifts, cash and donations. The report considered problems of entertainment, the use of flattery and friendship to obtain influence and what the report described as the blatant use of political donations to obtain favourable treatment. Other examples, in 1995, again in 1997 and then in 1998, this Commission publicly investigated major allegations about the use of bribes, gifts and donations in development matters in the Randwick, the Holroyd and the Fairfield City Councils. In 2002 it heard a matter concerning the Rockdale City Council of bribery in a property development matter, including evidence about a lobbyist’s success fee, a sum of money was to be
40 paid for every additional floor allowed by the council above the four floors then allowed. Lobbyists’ success fees will be examined in this inquiry.

Then in 2004, this Commission dealt with a very different sort of matter touching on lobbying and post separation of parliamentarians. It found misconduct by a parliamentarian who undertook preparatory steps for the establishment of a private consultancy business. It was preparation for a new occupation after his departure from parliament. They were steps said to have been undertaken because of the parliamentarians concerns about his parliamentary pension rights. Pension rights did later radically alter for

parliamentarians. Pension rights and lobbying are factors that arise in post parliamentary work availability.

Then in 2005, again in 2007 and in 2008 there were the now well known problems in the Strathfield and Wollongong councils. In the latter case there was evidence of donations, bribes, lunches and other socialising, grooming of council staff and others and the use of relationships.

10 While various forms of lobbying were always involved in local government matters, it is a notable feature that professional lobbyists were rarely a component of those activities. There is evidence of some increase in the use of professional lobbyists in land development, though it still remains limited.

Lobbying is now quite highly regulated at the New South Wales Department of Planning level. But only slightly in most councils. However, two councils, Tweed and Sutherland Shire have quite advanced lobbying regulation structures and in Sutherland Shire there is in addition a lobbyists register.

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Local government is an area that may call for consideration of lobbying that is different from other areas of public administration. There are however, other problem issues concerning lobbying beyond the type already cited, which cause lobbying generally to be regarded with suspicion, scepticism and a view that it may be corrupt or contrary to public interest. These features seem at odds with the assertions that lobbying is a good and necessary activity. Returning briefly to an international perspective, the wider problem is perceived to be very alive, for example in Washington DC, President Obama said on 18 June, “My administration is committed to reducing the undue influence of special interests that for far too long has shaped the national agenda and drowned out the voices of ordinary Americans.” Special interests exert this disproportionate influence in part by relying on lobbyists who have special access that is not available to all citizens.

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40 Examples of the other lobbying problems that have emerged in this investigation so far, but which are also commonly heard about lobbying in jurisdictions across the world are as follows. That private or non-transparent contact between the lobbyist and the lobbied is one of secret meetings and preferential deals. This is most often a reference to private meetings between a commercial interest and a government representative such as a minister. The suggestion behind this type of complaint appears to be that private deals can be done which are skewed or bent or not in the public interest, but false statements or exaggeration, which may lead government representatives are not exposed to public light or even to commercial opponents. The confidentiality, commercial in confidence and privacy all merged with secrecy with public interest suffering in the process.

The next commonly heard observation about lobbying is that decisions can be influenced or even determined by relationships between the lobbyists and the government representative, rather than being determined on merit. This is a reference to the fact that the ranks of the lobbying industry contained a high proportion of former parliamentarians, former ministers, chiefs of staff, staffers and are often former departmental or local government officers.

10 It is this issue which leads to discussion about the purpose of relationship in lobbying, the revolving door of employment from one side of the lobbying fence to the other and cooling off periods or bans on the employment of former public officers to prevent the misuse of government knowledge and the use of or misuse of personal relationships.

It also raises the question of the current ban both in New South Wales and in Queensland on lobbyists holding positions on government committees and boards.

20 The next commonly heard issue about lobbying is that it is, is that for a fee it gets preferential access to ministers and other government representatives when those who do not use professional lobbyists say they cannot get the same access. The access problem is related to a consistent level playing field complaint. This is mainly that large powerful and wealthy interests are seen to receive preferential access and treatment.

30 A further common issue about lobbying relates to political donations and fundraising. This is not an inquiry into the general topic of either of those matters. It has been recently examined by a New South Wales parliamentary committee. It has made recommendations which if accepted would greatly restrict political donations. It is universally accepted, however, that to look at lobbying seems to involve to some extent looking at the role that lobbyists play, sometimes unwillingly, in donations and fundraising. The examination to date of this topic has produced from almost every quarter responses best left to the evidence but almost no one supports it and there seems to be extensive support for the sort of recommendations made in the report of the parliamentary committee.

40 Finally, there is the issue of indirect lobbying. Use of the media in lobbying is presumably legitimate in itself. Where media reporting can't be distinguished from the client work of a lobbyist, it may be looked at in another light. There are many other issues about the current operation of political lobbying. A summary of all the complaints is that governments are elected on a campaign of promises perceived then to be weakened by inappropriate private interest lobbying.

The problems about lobbying insofar as they relate to a corruption prevention inquiry seem to fall into three approximate groups. Firstly, corruption in the sense of criminal activity, secondly corruption in the sense

that relationships, privilege and secrecy distort access, the competitive field, fairness and the public interest and, thirdly, damage to public trust in government institutions made the subject of lobbying. The principal response across the world and in Australia to all of these problems has been to impose registration and lobbyist disclosure systems mainly on the third party professional lobbyist.

10 The United States has had federal lobbying legislation since the 1930's, periodically upgraded. Lobbying there has always outstripped its legislation. Since January last year the Obama administration has introduced an array of legislative measures and probity requirements designed to take control of lobbying in Washington and in the White House in particular. They include rules to prevent the revolving door of employment from lobbying to government and back again. They impose some cooling-off periods of a type like those in New South Wales and elsewhere, the common cooling-off periods are usually between one and five years. There is also now a White House system to record contact between lobbyists and White House staff. There have been bans on gifts and there are ethics pledges, breaches of which can be used in later action.
20 Those schemes have been accompanied by White House voluntary disclosure of information policies including the disclosure of visitor access records.

The European Union has lobbyist registration systems which make lobbyist's identities public but it is all voluntary. The registers contain some 3,000 lobbying entities in Europe available for public inspection but most of Brussels' estimated 10,000 lobbyists do not register.

30 The United Kingdom had in the past rejected the legislation, the regulation of lobbying. The previous government at some stage after January 2009 was considering some reform proposals but by March this year no substantial action had been undertaken but when the four MPs referred to earlier were suspended for inappropriate lobbying activities a change was indicated. On the night of the suspension, 22 March, 2010, the leader of the House of Commons made a statement concerning what was described as paid advocacy in lobbying saying there should be a legal register of lobbyists which would require people to register as lobbyists and to register the identity of the client on whose behalf they were acting. On 6 July the new British coalition government was reminded in parliament of a pre-
40 election statement by the deputy prime minister and calling for a lobbyist registration system in Britain and that seems likely to occur.

Canada, both at the national level and in five of the provincial governments including Ontario, has introduced statutory registration and disclosure procedures for lobbyists. With quite recent amendments the registration requirements have become stringent. The registers must include the names, not only of professional third party lobbyists but in-house and other categories of lobbyist as well. Those registering must disclose the names

and political backgrounds of lobbying staff, some financial details, ownership details, particulars of all clients and the, and the general subject area of proposed lobbying, whether or not the client is receiving other financial input from government sources must also be disclosed, quarterly reports are required to be filed by those registered, penalties apply for non-compliance. The registers are public. This Commission is in touch with Canada's lobbying commissioner for the purposes of this inquiry.

10 In Australia most jurisdictions have adopted some form of lobbying regulation already. Queensland has the most elaborate system fixed by legislation rather than just a code. Its register is supervised by their Integrity Commissioner, Dr David Solomon from whom we'll hear in this inquiry. It establishes a register, quarterly returns and requires the publication of information about the lobbyist and the client, though not yet the topics or the subject of lobbying.

20 Tasmania is in the process of introducing an integrity commissioner and has already established a lobbyist register. Western Australia was the first state to introduce the system of lobbyist registration in April 2007. It followed the lobbying activities of Mr Brian Burke, Mr Grill and others examined in the Corruption and Crime Commission of Western Australia.

The Commonwealth of Australia has a lobbyist register, or it had one for a period then abandoned it, to return to a registration system in 2008. Its system requires the publication of the identity of the lobbyist and the client on a searchable register. A similar system exists in Victoria as well.

30 The New South Wales system commenced with a set of guidelines for managing lobbyists introduced in 2006 by Premier Mr Iemma. It imposed for the first time in New South Wales a standard by which lobbying was to occur but on 1 February, 2009 Premier Nathan Rees introduced the current registration system by an expanded Code of Conduct. It imposed on ministers and government representatives generally an obligation not to deal with third party professional lobbyists who were not registered. The system of 1 February, 2009 introduced for the first time a register in New South Wales.

40 The Code does not require other forms of lobbyists to register. The register is public and it requires the disclosure of identity of lobbyists firms and staff as well as the identity of their clients. Registrants are required to notify changes and to supply quarterly returns. The register is currently kept by the Department of Premier and Cabinet from whom we shall hear some evidence about its operation.

The register is searchable on the Internet, including as a list, and is constantly updated. It's a less expensive system to manage than the Queensland system, but does not have the sanctions for non-compliance available in legislation other than by deregistration. A useful table to

compare jurisdictions may be found, Commissioner, at page 115 of the scanned document. I might just bring that up on the screen for examination. Copies have been made available to the media and any member of the public that would like to have a copy can certainly have one made available. If we could just, it's a lot of information on one document, but if we could focus on the top left-hand corner, the format of the document will become clear. The table is one which compares the type of lobbying regulation that exists in various jurisdictions. Along the top, if we could just perhaps focus in a little, that's it, thank you. It covers jurisdictions from the top left-hand corner, starting with the Commonwealth in the second column from the left, if you could just put the cursor on Commonwealth, and following along to the right we see that it covers Queensland, Victoria, Western Australia, South Australia, which has the least degree of regulation of lobbying in Australia, Tasmania and then Canada, which has the most stringent system currently operating in the world at present, the United Kingdom and of course New South Wales. Down the, if we move back to the left-hand side, down the left-hand side we see the forms of regulation that are covered in this table. First is whether or not there's a Code of Lobbyists, then whether there's a register, because one can have a code but not a register, then whether or, what type of lobbyist is required to register, what form of disclosure is required, whether or not success fees are paid and so forth. And there are a number of headings, including further down the page, some that relate to the cooling-off periods for ministers. So that table will be made available and it's a good working tool for comparing jurisdictions as to the amount of lobbying that is currently imposed. Now, it will become apparent during the course of the public part of this inquiry that lobbying at parliamentary level is different from lobbying in local government and at state planning level. Both local government and the Department of Planning deal with the difficult area of land development and zoning. The New South Wales Department of Planning has introduced a particularly stringent protocol for dealing with professional lobbyists. It's complementary to the lobbyists' registration system managed by premier and cabinet, but it has additional requirement in respect of any contact with lobbyists. In particular it requires that more than one departmental officer be present when there is contact with a lobbyist and that a written record of a meeting be kept and filed. There is an important rule about venue for lobbying, that lobbyists must be seen either in departmental offices, local council offices, on site and at no other place. The system extends to telephone contact, the detail of which must be noted and included on the file, and it's a disciplinary breach to fail to comply. That system has been brought into the department by the present Director General, Mr Sam Haddad, who will give evidence about it in this inquiry. A system or a question that will be examined in the course of the evidence is the degree to which a register, whatever else its purpose, ensures the integrity of the lobbying process and acts as a guard against corrupt conduct. Included in that examination will be questions of who should be registered and what information should be included in any expanded register system. These are particularly topical issues in the lobbying industry because at present only

