

HALIFAXPUB00054
02/08/2010

HALIFAX
pp 00054-00089

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION HALIFAX

Reference: Operation E10/0268

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 2 AUGUST 2010

AT 2.05PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we have present Professor Adam Graycar. Professor Graycar could come forward.

THE COMMISSIONER: Professor Graycar do you want to give your evidence under oath or do you wish to affirm the truth of your evidence?

PROFESSOR GRAYCAR: I'll make and affirmation.

10

THE COMMISSIONER: Won't you be seated.

<PROFESSOR ADAM GRAYCAR

[2.05pm]

MR GORMLY: Professor Graycar, what's your full name?---My full name is Adam Graycar.

20 You are, I think, currently the Professor of public policy at the Australian National University and you are Dean of the Australian National Institute of Public Policy, is that so?---That's correct.

Professor, I'm just going to get on the record some other things, if I may. I think you've had a fairly long history both in politics and in academic life. Is that so?---Well, in government and academic life.

I'm sorry, in government and academic, my apologies, quite right. You have doctorates, I think two doctorates. Is that so?---That's so.

30

At the University of New South Wales and - - -?---University of New South Wales.

Thank you, right. And I think you've been doing research originally in criminology but more lately in policy making and I think you've held academic positions in social policy, political science and criminology at Flinders, Rutgers, University of California Berkley, University of London, Yale, Sydney University and University of Hong Kong and the National University of Singapore.---Many of those were visiting posts, yes.

40

Thank you. You've also been nine years director of the Australian Institute of Criminology, the Commonwealth Government Agency and I think that you were the head or the Cabinet Office for the Government of South Australia as well.---That's correct.

All right. So you've been exposed to government side and academic side. ---Yes.

Professor, in recent times you've spent some time in the US, is that?
---That's so.

What was the period that you were there firstly?---I was there from 2007 until the beginning of this year I had a three year period as Dean of the School of Criminal Justice at Rutgers University.

10 In the course of that period I think you came to have some focus on lobbying activities in the United States. Is that so?---I, while I was at Rutgers University I set-up an institute on corruption studies and within that we looked at various types of behaviour that could have been deemed corrupt.

And did that include lobbying in the US?---We, we did not do an actual research study on lobbying but lobbying activities pervaded many of our discussions and analysis of what we did.

20 All right. I think you were present for some of this morning, is that so?---I was, yes.

Professor I'm going to ask you to give – direct your attention initially to the issue of the mischief which lobbying is said at times and when it is not good lobbying to present to a system of government. Now, in the course of the opening this morning, I'm not sure if you were here for that, there was a quote used from the Obama Administration concerning the role of lobbyists as a body who it was said were, "taking over" the agenda of government. That is that government wasn't setting the agenda rather it was being set for it. Is that a type of complaint of which you have heard before?---It's commonly acknowledged that in the United States people get much worse
30 government than they deserve, they get much worse legislation than they deserve because of the role of special interests.

All right. Special interests being another representation of lobbying?
---Well, the lobbying is the communication of the special interests.

Right.

40 THE COMMISSIONER: They have a long history of that.---There's a long, long history and - - -

recent decades, in the last decade or so, has focussed on very much the way in which

It probably stems from about 1790?---And earlier even. There are two sets of reasons. One is the structure of government and the way the constitution was written but the proliferation is, certainly in recent decades, in the last decade or so, has focussed on very much the way in which interests, well, often can be stopped and that special interests can be developed and in, in,

some of the groups are so large, so powerful that they determine the agenda and interestingly since the Obama administration was elected anybody who had followed the health debate would find that that was clearly a set of interests pitted against a government saying we think this is best for the people, we were elected, we had a mandate to do this and the interests are whittling it away bit by bit.

10 MR GORMLY: All right. Well, now, are you able from what you saw in the course of your work at Rutgers examples of special interest groups seizing an agenda and of an inability of the system perhaps to deal with special interest groups? It's a fairly broad question, professor, I'm just drawing on if anything what I understand to be some evidence, perhaps in the nature of anecdote perhaps from what you have seen that would represent the kind of risks that can occur with lobbying?---Well, we could take policy areas bit by bit and analyse them and dissect them. If we took health policy, if we took banking policy, if we take parts of agriculture policy and one very small example in that is that Americans pay the highest price in the world for sugar and the way in which the sugar interests have maintained the price through lobbying is a very, very interesting example.
20 If we take oil, the drilling for oil and the regulation and the lack of regulations, if we take gun availability, if we take student loans, we can go through, you know, any of these. If we look at prisons, American prisons are terribly overcrowded, the prisons in California are bursting at the seams, the governor wants to close some but the prison interests won't, well, won't let him because they, they will, they have lobbied the legislators in that state to keep the prisons going, the unions, the private, you know, all of the services that go into the prisons, you can take almost any area of public policy and - - -