third party professional lobbyists must register and not even specialist representative professions such as lawyers or accountants. The professional lobbyists are only a small part of the lobbying community, although there will be evidence that it is a growing sector. At present the register doesn't require registration by in-house lobbyists, special interest groups, peak or industry bodies or charities. Backbenchers of parliament of course, whose role by virtue of their membership of parliament is very much one of lobbying, do not register. Nevertheless, the way backbench lobbying occurs, both of ministers and departmental officers, will be examined, along with other forms of lobbying. The administrative and cost consequences of expanding the extend of the register must also be noted. A system of safeguarding all lobbying other than by registration and beyond the use of a register, is of course a central part of this investigation. The work of the Commission on this investigation commenced some months ago. A literature review world-wide was conducted to establish the detail of regulation systems in other places in the world as well as in Australia. An issue paper was then prepared, published and widely disseminated with a call for written submissions on twenty-six issues identified in the paper. It's available on the Website of the ICAC. A number of submissions were received from most relevant sectors of the lobbying community and from others. In addition, notices were served on various government officers under Sections 21 and 22 of the Independent Commission Against Corruption Act, seeking answers to specific questions and seeking the supply of certain records and documents. Finally, apart from this part of the public investigation, finally there was also a very large interview process undertaken. Officers of the ICAC and myself have been involved in interviews of people from all sectors of the community that may be touched by lobbying. Those sectors include the registered thirty party professional lobbyist, the in-house lobbyist, special interest groups, the peak and industry bodies, elected officers of local government, local council staff, Directors General of New South Wales government departments and other departmental officers, consultants, ministers of the crown and former parliamentarians, including former ministers and premiers and their chiefs of staff and staffers. In all, almost a hundred interviews have been conducted. It's not intended to release the written submissions or the interviews, though in some cases, with consent, parts will be used, quoted and attributed where appropriate. Some submissions and interviews cannot be released because of their content or because they were submitted confidentially, but generally the submissions are too bulky in any event to publish or distribute, but all have been scrutinised and used in the preparation for this part of the public inquiry. The perception of illegitimate lobbying practices where it is unfounded needs to be dispelled, but strands of proper lobbying must be untangled from illegitimate lobbying so that each can be seen separately. This may involve registration in the long run, but that type of imposed rule-making, while possibly necessary, may not be the complete answer. A method of investigating the questions raised in this inquiry has been to look closely and the precise mechanics and operation of lobbying as it happens at the present time and on a day-to-day basis. This

will continue to be done by the calling of witnesses from all parts of lobbying, both the lobbyists and those who are lobbied, as well as members of the media, academics and other commentators referred to. This should identify the components of lobbying that are critical to its legitimate operation and separate them from other aspects which may represent dangers or damage to the wider system. It may in itself dispel some question about the lobbying process that many government decision-makers say can be helpful and can be done quite well. Out of this material, the following principal questions, of course not all of them, concerning lobbying may be addressed. Let me list some of those sorts of questions without being comprehensive about it. Why does so much lobbying, by any for of lobbyist, occur behind closed doors and how is the perception that it creates of unfair access and deals to be overcome?

Secondly, what role do relationships play between lobbyists and the lobbied. Third, do lobbyists create or aggravate unlevelled playing field problems in access and outcomes. Fourthly, do cooling off periods assist in reality and perception. Fifth, to what extent is lobbying a part of the limited post parliamentary career options. Sixth, what controls can be placed on the revolving door between lobbyists and the lobbied. Seventh, what safeguards are needed when family members of government decision makers are also lobbyists. Eight, do public registers, registration and codes of conduct serve a purpose and if so, what categories of lobbyist should be registered. What if any level of disclosure should be required about lobbyists their business. Ten, should success fees payable to a lobbyist successful in a lobbying project be prohibited, as they are in Queensland and Canada. Eleven, what other procedures that a register and registration would provide safeguards over lobbying. Twelve, what disclosure can or should occur about what is said or done in lobbying meetings, in particular how are incidents of informal lobbying, for example at functions, to be accounted for if at all. And thirteen, what role if any should lobbyists not play in the minefield of donations and fundraising.

Many of the answers to these questions are likely to emerge from considering the oral expert, the oral evidence of the witnesses being called in this public inquiry. It is expected that quite apart from public registration systems, questions will be directed to whether useful lines can be drawn among work methods which would have the effect of facilitating the good lobbying, excluding bad lobbying or minimising causes of suspicion.

It may be that the outcome includes acknowledging that some things in politics and government necessarily involve compromise, advocacy and some confidentiality. It may be necessary to accept the painful consequences of coming second in a race. These implicit and necessary things can all cause anger, resentment and frustration, acceptance of any of these matters, however, is no answer to the damaging dilemma currently presented by lobbying.

It seems unlikely that any answers lies completely in a public register. The history of exposing criminal corruption suggests that there must be additional solutions to the problem. A good outcome would ensure the supply of information, innovation and perspective that non-government can give to government in whatever form it takes. But it might usefully regulate its delivery. Whatever forms that regulation takes it would need to be practical, workable and inexpensive.

10 I turn now to the public part of the investigation that's about to commence. It's expected that the inquiry will take twelve days, sitting from Monday to Thursday for the next three weeks. It's hoped to call around forty or more witnesses. All of the witnesses have been interviewed. All have had access to the issues paper and a list of issues. And all have had the opportunity to think about the issues as they relate to their particular field or experience.

20 None, as you've said, Commissioner, will be asked questions with a view to making findings of corrupt conduct or even adverse findings against any person or institution, but all questions necessary to expose the issues will be asked. Any person wishing to do so, is invited to contribute to this inquiry by raising topics or questions, ideally in writing with me or to the solicitor of the Commission.

The witnesses in the first week will consist of some senior journalists, authors on lobbying, a regulator, some professional lobbyists and the first of some, of the present and former members of parliament to be called throughout the inquiry.

30 Next week the evidence is expected to range widely including in-house lobbyists, special interest groups who lobby, those who use lobbyists, consultants as well as that formidable group in touch with lobbyists, the ministerial chiefs of staff, both former and present. In addition next week, we will hear from the Honourable Fred Chaney, who has had some of Australia's most extensive experience as a lobbied member of the Commonwealth Parliament, and now himself lobbies on behalf of the charitable and community bodies with whom he works. In that week and extending into the final week, we will also hear from persons involved in local government, including a planning consultant and experienced Mayors and Councillors.

40 In the final week we will hear also from Directors General of New South Wales government departments, other senior public servants and from those who have, who are or have been classically lobbied, being present and former members of the New South Wales parliament and a former New South Wales Premier.

The witnesses for today will be firstly the veteran journalist, Mr Alex Mitchell. The author on lobbying, Professor John Warhurst, who has also taught on the subject. Professor Adam Graycar, currently the Dean of the

National Institute of Public Policy at the ANU and who has extensive experience of the American position. Mr Julian Fitzgerald, an author in lobbying and a former public officer in the Howard and Rudd administrations.

10 The witnesses for tomorrow will be Ms Kate McClymont, a senior journalist, Mr Mike Ahrens, of Transparency International, Doctor David Solomon, the Queensland Integrity Commissioner who supervises the Queensland register of lobbyists and Doctor John Kaye, a member of the New South Wales Legislative Council, a Greens member, and a former engineer and academic.

Commissioner, that concludes the opening.

THE COMMISSIONER: Thank you, Mr Gormly. The Commission will adjourn for ten minutes.

20 SHORT ADJOURNMENT [10.47am]

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, I call the first witness, Mr Alex Mitchell. Mr Mitchell, if you could - - -

THE COMMISSIONER: Mr Mitchell, would you like to give your evidence under oath or do you wish to affirm the truth of its contents?

30 MR MITCHELL: I'll affirm.

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Thank you, Commissioner.

Mr Mitchell, your full name is Alex Mitchell?---Correct.

10 Right. And you have been a journalist, I think, for some 50 years?---That's correct.

Mr Mitchell, I propose just going through a little of your background then I understand that you have a, an opening statement that you would like to make and we'll then get to some lobbying issues?---That's correct.

Now, I think firstly you started at the Townsville Daily Bulletin in 1966 and then for six years worked in newspapers here in Australia?---That's correct.

20 Did you then go to Fleet Street where you worked in the UK media for about 20 years, in the London Sunday Times?---Correct.

And I think you also worked with Grenada TV on the World In Action, which is an award-winning news programme and as editor of Newline daily newspaper?---That's correct.

I think you returned to Australia where you started with The Sun Herald as a news editor and also as an assistant editor and later as a deputy editor and remained in that position for about, I think, over four or five years?---I did.

30 And I think you then became the European correspondent and also the UK manager for Fairfax?---I did.

After that you returned to Sydney where you I think started some new columns including the Sydney Olympics Notebook and then in 2000 became the New South Wales state political editor?---I did.

I think you've co-authored numerous columns and while you ceased full-time work in May 2007 you are still writing on state politics, is that so?---I do.

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In 2001 I think you were also the president of the New South Wales Parliamentary Press Gallery?---I was until 2008.

Thank you. Now, Mr Mitchell, would you like to let us hear your opening statement?---I just thought by way of, just to see, so you could appreciate, the Commissioner and yourself where I was coming from in this, and this is my view of the subject. Lobbying has become a blight on public life in

New South Wales. It has a corrosive and corrupting impact on state politics and on local government. It has become the high-dollar pathway for powerful, private interest groups to obtain law changes and administrative decisions which are favourable to them and not necessarily in the public interest. It means that high-level decision-making is often skewed in favour of those with the deepest pockets who employ the most artful persuasive and well-connected lobbyists and it all happens behind closed doors without any real attempt at transparency or accountability. No wonder the public perception of lobbyists is so poor and their tradecraft is regarded with such suspicion. Parliamentary democracy has traditionally encouraged electors to make representation to their elected officials via letters, petitions and deputations. In that sense lobbying has always been with us. However, it is the growth of the lobbying industry and the specific weight of its political clout which is causing alarm bells to ring. Access to our local MP or councillor used to be a right and in the majority of cases it still is. However, there is another form of lobbying which is highly organised, expensive and usually coercive which has a formidable influence on government and ultimately on democracy itself. In the past quarter of a century there has been an enormous growth in the lobbying industry in New South Wales. Individual sole proprietor lobbyists have been replaced by partnerships which have been bought up by national and even international agencies. Some big companies have objected to the vast fees charged by lobbyist firms and established their own in-house lobbying units. There is scarcely a major business enterprise which doesn't have a lobbying firm or in-house lobbyists who are engaged in the full-time practice of consulting ministers, the opposition, back-benchers, mayors, councillors, senior departmental officials and council officers. The lobbying industry has become such a pervasive presence at all levels of government that it claims to be an accepted and acceptable part of the democratic process. It even goes further and often claims to help the efficiency of government and streamline its decision-making. In my view these claims are utterly self-serving. In the absence of any real information about who they meet, what is discussed, who is paying the fees et cetera some lobbyists, but not all, leave themselves open to the charge that they are insidious forces working for outcomes for clients whose motives are little removed from pure greed. In New South Wales in the rivalry between public interest and vested interest invariably vested interest triumphs, due in no small part to high-powered lobbying.

Thank you, Mr Mitchell. May I turn firstly to the question of the degree to which you could see in your work as a journalist the activities of lobbyists? ---Well, I saw it both working in the Press Gallery at Parliament House over 10 years and as a journalist working in the city of Sydney, it depended to a large extent what round you were on, what speciality you had as a journalist but if, whatever it was, you pretty soon made the acquaintance of a lobbyist or a lobbying company who was attached to that round of activity. So, for example, if you were the real estate journalist it didn't take too long for someone who had a deep interest in real estate matters to beat their way to your door, introduce themselves to you and take you to lunch and tell you

about the falling poverty of their clients and what you might do as a journalist of furnish them some useful publicity so it's in fact no journalist in a senior position in Sydney wouldn't have at some time in his or her career be approached by a lobbyist representing certain interests to introduce you to the issues that they most, that most concerned that group of people.

10 So would it be true to say that generally speaking lobbyists are at least visible to that extent, you know who they are?---Yes. In no time at all you're going to become acquainted with the movers and shakers in the lobbying industry and they're going to be agitating you for publicity, for stories, favourable stories or something about that, the particular thing that they represent.

20 So over your experience, particularly over the period that you've been working in New South Wales, have you yourself been able to observe in New South Wales any growth in the professional lobbyist?---Incredibly so. I think when I first used to make sort of fireman's visits to Parliament House say in the eighties and nineties when I wasn't there full-time, you were aware that there were people who had put up a shingle and were claiming to be and were in fact lobbyists and who got to know who they were and indeed if you knew who they represented and you wanted a story from that industry, they became contacts of yours to contact them and ask them what's happening and you got a briefing from them about what was doing in a particular, whether it was to do with transport, health, education or whatever it was that they had clients. That, of course, has now been

30 incredibly superseded by an amazing growth and I, just to look at the register which I did prior to coming to this Commission hearing, I looked up the register and saw there was something like 101 or 102 actually named registered lobbyists in New South Wales. Well, when I left the (not transcribable) in 2007 there was something like 20-odd journalists in the gallery and on those registered as lobbyists, some of those have six or seven people employed as lobbyists, so the imbalance is enormous. You've got something like three or 400 probably lobbyists representing 100 firms on the register, totally outnumbering the number of journalists in the Parliamentary Press Gallery so it's a formidable pressure group.

40 Would you say that in the exchanges that occur say between the large bank of lobbyists and the smaller bank of journalists, that lobbyists are an easier source of information and perhaps a more cooperative source of information than government itself?---Yes, they are indeed. They are hired by the clients to press a particular case and they are very, very well-prepared people and they've got a huge amount of information that they want to disperse to you whereas government departments have other restrictions perhaps from their minister or from their heads of department and are less likely to want to go on the record whereas the lobbyist will certainly feed you information in a most generous way to make sure that that information

or in the hope that that information is going to be, appear in print or on television or on radio in an unvarnished fashion.

And does that happen?---It does, too, too much in my view because it's, it comes purely from a single point of view and in a lot of cases the journalist, for whatever reason, may be rushing to get a deadline, will take that material and put it out without sort of getting an alternative point of view, without shopping it around which is, I think, what the journalist's, you know, role should be, not to take it pure and simple from one source and put it out there
10 but try and get a more rounded picture or even the next day go to someone else or go to another part of that industry and get a contrary view.

In the, in the quality of the work that you've seen that comes from the lobbying industry or from lobbyists who are in contact with journalists, is there some comment or observation that you'd make about that?---Well, I'd say that it's very, very professionally done. The, you know, the most fertile area for recruiting for the lobbying industry is politicians themselves, ex-politicians and media people and that's a formidable combination of
20 people you've got, who are very switched on, do know what's happening in the political culture, know how it works, that's why they're hired, that's why they get very, you know, enormous fees, most of them earning more money than humble journalists in the vineyards of truth and so you've got these people and they present to you very, very elegant and very professionally put together material because they know what you want and they know you've got deadlines, they know it's got an image attached to it that's going to make great television that night and so of course when it arrives as a package it's professionally done and very much tailored to the market of your paper or your media outlet.

30 So essentially your point is then that it's, it's high quality work but it's advocacy for one interest?---Correct and that's what is it's problem I think in using it at face value.

What is the significance of it being high quality from a journalist's point of view?---Well, it means that the journalist is going to take it and realise that it's instantly really sometimes not even on a disc, it's on a CD-ROM. It may even have pictures attached or, or drawings or, you know, glamorous-looking photographs, which of course immediately interests the newspaper or the television station because it provides them with something that's got a
40 picture attached, it's got an image and it's good, well-researched material apparently. But of course, just to stress again as you have, that it's from a particular point of view and that's a message that they want to sell. And that's the danger signal. You take it, you might accept it, but you think, I'm going to check this out with someone else, because the figures may be suspect but, you know, in the rush for time, many journalists don't even know how they're going to check their claims, their, the fundamental of their story and the costings or their predictions of usage of a particular motorway or a tollway. They say it's going to change this and it's going to

have X million transport miles, passenger miles. I've got no way of checking that. Unfortunately, they tend to go straight into print.

10 THE COMMISSIONER: All right. The more professional they are, the less work the journalist has to do?--Exactly. I mean, it's, it's the lazy journalist who will take this material and put it straight out and the incompetent journalist, when there should be, you know, editorial control of this matter. Say thank you very much for this, but let's now check it out. In the, in the way in which newspapers and the media operates these days, the sheer speed of it, that doesn't always happen.

MR GORMLY: How would that be checked out, just normal journalists' work, how would that be done?--I think the best way of taking that material and checking it out is to go to another source, go to many sources, go to academics, go to the opposition, go to the Greens, go to someone who's in that field who may have a contrary point of view or may even actually be working for, you know, say there's three bids and it's a contract coming up, well then, what about the two other, you know, people who've got bids in, are we going to ask them what they think of this? And ah, you know, but of course if you do that, the problem is professionally, the one that you're 20 dealing with, the lobbyist you're dealing with says, we don't want that, we don't want our message tarnished by what some other, the town hall says, for example, or the, you know, the opposition says. We want our message to go out exclusively from our point of view. So the journalist runs a hazard of becoming a source which is not trusted or not a team player if he or she goes to someone else.

So what happens then for a good journalist in his or her interaction with lobbyists, what happens if they answer or they ask difficult questions or do 30 lobbyists go to those journalists?--Well, the problems is, the way this finely-honed, you know, presentation of issues goes to the journalist who's least likely to want to ask those questions, who is more prepared to say, okay, I'll take it and we'll run it tonight and we'll give you top billing, it will be our lead story on the news tonight or on the front page tomorrow. And that journalist of course gets favoured treatment from that lobbying firm and ultimately from that client who says, and there's a list, I mean, a lot of these lobbyists, when they go to impress a department of a client, one of the things they'll say, look who's on our board, we've got three former 40 ministers and I've got a list here of absolutely tame and safe journalists who I can make sure these stories get into print. And of course that's a selling point for that lobbyist firm to be able to present, unofficially and in confidence, I'm sure that that's how they operate and I can see in the paper each day or on the news, I can say, I know where that's come from and I know why that journalist's doing that particular story.

So in a sense there's a double problem then that not only is one side of a story being published, but if lobbyists are an easier source of information that government itself, good journalists are finding that their suppliers of

information are coming from the harder side, the more difficult side to extract information?---Yes. The lobbyist offers himself or herself or their connections with two things they're going to say to a client. First of all, I can get access for you to the political culture of the state, and secondly, I can get you the media you require to press your case. And so that's a pretty big thing to have for the lobbyist to do. So the journalist involved in this, just as the politician, both of us in that side, both sides, the fourth estate and the first, or whatever it is, have the right and should say, well, we're not copping this, we're not taking this, because we run the media, and the politician should be saying, well, we run the political process. The trouble is that there's a nexus here and one that's making it very difficult for the politician who's pushed into a corner with heavy-duty lobbying, and the media also which is playing a complementary role in a sense, if it doesn't do its guardianship role properly and it gets pushed into the corner of accepting this stuff because it's coming raw, it's coming high-powered and it's coming with sort of the authority of a lobbying firm that's very well-connected and with big and impressive people on its list of lobbyists.

MR GORMLY: Well, one would expect that the media would also play, to some extent, a role of watchdog on lobbyists. Are there any difficulties in, apart from the ones you've already described, are there any difficulties for the media in acting as watchdog over lobbyists?---Well, there are, simply because until very very recently there was a non-disclosure principle. All, all these activities, there was no register, there was nothing like you outlined in your opening statement at the planning department, and I don't know the accessibility of the media to those notes of those meetings, but in my view, that's what should be, there should be a much more public declaration of, which we have at the moment, an incomplete list in my view of a register. The register does not contain all the names of all the lobbyists or even all the clients. So it's a feeble, half, and much-appreciated attempt at bringing it under some kind of public disclosure, but it's nowhere near the requirements of what's happening in New South Wales today, in my view.

Now, in making all the comments you have about lobbyists so far, have you been distinguishing between the various types of lobbyists and in particular have you been distinguishing between the, say the third party professional lobbyists on the one hand and peak bodies or in-house lobbyists on the other, or is there no difference?---There is a difference and, you know, and one of the dilemmas I'm sure the Commission will have to face in this such an inquiry is, you know, what I call the good lobbyists and the bad lobbyists. But that's a very subjective decision on my part I guess. But, I mean, if someone comes to parliament and goes to ministers and the political process and says, look, we have got to do something about providing a proper access for people who are disabled in our public buildings and not enough's being done, that's for me good lobbying, because it has a public interest argument attached to it. The bad lobbyist, if you like, is not one that's disclosed what happens at a coffee table or at the table of knowledge somewhere among people meeting, you know, in quite

inappropriate circumstances where there's no disclosure who's representing who, what's going on, what were the conversations, not that we'd want to know the conversations but it's just that's bad. I mean, when you see at Governor Macquarie Tower something big's on and you stand outside- - -

I'm just going to stop you there because it's quite an important point, this one. I understand your point about the public interest but so far as lobbyists themselves, the categories of lobbyists are concerned, is there a distinction in principle that you would point to, if any at all, between say the in-house lobbyist on the one hand for some corporation and the professional lobbyist who acts for a corporation?---In my view, no. I think that whatever regime comes in should be pretty much a catch-all operation. I find it difficult, for example, when I see some of the exemptions and I personally know that some of the people on those exemptions, why are they there? I mean, there are, I just don't see that there's a category of lobbying that doesn't, shouldn't meet a public standard, so I'm not one of those who sort of wants to sort of, oh, they're in a special category. If they're a charity or they're this or that, why shouldn't we know that they've come in to see a minister and arguing for a particular point of view that might have a very important impact on public, the public interest, so I'd want to know what they're doing there.

There will of course be differences in quality between the work of one lobbyist and another and the experience and capacity of one lobbyist and another. Of the most capable lobbyists, that is, the ones with the greatest skill, that you've seen, what would you say are features of the way they operate?---Well, I think that the best lobbyists are those who are most up front, you know, they don't have a problem, they say, they're up front about who they represent, what they're doing, how they're going about their business, presenting you with, with material which is both accurate and proper and then you take that decision, you know, how to use it, whether, whether, or whether to dismiss it.

You've got an open process?---An open process. And those lobbyists who function that way, and there are many of them, I have to say, many who do, and they make that sort of a signpost of their, of their, and the integrity of what they do. And they're to be applauded and they're to be encouraged. It's the sort of shifty operation when you see them going in you say, they're going in to see the bad guys. And they're not meeting appropriately and there's improper conduct in my view taking place.

Right. Just before we leave the area too of journalists, having discussed them a little earlier, are there any observations that you would make about the activity that you have observed of lobbyists using the non-print media, that is radio or TV?---I think that the really worry is, if I can give an example, without giving an example. I mean if the, there was a decision made to you know, do a, a certain enterprise or some new activity, some big area of entertainment or public recreation or something a lobbyist firm was

hired. The first thing they do when they move into the area where they're going to get this thing going is to get the local radio station or the local newspapers, which are, you know, really stretched for revenue and say, don't worry, we've got a big budget for you. We're going to advertise in this area and in your paper and your radio station, because that's built into our budgeting, in return we want your unequivocal support for what's happening. Well, you may have local interest groups saying, but we don't want this function or this event or this development in this area. We want to keep the, the purity of our environment and our community and we're not, the trouble is it's going to skew the media because there will be contained in their operation a media advertising budget to push that particular thing.

Right. So can I just explore that for a second with you. Essentially then as a tool of lobbying the attention of media outlets can be attracted by an associated offer about advertising, which may have nothing to do with the lobbying. Is that - - -?---Correct. And a classic case, I mean there's several, but one I can easily mention since it's now not an issue is the North West Metro, it was this \$12 billion plan unveiled a few years ago and everyone in Sydney will remember it. It was going to be this incredible heavy rail line going from the north west of Sydney to the centre and the advertising associated with that if you remember at the time was phenomenal. And of course, that purchase, not just advertising, but they're in favourable comment for it, because who was going to be accepting the advertising and then turning around editorially and rubbishing the project. Within 12 months or 18 months that project has disappeared, it's dead, buried and cremated, I think is the current parlance. It no longer exists, it's vanished. But our money, your and mine, taxpayers money in the course of this went to promote this scheme and lobbyists and of course people were arguing for light rail or an alternative vision of how we should perhaps operate the, the you know, terrible and appalling trouble with traffic in the city. We just (not transcribable) it off the map.

All right. Well, that, that must mean that you're referring there to advertising by lobbyists hired by a government interest?---In some cases a government interest, sometimes it was actually in the, in the Rozelle link, which is also dead and buried since, that was another one that came up. It replaced the North West Metro. That's now dead and buried. I think the bill's come in for that at about \$100 million, which we now owe to the companies who bid for it as well as the advertising, the preparation of all the documents that went into two projects in transport alone, which we're picking up the tab for. But, yes, it did involve, you know, taxpayers money.