30 THE COMMISSIONER: Including defence?---Defence, absolutely. And one argument is that the, going back for half a century when Eisenhower was president people talked about, well, he talked about the military industrial complex that came together to make sure there was a continuing market for their wares and there have been conflicts that many people say could have been solved in other ways, could have been solved by diplomacy and need not necessarily have escalated but either lobbyists have been in there, the president alone cannot declare war or make a treaty, there has to be the advice and consent of the congress and congressman are, certainly in the United States, relatively easily persuaded and bought, some
40 congressman, I mean, please don't think all congressman are like that.

MR GORMLY: Sure. If you were to take any one of those areas and work out how it is that lobbying has or the special interest groups have carried out various activities to secure the influence they have, is there any particular area that you would direct attention to to find out what that might be, how they've done it?---There is substantial academic literature on the lobbying activities, the processes appear pretty simple and straightforward, they all sponsor events, they make political donations, they take politicians on

junkets and in particular they draft legislation. Any bills that come into congress usually come in competing forms, the congressman don't always have the staff or the expertise or the data so they'll help in the drafting of legislation, they'll recruit personnel and you'd have to take a specific case study because, you know, we're talking in fairly large generalities but what's generally acknowledged is that any registered lobbyists in Washington spend about \$4 billion a year that they report and there are, the numbers are tens of thousands of registered lobbyists that spend very, very large amounts of money and so this covers the whole spectrum and you've got, you know, more has probably been written about the lobbies in favour of the second amendment, the right to bear arms, the most powerful lobby acknowledged by many is the National Rifle Association and even if you start to look at all of their activities, they will go after congressman that, who don't support their line, they will have them defeated through all sorts of (not transcribable) they'll fund opponents, they will run cases through the newspapers, the courts, it's a very, very powerful lobby. But of course there are good lobbies and there are good lobbies and bad lobbies and, you know, these are sometimes matters of judgment as well and AARP, the American Association of Retired Persons is a very, very powerful lobby in the retirement area, of pharmaceuticals, Medicaid, health care, taxation, it has 33 million people but many people think that, you know, they've exceeded their, 33 million members so every, it's a multi-billion dollar organisation. You get into all sorts of judgments about the (not transcribable) pitted against the health industry about how pharmaceuticals can be made available to older people, there are many judgments about which is, you know, who are the goodies and who are the baddies but there's a lot of money in play and the congressman have to make decisions.

THE COMMISSIONER: But that's a very, that's a transformation of the idea of democracy?---As Professor Warhurst was saying before (not transcribable) everybody has equal access but access also is tied up with a lot of knowledge and so you often have interest groups going head to head and watching the AARP and the pharmaceutical industry going against each other or their lobbyists going against each other so it's one part of the health agenda.

MR GORMLY: It does nevertheless seem to be a subversion of the concept that a government is elected to govern but doesn't do so or is unable to do so because of special interest groups. Is that, it's again a broad statement but that seems to be a consequence of allowing powerful lobbies to set an agenda?---Well, that was very evidence in the election of President Obama who campaigned saying we will have a health care, a health care system that does A, B and C. Come the election he says I have a mandate to do A, B and C and then the first year of his term was negotiating to do that when various interests said well, you can't do that, you know, our profits will go if you do that. They didn't say it as bluntly as that and in the end the, the bills that came up were so severely compromised and the political debate then is, is a little bit of it a step forward or should he have held out for the whole lot.

THE COMMISSIONER: Is that because of the influence brought to bear on individual congressman?---I would have thought so, yes, because even the President can't pass the legislation.

10 Yes?---The separation of powers keeps it out and one of the classic cases, and this is just going back some time, 20-odd years, organised crime had, was very closely and deeply, had closely and deeply infiltrated the Teamsters Union and the Department of Justice had done a comprehensive review of organised crime's influence on this union and the impact that that then had had on American life, on business, on a whole range of things and proposed legislation to put certain kerbs on the influence of organised crime in the Teamsters Union. When the bill went to congress the union did a massive lobbying exercise on many politicians, many donations and the bill never passed. That was, you know, it was as blatant as that and this is another example of what I was saying that Americans often have legislation and conditions that are less than optimum.