Have you ever had offers made to you as a journalist of some benefit for writing a story?---Well, more, as a columnist, I mean columnists are naturally a place where people come to, you know, hoping they can get mentioned. I mean some people would want, would rather, you know, purgatory is to get mentioned in a column written by me. But other people sort of really think it's a terrific, and they want to get a mention. So this

was sometimes accompanied by, oh, how would you like tickets to this or how, and in one case there was some launch or some new beer in Sydney and I arrived one day at work to find the couriers arriving at my desk saying, oh, here's a case of beer for you that's arrived. And I noticed there were several in the office. But I just went outside, got a cab, put it in and said, send it back to them. And I paid for the cab because I wanted to make it absolutely clear that this was so grotesque and I mean I'm not (not transcribable) or wanted to have someone's case of beer, what's going on, carry it out of the building, it's just, but you know, they, these things do
10 happen and you've got sort of make clear to the lobbying industry you're not going to be part of that trade.

Would you agree with the proposition that we've heard in the course of the investigation that, that gift giving is not really a significant feature of the work of lobbyists, but that it does occur or would you have some other view?---I think the members, the members of parliament have their fiduciary, you know, their statement of their register and they put most of the things there. My worry is always that what they put there is sort of, I don't want to accuse the honourable members of falsifying these important
20 documents, but you sort of think there's probably, they put down some things, but there are other things happening. But I, no I think it is a small part of it all. But it's a significant part and it shouldn't be sort of, they just dismiss it, oh, well, you get trinkets from such and such and it really amounts to nothing. My worry is that it's more apparent that things go on then we ever hear about and they should be disclosed and there should be some kind of regime where this stuff is picked up.

THE COMMISSIONER: Is that suspicion, Mr Mitchell or do you know, do you have information? I'm not going to ask you what the information is, so you don't - - -?---Yeah, sure.
30

So I just really would like to know whether you're saying this based on, on suspicion or knowledge?---Knowledge. I mean I know of incidents where a, you know, ministers and members of parliament have, in one, two cases that come to mind walked into a, a very prominent tailor shop in the city and, and the person said, buy yourself a suit now you've become a minister. He said, I can't afford a suit. And he's tried one on, it fit fine. And they said, and he said give him nine. And the guy walked out with nine suits. And another occasion where another senior minister talking with one of his
40 colleagues, how does he get his money, well, he has an overseas bank account and they put the money there. Now how are you going to find those, how are you going to know about them? But that's anecdotal, it's of a certain knowledge. It probably, if it was true I would've written it and, you know, copped all the things. But I didn't write it and I haven't got enough information to write it.

MR GORMLY: Is that something you're saying that happens in relation to lobbying?---Well, the person that was with the minister, the newly

appointed minister is and was a lobbyist. And so he was saying to him, now you're doing this, you're going to have to need some good clobber and here's, and pick yourself up nine suits which I'll pay for.

All right?---But I thought that is improper process of a lobbyist to dress up his minister and give him a favour of that magnitude.

10 If it were up to you would you say that there is no room for gifts whatever or that there is some practicality about gift giving? I'm not expressing a view here, Mr Mitchell, I'm not loading that question. I'm interested in your view?---I mean I think that in sort of in Canberra in the formal exchange of among dignitaries people do this and visiting presidents and prime ministers and that's a natural gift giving. And it's a terrible insult to people in some cases to say I'm not accepting that and I mean, it's just, you know, I think there's natural courtesies between cities and between visiting politicians and what have you. But when it's a commercial thing from a big companies who says, we'll deliver a, you know, two crates of Grange to your house, that's just not proper. And you know one worries about the, those sort of favours and if they go on how much.

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But Mr Mitchell, we hear, have heard sometimes a complaint from parliamentarians and former parliamentarians that by business necessity they spend with people who are contracting with or lobbying the government and that inevitably they will meet them at functions or see them in coffee shops or meet them in a coffee shop. And that there is perhaps a purchase by one for the other of a cup of coffee, when it relates, it may relate to something that involved some millions of dollars. And there is some objection to the suggestion that, that purchasing cups of coffee or even having a meal during the course of a working day is an unrealistic restraint and that it has nothing to do with the outcome of lobbying. Do you have a view about that?---Yes. I must say I've heard the same thing, that you know, various colleagues that I know in the lobbying industry say, oh my God, now it's become so difficult. We used to be able to pick up a phone and talk to someone. We used to be able to have a coffee with them. We used to have this terrific, and that's the way things happened in Sydney and in New South Wales. We got things moving, it was unofficial, but it was terrific. And we had the cup of coffee and now what they're proposing is going to make things more difficult to do. The wheels of industry will grind to a halt, et cetera. I'm not convinced of this, as I said in my opening statement. A lot of this stuff is very self-serving. I mean what is wrong with having these meetings in proper places, properly minuted, with the appropriate people there. This is not going to be disclosed. It should be part of the cabinet process, when they go to cabinet. The minutes of those discussions with lobbyists should be, should go into the cabinet meeting.

30

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All right? And that's all - - -

So - - -?---Go on.

So the rule for example that Mr Haddad has for the Department of Planning restrictions, that venue is a critical component, that is he requires his officers to meet in council offices, departmental offices or on site and nowhere else, is that the kind of rule that you think would be useful?---I think it's totally proper.

All right. I'm just going to ask you some short questions then, Mr Mitchell, and I think we'll have to finish up then unless there's some other matters.
10 Can I ask you just firstly for a short view on the question of cooling-off periods for ministers and ministerial staff after they cease to be ministers. Now, there is one in New South Wales at the moment for 12 months, it's relatively recent. Do you have a view about cooling-off periods and the appropriateness of the period?---Yes. I think that the private sector has set the course of this. If you leave one bank and you can't show up at another one and if you're Rupert Murdoch's son Lachlan you can't go into opposition. I think Rupert made it three years before his son could go into business and oppose his father so it's absolutely accepted in the, in the world of business and I can't see why ministers and MPs have so resisted a
20 simple proposition like this when it's so accepted in the city and in private, you know, the sector, why it shouldn't be appropriate in the public sector.

What do you understand to be occurring when a cooling-off period is applied?---As I understand it, they can't lobby in that particular area of their government if they were a minister or health or something, if they do have a shingle and set it up they can't start lobbying on health matters when that is something they've had absolute hands-on control or in government issues in which they had some jurisdiction and that prevents them from immediately, but I mean, now what we have, the politicians have now sort of pre-empted
30 this and they have a pre-emptive strike, they now say I'm leaving and I'm going off to work for a charity and so we take a detour through a charity where they sort of serve penance in order to come back into the lobbying industry further down the track so I think there's a lot of fiction about this, what does it matter if some of these politicians who've grown up together, they've grown up in a culture together, just like journalists, lawyers and other people, two years, five years, it doesn't mean, it doesn't mean a great deal because they know each other, they're sort of bonded.

The logical extension of that is that you would prohibit former
40 parliamentarians and public officers from going into lobbying at all. Is that a view that you would support?---Well, what I've noticed in my career and in recent years is the number of politicians and ministers who leave and immediately go, they don't go into the private sector to take over major banks or major corporations or major businesses, they go to lobbying. Now, you have to ask yourself why is there such a preponderance of them find this such a fertile area for their post-parliamentary career.

THE COMMISSIONER: I've heard it say that that's because they are not really qualified to go into business and they don't have the knowledge and know-how and they've spent all these years in parliament and stopping them going in is really stopping them from earning a living because there's nothing else they can really effectively do?---I, I must say that there's a lot in which the Commissioner says, you know, what is their expertise and what is it and they can't, they think they can walk out of running departments with billions of dollars employing tens of thousands of people and yet the private sector when they take one look at them say not for me and so they end up going to what they can make a quid out of which is lobbying and that's become a fertile area and you have to ask yourself why is it so many of them go there and I must say ex-journalists, why do they go lobbying, they know that it's a kind of a very lucrative post-career proposition and that's the worrying thing, that they find that so attractive.

MR GORMLY: Mr Mitchell, then just following the Commissioner's question, it wouldn't then surprise you, as I must say it did surprise me, that there is a post-parliamentary problem about occupation, that is, it is in fact for retiring politicians or politicians who leave parliament under whatever circumstances, it's very difficult for them to find appropriate employment. Would you think that that's right or not right?---I think it is difficult and I think some of them have been in office for so long and that they're, you know, you'd think that they would achieve such qualifications in that term of office that they would naturally be very attractive proposition in business but it's, it is not the case because there's a, a suspicion in the board rooms and the people that headhunt and do these things that they're not, they don't have the gifts which many of them think they have and they don't really show up too much, too often as you can see in recent times how many of them have taken significant and major jobs, very, very few.

All right. Now, Mr Mitchell, I think we're going to have to, to stop as interesting as this has been, but I have read about the, the Christmas party story about which you have written. I was wondering if you could just recount that story. If you, do you know the one I'm referring to?---Yeah, I do. I mean, the Parliamentary Press Gallery since 1968 has had a annual Christmas party and it is the event of, of Parliament every year and the Premier comes, all the MPs, ministers, staffers, it's a tremendously significant, it began very small but over the 30-odd years, 40 years it's been going it's turned into a really big event at Parliament House where it's held and while I was there the rates of charge when I was president of the gallery, the rates of the food and the beverages went up so astronomically under the sort of user-pay systems that we found it difficult to furnish those things and we had to go outside to get contributions from the AHA and from liquor firms to supply the, food, you know (not transcribable) and the food all came from locally but that was a compromise we made, we discussed it, we said we could do it, it didn't tie us to the liquor industry but we felt we could do it. Then we charged us a small fee to come to the party to cover our costs and that was introduced, 20, \$10 I think. Since leaving the gallery

I've been quite concerned to know that my colleagues, and I've got greatest regard for all of them and this is not a criticism of them but it is something I wouldn't have personally done, the Christmas party at Parliament House now is sponsored by the lobbyist industry, about half a dozen of them got together and said look, you people shouldn't have to pay for this, we will, we'll put on the party every year at Parliament House, when all the, the premier, all the ministers come and so it seems to me just as a breaking of a tradition which was important, it was the gallery's party, it was our recognition of our role in the parliamentary process and in the Parliament, in the building, the institution and the oldest parliament in the country and now for the lobbyists to be running it and financing it and I personally wouldn't go, I wouldn't want to be hosted by lobbyists at Parliament House for the Christmas party of the gallery, it's just wrong.

Did the lobbyists go?---Yes, they're, they're deep on the ground because it's a great chance for them to meet the premier. I mean, I haven't personally gone but I'm told they bring all their staff because what a terrific occasion to go up and thank the minister or, you know, show goodwill and backslapping and take over - - -

20 THE COMMISSIONER: Weren't they there in the past?---They came but they were not, you know, there would be some and indeed I was in charge of the list of invites at one stage, with other colleagues I didn't, but I would invite some of them who I knew - - -

And there's just been a great increase?---Yeah, well, they, they've ambushed the party and taken it over. It is now theirs. They've, they finance it and I just think, I mean, I'm a purist in these matters but I think that sort of gives you an idea of the sort of shift in the structure of what's happening.

30 MR GORMLY: All right. So it's not, it's no, it's not a journalist parliamentarians' party now, it's a lobbyists and journalists and parliamentarians?---Yeah, the lobbyists finance it and they, they own it in that sense, they're the new proprietors.

Mr Mitchell, there are two, two other matters I'm reminded I must ask you. The first is what information journalists would find useful to be published on, for example, a register about lobbyists and lobbying, what is it that a journalist would find useful? What, what would they like to see on a register?---I think that the register at the moment is an important step but it doesn't first of all give a link to showing you what that firm is, it's contact numbers, it's addresses, it's details of, you know (not transcribable) just as name, so and so, how do I contact anyone, how do I know where they operate from, where's their office, who, just, you know, really basic and I would hope that you could get that. That's sort of important. I think a lot of the other stuff should be collected internally and kept in the government between the ministers in the meetings but probably for journalists I want to

know what's the name of the firm, who are the principals, who are their lobbyists, who are their clients but I also want contactability, I want to be able to contact them and put questions to them, an email address.

All right?---I can't get that at the moment.

10 Mr Mitchell, what about, a lot of those things are on the register at present but what about things like the frequency of contact between a lobbyist and a government officer, would that make a difference to you?---It would but I can't see it happening and probably the, the, I think that's necessarily a part of what they will do internally. I mean, I'd like to know but I don't quite, quite see how I can make a legitimate public interest demand, we need to know how many times you meet, if they'll tell us we'd be delighted to know but I can't seem them making a declaration of it.

20 So you're in effect acknowledging that the contact that occurs between a lobbyist and their client on the one hand and government on the other will contain confidential material?---It will. And I want to know that it's happened. I don't want to, you know, and we find that very difficult to establish at the moment. I want to know that it's happened, but actually the number of times it might have took place, I want to know who they represented when they met, maybe where and how often, sorry, how long or something. But if I can get that detail it adds to my story and I want that.

What about the general topic that's discussed, if not the detail?---Oh, I think that that's one of the important things. It should be made a declaration or we saw the minister regarding X or Y and we were representing this client and we discussed this project. I think that's very essential.

30 All right. Now, look, a last matter is, well, look, I think I've covered that. ---Okay.

THE COMMISSIONER: There are some questions I'd like to ask you, Mr Mitchell. A lot of what you've said really involves the influencing of the media by lobbyists. Is that, can that be controlled? Are you suggesting that that can be controlled?---Well, the media are drawn into it simply because the lobbyist's doing- - -

40 I understand.---Yeah.

I understand that it's very seductive.---Yeah.

But isn't that just part of life?---It is, but I would hope that editors and journalists are more trained as to how to deal with it. And there's not really a Code of Conduct which covers, we have a Code of Conduct in our union but I think I'd be right in saying that it's not a coverage of what should be, how should journalists, young journalists especially coming into the

business, how would they cope with a lobbying effort by a, by a, by a lobbyist, what should be their approach.

A lot of what you say really concerns the integrity of journalists.---Correct.

And what you're I think suggesting is that there should be, the Code of Conduct of journalists should be reinforced in so far as it concerns their dealing with lobbyists.---I think that's entirely appropriate.

- 10 The second thing I wanted to ask you about what comments you made concerning access to parliamentarians. You said, if I understand you correctly, that there are still a number of parliamentarians who allow pretty free access in the traditional way and some who don't and the lobbyists take advantage of the ones who don't. They get access to those and for others it's much more difficult. Did I understand you correctly to say that?
---That's correct. And I think- - -

- 20 How do the lobbyists get their access to the difficult ones, what is there that they do that gives them this privilege?---Well, the most important and significant thing is if they were former colleagues and powerful and important ministers.

So it's who you know?---Exactly. It's very much a network thing on not what you know but who you know.

And how, do you have any view how this should be changed or controlled?
---Well, I think that my, my philosophical, sorry- - -

- 30 I know philosophically if you could wave a magic wand you would do it but- - -?---No, but I think that, you know, I am surprised having observed parliament and watched the process at work, why, even at the moment because it's executive government, lobbyists concentrate all their, most of their fire on ministers and backbench. Why are the ministers taking these decisions? We have a public service. The public, the minister should simple go into the, into the cabinet meeting saying, here's what I've come up with and this is my, this is what my civil service have provided me with. But you'll find ministers, if there's a new contract going for a lung machine or something or other, the health minister, who would know nothing about lung machines, is suddenly taking the decision between a massive contract
40 that's going to cost millions of dollars for us, or a motorway or something else or some, you know, incredible piece of, what would they possibly know about it and why are the lobbyists talking to the public servants? The directors general, they're the people who we trust and hire to make these decisions yet ministers have intervened in this, interposed themselves into the decision-making, where it all comes to them and their chiefs of staff who were appointed by them. So when you say, well, how's this, well, just separate them out, they have nothing to do with the process, except when they go to the cabinet, present their document and say, we got three tenders

and around the cabinet table we take that decision. But at the moment it's open to terrible strife and problems I think. When the ministers are out having lunch, the ministers are going for coffee, the ministers are taking phone calls from their former mates, the ministers are taking these decisions of which they have no knowledge. How can they decide whether this, the police need a piece of X or Y or, they have no, you've got to rely on the experts, the professionals in your, and that's who the lobbyists should be talking to, going to them and saying, listen, our contact is better than B, this is better than that and this is better, and let that go forward then as a
10 decision, not ministers who have, I don't feel have the competence.

I understand what you're saying- -?---Yep.

- - -but the, all the time that you've been speaking, of course, as I'm sure you'll understand, I'm thinking about, well, what are the controls, what are, what are the changes, what can stop this. What do you think, what do you say about that?---Well, I think it's, Commissioner, with, you know, I mean, I think it's strong editors with the media and it's strong politicians with the, with, with our thing. What we need is a sort of, you know, if you've got a
20 strong institution and your parliament is strong, your government is strong, your cabinet is strong and you've got people who's got, then you, you, you've taken major steps towards, you know, this is magic wand I guess, well in newspapers regrettably we live in a world of frailties where there are people open to all kinds of blandishments and, and there's this process has sort of crept up on us and now we've got it and rightly I think it's all good, great credit to the Commission saying, we'd better look at this because it's not too flash what's going on and it's getting sort of, sort of not danger level but it's an incipient problem. But, you know, maybe, you know, there's just
30 got to be change, you know, where the executive government just, you know, sort of disburses its decision-making to the directors general and it takes it away from the political culture which is so now running the show, it's, everything goes to the political culture. They have taken over the administration of these, these institutions in such a big way that the public perception is, what's going on here, is this just for a group of people, a group of mates, or is it for New South Wales?

Mr Mitchell, thank you so much for giving evidence to us and helping us.
---Okay. Thanks very much.

40

THE WITNESS EXCUSED

[11.47am]

MR GORMLY: Right. Commissioner, our next witness is Professor John Warhurst, who's present in court.

THE COMMISSIONER: Professor Warhurst, would you like to give your evidence under oath or do you wish to affirm the truth of your evidence?

PROFESSOR WARHURST: I'll give my evidence under oath.

THE COMMISSIONER: Yes. Thank you. Would you swear Professor Warhurst in.

THE COMMISSIONER: Mr Gormly?

MR GORMLY: Professor, your full name is John Warhurst. Is that correct?---John Lewis Warhurst.

10 Yes. Thank you. You are currently the Emeritus Professor of Political Science at the Australian National University.---I am.

Is that correct? I think you're also the Professor of Politics or Emeritus Professor of Politics at the University of New England, having been professor from '85 to '93?---That's correct

Right. I think you hold the Order of Australia, an Officer of the Order of Australia?---Yes, that's right.

20 You've held other professorial positions, including at Flinders University, from which I think you obtained your PhD in 1977. Is that so?---(NO AUDIBLE REPLY)

And you're a former president of the Australasian Politian Studies Association. I think you've authored, co-authored or edited some twenty books.---That's true.

30 In the course of your teaching work at university you have I think focussed on Australian politics and government but you have had a particular focus on lobbying and political advocacy, parties and elections?---That's true.

And I think you're the author of the book, I think one of the two books or three books really that currently cover the area of lobbying in New South Wales, that being Behind Closed Doors, published in 2006 I think. Is that so?---7.

2007. Thank you. But you've also written widely on the topic and spoken on the topic.---Yes.

40 Most recently I think you've also spoken on the topic of post-separation employment of ministers and public officers?---Yes, I have.

Right. Now Professor, before we get into some detail, is there any opening matter that you would like to raise concerning lobbying?---I had a short introductory statement which sets out my general views on the topic if I may, lobbying is only one part of a larger scheme and should therefore be considered in the broadest possible framework or context of democratic policy making political parties, elections and citizens and the relationship between them. Lobbying is business as usual in political government and

commercial life. It often performs a useful function making the relationship between the complexities of government and the community more efficient and mutually useful by the distribution of information and shaping the interaction between government and the community. Even when it is not particularly useful, it is often benign. Though, as a paid activity, its benefits are not evenly distributed within the community. Improper conduct, perhaps called corruption is the exception rather than the rule. Regulation of lobbying should consider the responsibilities of lobbyists and those lobbied equally and in equal measure, in my view. In this context lobbying is an industry that involves the world of insiders, so called. A world that is largely unknown to the wider community and when it is known, it is largely viewed with distaste and an industry that works against the wider interest of the community by delivering favours to some rather than others. The minority rather than the majority. Various types of lobbyists, while conceptually distinct engage in similar forms of activity. They often work side by side on the same project, therefore this is a good case for treating them equally in any regulatory system. Among lobbyists, former ministers and MP's are in a special category as the preeminent example of insiders. If one aim of regulatory system is to reassure the public that all transactions are open and above board, then this group should be accorded special attention, even if their activities are judged to be unexceptional. Activities and individuals which overlap other aspects of politics such as party membership, elections, donations and campaigning are especially open to improper conduct and reasonable public suspicion. The activities of lobbyists often parallel the way the system of representative government works, especially when constituents are involved. This similarity should be brought in mind in assessing the contribution of lobbyists to the public good. At the heart of much successful lobbying are close relationships between lobbyists and those lobbied. Ultimately the ethical standards of all concerned will determine the propriety of the relationship. The ethics of lobbying is not black and white and there is legitimate room for disagreement about what is ethical and what is not. Thank you.

MR GORMLY: Thank you, professor. Professor, I'm going to take you to a number of topics. Let me start firstly with the idea that lobbying and lobbying groups are powerful?---Ah hmm.

That is that as I understand the argument, lobbying groups have become powerful in such a way that they can alter the agenda of government. It's a very broad proposition, but it seems to be one that one hears around the world?---Mmm.

Can you describe the process by which you think that a lobby group, who after all has no power over legislation, and ordinarily would have no power over government decision making can be described as powerful for the purposes of influencing a government agenda? What's the mechanism?---I mean, thing is as you say, it's a difficult thing to untangle. The, the way it could be measured is sometimes in terms of access that groups or

individuals are described as powerful if they're seen to have close relationships or easy access to decision making. The term insiders, that I mentioned in my opening, opening statements. Sometimes it's in terms of outcomes. A link is made between representations by so called powerful interests and the ultimate outcome in a particular, particular government decision. In my view, there's quite a lot of confusion often between access and outcome, if only because there are so many other factors involved in any government t decision. In terms of a mechanism, I, I think the so called powerful interests might be seen to have the resources by which to mount a
10 powerful argument on, on the merits of the case. The resources to bring the facts to bare that other, other individuals involved in the way the community may be. The, the resources to employ highly paid staff or highly paid consultants, who can put their case in a persuasive way. And in a way which is accepted by public servants or ministers or others making political decisions. As I say, more or less on its merits. It's regarded as a more persuasive case because of the evidence that it, that it raises, the arguments against alternatives, which is often an important part of, of lobbying and decision making. If governments are dealing with alternatives, the ability to
20 knock over an alternative can be just as important as supporting your own case. But the other, the other mechanism I suppose is, is the mechanism of, of threats or promises.

THE COMMISSIONER: Are you thinking of public, of political donations, for example, I mean putting it crudely - - -?---Yes.

- - - and the general public perception is that some lobbyists exercise power by rewarding or promising to reward powerful groups within government, not necessarily by making payments to individuals, but by benefitting power groups within the party or the party as a whole. Whether by bringing in
30 boats or money or something else or something indirect. I mean that's the general public perception, right or wrong that this kind of thing sometimes happens?---Mmm.

You must've studied - - -?---Others - - -

- - - this phenomenon?---Yes, I've studied - - -

Then we'd be really interested in your views about does it exist. What are the, is it, is this just speculation, suspicion, gossip, is it real?---I think it
40 often is real, yes, I do. And we're seeing it at a heightened form perhaps during an election campaign. But in more general, in more general terms and in other times, I think powerful interests who have the ability to, in a general sense paint the government in a favourable light, speak favourably of the, in the media for instance, speak favourably of the government among their employees or among their contacts in the community, to come up with solutions which make the government of the day look good. I think in my study, and that's, it is an academic study, not personal knowledge as such, that this is quite a common, quite a common thing.

Throughout the world?---Throughout the world, certainly. I don't think Australia, I think the trends that we're discussing, as have been made clear this morning, are not restricted to Australia by any means. And that Australia is, I wouldn't say lagging along, but it is in the pack as far as these developments are concerned. You mentioned financial inducements, I would say that they are, certainly in the minority and possibly even quite rare that what those in government are more concerned with is, is election and re-election and, and being popular and, and of course making the right sorts of decisions which will in turn benefit, benefit them. But all of these things I would see as the, as the ordinary currency of, of politics so that it's a question of course of distinguishing when they occur and when they, when they don't which is - - -

I'm not sure if I understand that. What's in the ordinary currency of politics?---That - - -

Are you suggesting, and I'm not sure if you are, that, that carrot and stick approach of, in relation to benefits of whatever kind, you think that that's the ordinary course of politics is it?---One of the ordinary courses of politics.

Doesn't it depend on the nature of the benefits?---Yes, it does. And they are various sorts of benefits. And I was trying to make the point that I think that there are two types of mechanisms by which lobbying is undertaken in the, in the world of government and one of those types is not about benefits, it's - - -

In know?---And the other type though, I think, yes, I think it's, it is, it's quite common in all, in all sectors that - - -

Well, do you think that's healthy?---I think too much of it is unhealthy and I think, I think often it is unhealthy.

Well, what is unhealthy about it?---Well, I think it's unhealthy, I had in my mind an idea that there is a relatively level playing field in politics and policy-making and if some, some interests by their very nature are able to, to paint the, to help paint the government in a, in a, in a positive light to get in part returns in policy returns in response to a close relationship with the government and, and talking up, talking up the government I think there's an element of an unhealthy, although quite natural, there's an unhealthy aspect to this.

But it's very difficult to stop that. I mean, that is how politics works, doesn't it?---I agree with you.

I mean, that's the western form of democracy, people with money use the money to try and benefit themselves and the hope is that that will all balance itself out in the end - - -?---Yes, I don't think it - - -

- - - with opposing views but we are really looking at something more than that?---Yes.

10 An element of impropriety?---First I'd like to say that I think I'm speaking, as I think you are, of the broader way in which interests and government interact and not just the lobby, the so-called lobbying industry. I regard the lobbying industry as essentially technicians or professionals who do a job in a particular way for broader interests in the community and they can find other means of doing the, the job by employing their own staff or by having their own senior staff engage in this sort of activity but they, they, for, for reasons of efficiency and for division of responsibility within the, within the company and the way they spend their money they give some of that activity to the, to the lobbying industry so I, I am, I am concerned with the larger whole but I, I say that within that large whole there's a, there's a consultant lobbying industry which is part of the concern of this, this inquiry
20 and they play, they play a role in that. I don't believe that - - -

MR GORMLY: Professor, can I just stop you for a second?---Mmm.

The Commissioner originally asked you about the question of donations?
---Yes.

30 The risk, is it not, is that a donation that is connected with a lobbyist is likely, not just may, but is likely to produce a positive response back to the lobbying for whatever his other interests are. If a lobbyist says I will arrange for you to have \$100,000 from such and such a client it's by way of a donation or it's by way of fundraising, that must inevitably produce a positive response from the party in question or the government in question back to that lobbyist. Would you agree with that? It's impossible to separate the two?---I mean, if you're speaking about a, a donation which is made as crudely as that, sure, then I would think that that would be the, that would be the case.

40 But you're, you're saying as crudely as that, you're thinking there that it is borderline bribery?---Yes, yes, and I think it's entirely inappropriate.

Let's put it another way so that we move away from bribery. Lobbyists seem to involve people with political experience and political nous, it seems to be a feature of - - -?---Yes.

- - - of professional lobbyists?---Yes.

It also involves a high degree of knowledge of how parties operate and how government operates?---Yes.

Lobbyists are, it seems, well-connected in the community as well?---Yes.

Lobbyists are therefore often people who would logically be able to raise funds for parties, that is the they've got the knowledge - - -?---In some cases, yes, yes.

Yeah, they've got the knowledge of how the party works?---Certainly.

- 10 They know that the party needs the money, political donations, it's an absolutely integral and essential part of the political system as it operates at the moment, you cannot run an election, you cannot run a party without donations, correct?---That is true.

Right. So if a lobbyist is also proffering assistance or advice or advocacy on the part of a client and he is connected with fundraising, there will inevitably be at least a perception, if not a reality, that the two are interlinked?---I agree with that, yes.

- 20 So would you, would you accept the proposition that at a level of principle lobbyists who are advocating for clients ought not be involved in either donations or fundraising?---Yes, I would accept that. I would like to keep them out of that sort of business.

That's not the case as the moment, is it?---I believe that's not the case.

- 30 All right. Would you agree too that a client who uses a lobbyist, if this were capable of regulation, let me put it another way, that a lobbyist should not be permitted to allow a client to intermingle its need for advocacy with the government with offers of donations?---Yes, I think they should be kept quite separate, I agree with you.

That even if there is no ill-will, even if there is no poor and bad intention, even if there is no mixing of motive, the perception is inevitably damaging, do you agree with that?---I agree with that.

- 40 Can you think of any basis whatever for justifying lobbyists being involved in fundraising?---No, I can't. I, I can though see difficulty in separating the two types of activities in the long run if we're talking about lobbyists in the generic, in the generic sense. I think lobbyists as consultant lobbyists, registered lobbyists, I can see no justification for them being involved in party fundraising or fundraising for political purposes. If on the other hand those who employ those lobbyists were excluded from fundraising or donations you certainly would be striking at the heart of the way modern politics is, modern politics operates. Now, you may want to do that but it's a, it's a very large step which - - -

Well, I, I take your point, professor, essentially you're saying that, that once you start to interfere with the giving of donations and political fundraising you're really stopping parties from carrying out ordinary electioneering and ordinary party activity?---Yes, you would change the nature of modern campaigning and you would downsize it considerably if you took away that access to funds, particularly if, if you were not time specific about the link between an interest in the community donating to a political party and engaging in, in lobbying because, and I think this is the nature of lobbying, effective lobbying. A lot of it, a lot of it is about relationships built up over
10 a long period of time, some commentators describe it as paying your insurance money and you call on it only perhaps decades later or you're, you're building up a relationship.

But nevertheless you're calling on it based on the donation rather than the merit of the argument?---Yes.

Right. Can I tell you for your comment, professor, that in the course of the investigation we have, as you will imagine, spoken to a wide array of
20 lobbyists from a number of sources, not just professional lobbyists but in-house lobbyists and others as well, and there seems to be fairly universal dislike along the lobbyists themselves for being drawn into party political lobbying, party political fundraising I'm sorry?---Mmm.

Does that surprise you or not?---Ah - - -

That is the lobbyists don't want to be involved in donations and fundraising themselves?---Yes, it does, it does surprise me that they would express it strongly. I think it's known in the, from an academic point of view that, you know, there are some lobbyists and lobbying firms with close relations with
30 particular political parties and I could see how they would want to be hands-off from any involvement in raising campaign funds at any level. On the other hand, they are partisan in their general orientation and I would imagine that even if they didn't want to involve themselves directly they wouldn't be adverse to pointing the party in the right direction, put it that way.

Professor, can I take you to another area. One of the devices that you have, I want to take you to the area of transparency, confidentiality and publication. One of the devices that you have written about is the
40 possibility that ministers' diaries would be published and that in that way it would be possible for the public to see who was seeing the minister, how often they were seeing them and with whom they were seeing them, so that if there were to be a large commercial interest seeing the minister weekly for six weeks with a particular lobbyist, that that's something that might be of public interest and would become then disclosed, would become public information. I assume that's what's behind your suggestion of this device?--Yes, yes, that's, that's the case.

It has been said to us by ministers and past ministers that to publish a minister's diary is to publish or force out into the public arena more information that the public needs to have, is entitled to have, and that it is an invasion to some extent of what might be personal matters in the minister's diary. Would you accept that kind of qualification or reservation about publication of the diary?---I could see there might be exemptions or exceptions for particular types of diary matters, but in terms of the professional side of a politician's life, a minister's life, I can see a case for very few exemptions. I think it is in the public interest for, and increasingly possible with electronic developments, for the broad outline of the major parts of the minister's diary to be made public.

So that even if you weren't publishing the diary, what you could publish then is a list of lobbying meetings?---Absolutely.

THE COMMISSIONER: Well, you could publish the appointments diary. ---The appointments diary would be a good way of, of putting it, yes.

MR GORMLY: Just as the governor does. The governor publishes her daily activities?---Yes. And as, as we're seeing at the moment, occasionally party leaders and others publish their diaries and the media take an interest in them and we know what they're doing and who they're meeting. And I think in the work of government, that should be possible as well.

Is that based essentially on a principle that for persons in elected public office, there really could never be a basis for a secret or unrecorded meeting?---Of a professional nature.

Well, of anything to do with government business?---Yes. I, I, I accept that.

THE COMMISSIONER: What of state security?---State security would be one exemption. And there may be others, but my point would be that I think the general argument holds, that there's a case in the public interest for this to be public knowledge.

MR GORMLY: So just as in the freedom of information field and under the new legislation that applies in New South Wales, categories have been worked out where documents cannot or will not be published, you could well work out that list of areas that ministers would be, or ought not be published, but otherwise there would be publication of a list of who a minister is seeing on a day-to-day basis?---I believe so.

Were you present in court, I'm sorry, not in court, were you present during the evidence of Mr Mitchell- - -?---I was.

- - -just given before? Do you recall the exchange that occurred between the Commissioner and Mr Mitchell about that level of government to which lobbyists should be directing their attentions and his view that there were

not clear rules any more about who made certain types of decisions, whether they were ministerial or public service, either way they're executive, but whether they're ministerial or public service?---(NO AUDIBLE REPLY)

And do you recall that the Commissioner was asking Mr Mitchell about his views concerning controls that could be applied?---(NO AUDIBLE REPLY)

10 Can I just follow that, do you recall that evidence?---I do recall that evidence.

Can I just cover some of that to receive your views about it. Firstly, do you agree with Mr Mitchell that there has been a loosening of rules about the decision-making apportionment between ministers on the one hand and public officers on the other, public servants on the other?---I think it's, I think it's more complicated than Mr Mitchell would suggest. I think there is a to-ing and fro-ing between greater emphasis on ministerial involvement at some times and greater emphasis on public servant involvement at others, at other times. So I understood Mr Mitchell to be saying that there's a general trend in the one direction and I don't accept that.

20 Ah hmm.---I think ministers and public servants have always been involved in decision-making and you could go back decades and you would have hands-on ministers, ministers who got, got involved in decision-making, others who were hands-off.

All right. Well, there may be legitimate debate about that topic then.---Yes.

30 So that would inevitable lead to the conclusion that you would accept that contact between ministers and lobbyists is something that would need to occur if, if lobbying was to be permitted?---Yes, I think so I can see nothing inappropriate about lobbyists in that generic sense seeking to meet with a minister and the minister agreeing, agreeing to do so.

40 All right. Well, that brings us back then to the question of access. Now, I recall the exchanges between you and the minister about access so far. We have heard in the course of the investigation, ministers and former ministers repeatedly saying the argument about access is something of a myth, that if somebody wants to get access to me as a minister, they can get it. That so far as I, the minister, are am concerned, you don't need a lobbyist to get in to see me. We've heard that said not just from New South Wales ministers but from elsewhere as well. Essentially, ministers say, and perhaps it may be in their interest to do so, but ministers do seem to say that access is a myth, that access problems is a myth. Now, the question is firstly, do you know anything about that topic, and secondly, are we then perhaps talking about different types of access, that is, physical presence of the person in the room may be one form of access, but access for other purposes may be

different. Can I ask you to address the first question first?---Certainly. And the first question is?

Do you, from your knowledge, think that there is any obstacle to access which requires a lobbyist to open a door?---I think there would be occasions when access is a problem for individuals. I don't accept the carte blanche view that's the case expressed by ministers and I've heard it expressed publicly, that anyone can get in to see me. I don't think that's, that's the case. It's not just a question of who you are, I think it's the natural rationing
10 of twenty-four hours in the day and I think therefore I can envisage situations and I've been told of situations where a lobbyist or some intermediary can be very helpful in gaining access to the minister.

So if the, if the lobbyist can ring up and get the access, it's presumably based on more than just relationship, it must be based on some assumption that the minister is going to get something out of the time as well. Would that be right?---I think that's right. It would be based not only on who the person, who the lobbyist was, of course, but the, who the client was, how
20 important a figure in various ways that person was to the issue at hand or, or just in general. So it would be a combination of both, I would think.,

Right. So that if there are two parties, one of whom uses a well connected lobbyist and the other who endeavours to use no lobbyist, but either could provide the service being offered to the, to the minister, it's the relationship that will make the difference, the relationship with the lobbyist - - -?---Yes. If you're talking about two individuals of equal standing in the community, that would, that is the case. Although I would also argue, believe, that
30 employing a lobbyist would be only one way of, of making that case for access to the minister. It may be that some other individuals are so good, so well connected by luck or good judgement, that they know someone who knows the minister or they have connections with someone in the political party or socially or in some other, in some other way. I think if we're talking about individuals at the highest level or a high level of society and in business then these are individuals who would have a number of avenues to a minister if they really tried. And if they had no avenue then they might consider hiring a lobbyist.

THE COMMISSIONER: The access is not controlled, I assume that access is within the discretion of the minister. I assume that you don't suggest that
40 there is any way it can be controlled or do you think it can?---No, I wouldn't suggest that access should be controlled. I imagine - - -

Or can be?---Sorry?

Or can be?---Or can be, no. And I think sometimes that access can be in the hands of a staff member or, I'm trying to think of a vernacular term for that, that of, of someone who can block the way for very good reasons, perhaps to the minister. But I think these impediments can be overcome over, over

time. And, and with some individuals perhaps this, my academic knowledge, can be overcome very quickly with a phone call, I need to see, I need to see the minister. I believe that would be quite standard in public life.

MR GORMLY: You're referring were you to the role of the chief of staff or a staffer in deciding who will and will not see the minister?---Yes.

10 So frequently a minister may not even know that there's an application to see him or her - - -?---Yes.

- - - because it's been managed by someone else?---Yes.

Well, do you yourself see any way of overcoming what might be termed the preference for appointment that a lobbyist can arrange?---No, I don't. I think the lobbyist is one of a number of intermediaries, some paid, some unpaid. Some people don't need intermediaries. I think it's one of the facts of life that some people can afford a lobbyist and perhaps that will help them get access to the political process.

20 I'm going to put to you a situation that again has arisen from interviews. It was suggested by some chiefs of staff in the course of interviews and some ministers as well that there needed to be an extraordinarily careful rationing of time by the busy ministers, those in busy portfolios, such that if they gave access, they would limit it to a period of say twenty minutes or half an hour where whoever it was that to see them was expected to put their proposal in a clear and crisp way. This was as part of a fairly common complaint that people would come in to see a minister and that they did not put their case in a clear and crisp way, particularly if they weren't trained to do so, and that in turn was part of a suggestion that some of the best presentations
30 came from people who are trained as lobbyists rather than people who had the direct interest?---Yes.

But in the course of all that there emerged a consistent suggestion that most access was a waste of a minister's time, that most of the time people would seek access, sometimes very vigorously and persistently only to spend half an hour of the minister's time telling them something upon which the government could not act, would not act or couldn't even understand. That that was so common and so frequent a problem, that it caused ministers to want to limit access unless they receive some kind of assurance that the
40 access was going to be worthwhile. Now this of course, what I'm describing to you here is a combination of things that have come from a number of interviews and we are not talking about access to a person's member of parliament, we're talking about access to the minister as a member of the executive government. Do you think that there is, without impairing any other right, a sound basis for allowing some form of objective vetting of applications for access to a minister, independent of the minister? ---I would find it difficult to see how that could work. I think the access to the minister ought to be the responsibility of the minister and those, those

around the minister. Clearly, and they would have their own vetting process within their office and perhaps among their public, senior public servants and others who would give them advice on who they should see and who they, who they shouldn't see. But ultimately I, I wouldn't like to see a situation in which the rights of the minister to see someone were restricted.

10 Do you consider that there is an obligation on a minister to grant access to anyone who seeks it?---No, I wouldn't, no. I think that's unrealistic. I think there has to be some rationing process. There has to be some individuals who will see, see a staff member or be able to put a written submission. There's only so many hours in the day and my understanding is that ministers are extremely busy people, and they can only do so much.

There probably is an obligation on a member of parliament to see a member of his constituency if that is physically possible to do so. Would you agree?---I would, I would agree.

20 That, that's a representation, a fundamental entitlement of a democratic process?---Certainly. Not immediately of course, but over in a reasonable period of time.

But there is an obligation on the member to endeavour to see a constituent? ---Yes.

Right. It's different with a minister. Is that so?---Yes, I believe they are fundamentally different jobs, places in the democratic system and the minister, yes, has the right to restrict and choose between who they, who they see.

30 Well, at the moment that seems to be being done partly by chiefs of staff and ministers. Correct?---Correct.

So that there is at least a definable obligation on the part of chiefs of staff and ministers to ensure that if access is granted, it's granted say a) in the public interest and b) on appropriate grounds, this is, not by preference or relationship?---Yes. Ideally that should be the case, I believe.

40 All right. So they are at least definable obligations?---Yes, the minister should be under an obligation to treat all requests fairly and - - -

Well, can I suggest to you, professor, that it's not a question of fairness, that it is a question of public interest so that fairness seems to imply that you might grant interviews to one of a number of people so that they can each put their case. But there may be a basis for excluding somebody from a ministerial interview even though fairness would dictate that they would get in. Do you accept that or not?---Yes, I accept the terminology of public interest rather than, rather than fairness.

Right?---It is, it is in the public interest that there be no, that, I'm stuck for language, but there is a public interest in having objective criteria for seeing individual from the community who want to put a particular - - -

Well, they'll have different outcomes won't they? The minister can choose who to see on the basis of public interest or he can choose to see people on the basis of fairness. He may see two different sets of people. Probably more for fairness than public interest?---Yes. Yes.

10 But either way there is objective criteria imposed by way of obligation on the minister or his staff?---Yes, I believe that should be the case. I also believe that there'll be a variety of reasons why a minister should see some person and I think to be seen to consult with someone in the community, even though the minister really feels that they have nothing to add to a particular discussion, I think there'll be a certain amount of that. I don't see the minister's relationships with the community as being narrowly tied to measurable policy outcomes. There'll be a mixture of the political, the policy, the, the community.

20 But if you're looking for a control and you can define the nature of an obligation on a minister or his staff, that is at least a start in terms of say a Code of Conduct?---Yes, certainly.

Or a declaration were that needed?---Yes.

And it would at least provide a platform for the exclusion of consultation based on relationship?---Certainly.

30 Can I take you to the question of the - - -?---Would you mind if I added to the point?

40 Yes, certainly?---The term relationship I think can be seen to imply something irrelevant to policy discussions or, or irrelevant to the matter at hand and I would agree with you that there is perhaps some elements of a relationship, that is someone who has been found to be reliable in the past or is a reasonable indicator of, of opinion from a particular industry then I can see past experience as being a legitimate part of the criteria by which individuals might be, might be selected. Even if you went back again and again to some people rather than others in, in a particular industry or in a particular policy area, that still might be a legitimate thing to do.

All right. Well, professor, I wasn't going to raise it with you but you've raised a point of importance because it has been said by the whole array of lobbying interests that we have interviewed from every level that relationship can be perceived in two way, that is it's an unfair preference arising from personal contact of the past on the one hand but on the other it is a, an ordinary foundation for business or working trust. Is that the point

you're making?---That's, that's the point I was trying to make but the second part of that, the more expansive view I think is the correct one.

That is, that is said to be the reason and I put this to you for your comment, that is said to be the reason why professional third-party lobbyists are often party-oriented, that is, they are often not bilateral or multi-party lobbyists, they will be Liberal or they'll be Labor because there is a, a language and a trust and a mutual background that means that if the lobbyist provides information to the minister and it's false it would not only be bad lobbying but it would be a breach of the historical or relationship trust as well. Do you think that that works in favour of or against the value of lobbying from a public interest point of view?---I, I don't think it's contrary to the public, to the public interest point of view. I, I think those sorts of relationships built up on shared values or, or past experience are a legitimate part of the lobbying trade and not in principle contrary to the public interest.

Do you think it's, it's - - -?---It might be unwise professionally for a lobbyist to put all their eggs in the one basket and a, and a number of them I think try and manage having a party orientation with a, a more general orientation so that you can have a lobbying firm which appears to be closer to one side of politics than the other but that it has on its staff members of, staff members who also maintain contact with, with others.

It does make the perception difficult to manage though, doesn't it, the public perception?---I think again, and, yes, I agree with that. I think again and again if a particular lobbying firm is seen to be so close to the government of the day that they are given unfair, unreasonable access, special privileges, then that is contrary to the, to the public interest. It breeds a perception that the insiders that I referred to in my opening statement are getting special privileges.

THE COMMISSIONER: Well, you just have to have a lot of access and you'll get a perception?---Well, if you're particularly good at your job you, yes, you will, perhaps that perception will build up over time but I think the party is, the public is still suspicious of, of, you know, a lobbying firm for instance which not only has a special relationship with one side of politics but employs people from that side of politics - - -

Why are the public unhappy?---I think the public sniff out a feeling that, you know, one, some people are getting access that others are not, that - - -

And should that be, that feeling be ignored?---No, it shouldn't be ignored, no, I, I - - -

How do you stop it? How do you stop this happening?---Perhaps not by particular regulations, I made the point that I think the emphasis should be equally on lobbyists and the lobbied and I think it should be made very clear to the lobbied that a public perception that they are giving special privileges

to particular lobbyists or particular interests is damaging to them. It might be - - -

Not only to them?---But to the whole fabric of democracy, yes, and appeal to their higher instincts as well as their base, base instincts. Yes, appeal, appeal on a number of grounds to, to the lobbied that the public interest demands - - -

So would this go into some form of Code of Conduct?---I think - - -

10

So it's not a regulation but it's - - -?---Yeah, I think it could go into a Code of Conduct, certainly, consider going into a Code of Conduct, it would have to be phased in, in a careful, a careful way, the way that's been tested but yes, I think it should be considered.

I mean, it would not be difficult to word it, I mean, the minister should not do anything that would give rise to a perception that he would be favouring one group of people above others?---Certainly.

20

And whether, whether that perception arises by the number of times the minister sees the individual or otherwise?---Mmm, or the number of, yes, the number of times the, yes, the decision is in favour of a particular individual.

Our most successful firms of lobbyists would be appalled at that, wouldn't they?---I suppose they would see it as some sort of restraint on trade, that it would penalise those who are particularly good at their, good at their job but - - -

30

Well, it's a matter of balancing?---I think it's balancing the public interest and I think it's up to those in office to, to attempt to balance the public interest and to, if they dealing with intermediaries to deal with a variety of intermediaries and, yes, and to deal with a variety of intermediaries who are seen in the wider public to hold a variety of political views.

In a sense this is really, it's a matter of, of ministerial ethics?---Yes, I believe very strongly that at the heart of a lot of these issues are the ethics and culture of those in office as well as those who are attempting to influence those in government.

40

By re-education?---Yes, I'm not sure I like the word re-education but, and I suppose what I know of some inquiries in other jurisdictions such as Western Australia that there's a feeling that no, you can have as much education and, and as many Codes of Conduct but some people don't seem to learn the lessons and that's what I read anyway.

MR GORMLY: Now, I want to take you back to some things now?---Yes.

At, at present it is a feature of the lobbying industry that it involves persons out of parliament or out of public office and it is really those persons, is it not, that create the perception that access is favoured to lobbyists?---Yes.

Favoured to those who use them.---Particularly those persons and particularly when the government of the day is of the same political persuasion.

10 So those persons in the lobbying firms or in the in-house lobbying or the peak bodies are in effect the problem when it comes to a perception of favoured access?---Yes. I think they are certainly pre-eminent among the problems.

All right. I think what you may be thinking of is that there are also people who may come from the party, so to speak?---Yes.

20 And the party person may well have relationships with the government of the day?---Yes, that's right. And by the party I mean both the party and the community, to put it that way, the party headquarters, the people who've made their, have been employed by the, by the party, but also those staffers and others who've had careers with particular parties, particular, governments of a particular political persuasion .

Mmm.---They can equally be seen as insiders to the political process.

30 THE COMMISSIONER: They could be, are they employed, I mean, are, are entities who have constant communication with the government by their very nature, do they look out for people like that and employ them?---Yes. And they have been doing so for, for many years, I think at least back to the 1960s. Entities who want to deal with government look out for such individuals. It's been a career path for, for such individuals.

40 MR GORMLY: So if you come from the party or you're a staffer or chief of staff, if you come from a government department perhaps or if you come from parliament itself, those, that group of people will inevitably raise a perception, rightly or wrongly, that relationship plays a role in access and perhaps even outcome?---Yes. I would generally exclude departmental officers, although there would be some who would be seen as partisan appointments to government departments or have had a particularly close and senior relationship with the government who would come in that category, but I would exclude most of the departmental officers.

So it's really the politicians.---I think it's the politicians, the staffers and a smaller number of people who would be seen as party officials.

All right. Is it reasonable, in order to avoid the perception of favouritism, to require of those groups of people that they leave parliament or leave their jobs as staffers and chiefs of staff and not engage in lobbying at all?

---I think it is reasonable for some period of time. I'm aware of the question of livelihood but I still feel on balance it's reasonable to impose some restrictions on the type of employment such people can take.

10 THE COMMISSIONER: Would the restrictions only relate to their field or would it relate generally?---Both I think. Different categories of individuals. I think it's very difficult for instance to, well, if someone was a premier or a treasurer or someone who held such a senior position, I think field is almost the whole field of government. For others you would, you would say particular - - -

It would be very difficult though to, if this was in legislation, to distinguish between the two and work out how you would impose the restriction, if it's to be a restricted restriction.---Yes. Yes, I can see that it would be, but I still feel some form of graduated restrictions might be worth considering. I think in the public perceptions, the site of former premiers and treasurers and very senior- - -

20 Professor Warhurst, I'm not sure why, why it is that there has to be these restrictions, the restricted restrictions and not blanket restrictions, because if the real mischief is the relationship, the relationships are there whether the expertise is in, is in water or transport or finance. It's there and why then restrict it to a particular field of employment?---I agree with you. The relationship is there and drawing the line is difficult um, and wherever you draw the line, the relationship will survive. And if I understand you correctly to be saying, if you're a cabinet minister you're effectively, where you draw the line if - - -

30 Yes.---Yes. And I- - -

And you've got your relationship with all the people you've grown up with in politics.---Absolutely. And those relationships, well, will continue and so - - -

40 I've heard it suggested that the only valid reason for having restrictions is knowledge of confidential information, so that if you have a period of say one year, then you can be satisfied that the person who's retired doesn't possess that confidential information any more, therefore, if it's not one year, it's two years, but a period. And so then that person should be free to go wherever he or she likes. Otherwise it's unfair restriction on employment. I mean, that's a view.---Yes, yeah. And I can see the argument that, you know, one year or some period at least enables the current decisions to work their way out of the, out of the system, if you like, so that the very specific knowledge say of confidential information or of the detail of argument that's ongoing within, within cabinet or within the, within the government, that, that certainly is one reason why you may want to have, have a cooling-off period. But that's a very narrow view in, in my , in my view, and as you've pointed out yourself, the relationship and the

skills and the contacts are about something broader than just the confidential information surrounding a particular government decision. I also think that some of this comes back to public perception, perception that there is something fishing or, or if a former senior minister is lobbying the government having walked out the door the week before.

10 Or even five years?---Yes. I think these relationships, and that's one of the weaknesses of, and the limitations of drawing lines and cooling-off periods and, and so one, that some of the most powerful, for want of a better word, individuals in, in political life, if they wanted to turn their hand to lobbying, they have a currency which, which lasts for five years, ten years, even- - -

Is there anywhere in the world where there's a permanent prohibition?
---Not to my knowledge. Not to my knowledge.

20 MR GORMLY: Well, that means there are two things, there are two things going on there, that firstly there is the currency of what you might call government information, which should be kept confidential, shouldn't be used by an individual to sell in the market place just because they've left parliament?---Mmm.

Okay. So there's information firstly. Cooling-off periods attack that problem because the currency of information, at Government level is usually short. Do you agree with that?---Most, most cases I do, yes, I agree with that.

30 And certainly parliamentarians and public offers that we've spoken to suggest that within sometimes months, whatever a minister knew ceases to be useful. So that a cooling-off period of twelve months in New South Wales or five years in Canada should be enough to resolve the information currency problem. Correct?---Correct.

However, relationships are totally different- - -?---Yes.

- - -because no amount of cooling-off period is going to have any impact at all if the ex-parliamentarian continues to be active as they frequently are, in party political life. Correct?---Correct. Yes, even if they're not active in party political life I think the relationships would probably persevere.

40 Or course. So that if they leave parliament they may still be seen talking to or having lunch with, going out with the families of other members of parliament, ministers, the premier, whoever - - -?---Yes.

- - - on an ongoing basis and yet they've got no public role whatever?---Yes.

So a cooling off period is not going to touch in any way the, or, you, may not touch in any way the relationship that exists?---I agree.

And even if they weren't friends, the fact is that relationships do persist, friendships persist?---Certainly.

All right. So it would be correct to say that a cooling off period really only attacks the currency of the information problem, not the relationship problem?---No, no. In the public eye, I suppose, a cooling off period serves a sort of symbolic function as well.

10 All right. All right. So that a cooling off period will assist with the perception of separation?---Yes, the public relations if you like of, of - - -

But there is a practical problem about of course having a blanket restriction, I suppose, on parliamentarians, that is that it does, as you heard me discuss with Mr Mitchell, appear to be one of a limited number of career options available to ex-parliamentarians. It is true that some seem to go into a public service life, that is working in charities and so forth. But that would assume that they don't need to continue to make a living. Is that right? ---That is true.

20 So that seems to raise a pension issue for ex senior politicians who've held a ministerial position. Do you agree?---I would. I would agree, yes. Yes.

Pensions were introduced for parliamentarians for much the same reasons as they were introduced for judges. Is that right?---I understand that to be the case, yes.

And that was in effect to preserve their independence once they departed parliament?---Mmm.

30 Correct?---Yes, correct.

And even in the ordinary industrial field at the moment is somebody is terminated from a significant position, termination payments are usually arranged already in the contract?---Yes.

Right. So that if there is, for example, a premature termination there is a bridging payment before they, to enable them to carry on before they move into the next sphere of employment - - -?---Yes.

40 - - - if there is one for them?---Yes.

And even at a non-significant payment, let me say a ordinary wages payments there are inbuilt redundancy components and arrangements and agreements for people who are suddenly cut off from their source of income. It would seem to suggest that if you want to have independence, I know you're nodding as I say this, and I will come to a question, professor? ---Yes.

It does seem that if you want to have an independent lobbying system from which you can exclude former politicians you would need to accept that ex-ministers need financial independence. Do you agree with that?---Yes, I, as far as it goes, yes, I do. I do. They need, they need financial independence and security.

All right?---I suppose there's always a community discussion as to what level of security is appropriate.

10 Of course. And that may not necessarily mean a return to pensions, but it may mean a payment for a period that enables them not to work if they are being cooled off?---Yes, yes. I think that would be, that would be a possibility worth investigating. I think the general issue of post politics employment of politicians is a complex one and one would have to examine it very closely. I don't accept the proposition that all former ministers have, have trouble finding employment.

20 In an, in an uncompromised field?---In an uncompromised field. It's true that many have their professions taken away from them by absence from the field for too long to maintain the currency of their qualifications and things of, things of this nature. But I think there are other factors at work. I mean my view would be that, it's the thrill of the chase, which is par to the attraction of lobbying to former ministers and politicians. And by that I mean, it's not solely a question of remuneration, it's a question of, what do they call it, irrelevant syndrome or relevance deprivation syndrome, which means that they don't want to go off somewhere else even if they are marketable and have professional opportunities. They, particularly if those opportunities are not in the public eye. So this is a complex question where I'm probably not - - -

30 MR GORMLY: It depends on the amount of compensation?---It does I think. And one, perhaps a system by which there'd be some evaluation of other opportunities for particular ministers, it's made more complex by the, excuse me, if you're going on, it's made more complex by the, the trend in careers in politics. People getting into politics very young and retiring very young. It wasn't such a problem when everyone was retiring as a minister in their 60's or 70's. It wasn't quite the issue. But if you're getting long serving ministers retiring in their 40's, then clearly these are very germane questions. And explain, I think, both the desire for some financial security and independence and also the attraction of lobbying and related activities.

40 Professor, do you, we only have a few minutes and I would like to, to use it with a fairly important question. We have raised with you already the question of the publication of contact between say a minister and a lobbying entity has an appointment?---Yes.

Do you yourself have a view about the degree to which the content of that contact can or should be made known to the public? That is contact

between a private non-government lobbying entity on the one hand and an elected representative holding a ministerial office on the other?---Only a general view and that is what is feasible and, and the more the better.

Ah hmm. Do you think that there is a problem about there being no publication whatever about the content of the meeting?---Yes I think the, the, the assumption should be that there will be some publication of the content of the, about the content of the, of the meeting. Even brief content. And it would be up to some justification of exemptions if the content, if
10 there was no content or, or very little content published.

Mr Mitchell seemed to have a good point when he was that the perception that the public might have of deals being done in effect, was because nobody knew what was going on in a meeting between a minister and a lobbyist. Do you consider that that is part of the public perception problem?---I think it's part of the problem, yes. And I think if it could be, if the meeting is about a particular bill or a meeting is about a particular issue, then it should be possible to specify that in the, in the diary.

20 Do you think that there is any justification for a view that privacy or the development of an appropriate rapport between a minister and a lobbying entity, for example, such as would breed frankness, might be impaired if the topic of the lobbying meeting was published?---I can see the argument but I don't, I don't accept it. I think that privacy considerations, given the number of reasonable exemptions for national security and other exemptions that basically there is a right to know, the public has a right to know.

And I take it you, you, you would accept the view that there could not be any basis for a meeting between a minister and a lobbying entity not being
30 appropriately recorded for government records?---I would agree with that. I, I, I agree that there should not be any reason for, for the purpose of the meeting.

THE COMMISSIONER: So that would really mean that if the minister met the lobbyist at a Christmas party they would both be ethically bound not to talk to each other about business?---Well, I wasn't going that far, I was assuming that the professional diary of the minister was what we were speaking about.

40 Well, it is but the point is - - -?---Yes.

- - - that if you're going to the Christmas party - - -?---Sure.

- - - and while you're getting your drink you bump into the lobbyist - - -?
---Yes.

- - - are you, isn't it unrealistic to, to expect the diary to be updated by what then passes while we're waiting for our orange juice?---Look, I think you've

got to be sensible about these things and in most cases that would probably be the case. If you're at the bar and the lobbyist says when are you going to made a decision about X and - - -

Yes, and can I, look, you know, we spoke about this and this is what's happened since then, you should know this?---I think it's a matter for judgment. I think there would be instances in which social contact should be reported but it's highly difficult to specify the boundaries, I accept that, but I can still envisage situations in which, you know, if you go aside for
10 half an hour to talk about business effectively, and I think the, the individuals concerned would know when they cross the bounds from just the occasional comment to moving into business mode - - -

Do you think it permissible for the minister to meet a lobbyist in the garden while the party's going on inside to discuss business?---Yes, I, yes, I do. I think the nature of government is such that as long as there's transparency about the meeting, I don't think we have, ministers have to lead a regimented life so that nothing is spontaneous and I think there may be occasions when an opportunity arises to speak to a particular person and as
20 long as that's transparent and is reported in the appropriate way I, I can see that being possible.

MR GORMLY: Commissioner, I can see the time and I think we've probably covered as much ground as - - -

THE COMMISSIONER: Yes.

MR GORMLY: Unless we were to keep him for hours longer.

30 THE COMMISSIONER: No, I know. Professor Warhurst's evidence is concluded?

MR GORMLY: I think so, yes.

THE COMMISSIONER: Thank you very much for coming, Professor Warhurst, you've been very helpful?---Thank you very much.

Thank you.

40

THE WITNESS EXCUSED

[1.03pm]

THE COMMISSIONER: The Commission will now adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[1.03pm]