20 MR GORMLY: That rather suggest that because of the difference in party position in the US compared with a parliamentary style here in Australia and the UK that party discipline, whatever it's other deficiencies actually acts as a, a protection against picking off individual members of parliament to disturb a vote?---Yes.

30 That is party discipline becomes a protection against lobbying?---To some extent unless the party itself is in a compromise. But I think we do understand that we can't generalise from the American situation because you'll agree a congressional system is different to a parliamentary system where the executive is integrated with the legislative branch of government. When you have a separation of powers of the executive and the legislative branch of government the things that the executive branch proposes can't always be assumed to have come to fruition.

Professor, I understand that you did some work in New Jersey on the cash for access. Is that the way in which it's been tagged?---Pay to Play.

Pay to Play?---Pay to Play. In - - -

40 Can you tell us about that and how it operates?---Yes. It had been a long standing tradition, not only in New Jersey, but in many states in the Unites States, in that one could not get a government contract and one could not get appointed to a government position. One couldn't have ones cousin or friend appointed unless you made donations to the political party that was in power. And everybody talked about Pay to Play as a, in just the way things worked.

This is an open, this is an open knowledge or closed?---It's open knowledge, but it was a nudge, nudge, wink, wink that you realised that if

you didn't contribute you didn't get in the front door. Your company couldn't bid for things. In your, you just weren't part of it. You had to Pay to Play. And the previous governor of New Jersey introduced legislation called the Pay to Play Legislation and I've got some examples, (not transcribable) to make public the Pay to Play, that when there was Pay to Play, it would be transparent. And banning Pay to Play for a certain range of government contracts. And I have this very nice little newspaper headline that suddenly says, New Jersey's Pay for Play Law Causes Twenty Nine Per Cent Drop in Political Contributions by Government Contractors.

10 And they were lamenting the fact that, you know, this has dried up a revenue source for the government for parties and sometimes government agencies. The interesting thing about the United States is that, and certainly in New Jersey, corruption has been endemic right through all aspects of the government in New Jersey. And I could tell you stories that would take us hours. But when this legislation came up saying, hey, we're going to stop it, people said, hey, this is changing our way of life. And an interesting side issue to this is that in the United States Supreme Court ruled in, on a case in February this year, the case was about the First Amendment and it was, the case was brought by a group of citizens, I think it was something like

20 citizens and the Federal Electoral Commissioner, and they ruled that corporations were the same as people for the purposes of the First Amendment and as such could give whatever political donations they wanted to give and they were not to be restricted by the restrictions that were on them at that time. And this was a very, very significant ruling by the Court. As soon as that came out in the same groups that arrived were going to after the Pay to Play legislation now and have that deemed unconstitutional under the First Amendment, in, which would say that if you want to pay to be part of the system, that is your constitutional right to do so.

30 So that, all right, can we just go to the structure of Pay to Play, because Pay to Play sounds like a donation system that allows or institutionalises a relationship between paying for political parties on the one hand and getting a government benefit on the other or participating in government on the other. Is that right?---That's right.

All right. So they didn't, in some ways it's an institutionalised connection between not being able to take part unless you also contribute to a party? ---Yep.

40 Professor, tell me if this is a parallel. We have heard in the course of this investigation from large companies who do not like making political donations because they go to both sides and they have various consequences, they have said that they make contributions in part because if they don't make contributions it looks like they're not supporting anybody. If they do make contributions then if there's a nearby benefit, it looks like they've paid for it. But it's the first part of the proposition that I'm interested in. They are more or less implying that they have some kind of

social obligation or others think they have a social obligation to contribute political parties on the basis that if corporations like that don't contribute, then the political parties don't necessarily have a source of funding to run elections. Do you follow that proposition?---Yep.

10 There's a social obligation suggested. Is that the kind of consideration that exists behind the New Jersey Pay to Play or is this just an accumulation of historical behaviour?---I think it's an accumulation of historical behaviour and an attempt to weed out some very, very excessively corrupt behaviour that has taken place for a long time. And in many cases the Pay to Play often involves kickbacks to politicians. There have been politicians who have gone to gaol for taking kickbacks. They've been many politicians who have not been tried and I base this on discussions I've had with the FBI who just often don't have enough evidence. They've done investigations and they've not been able to conclude the investigations. So you're dealing with a very different sort of situation to a, in a general, so, a company thinking in that it has a social obligation. What we're really talking about, well, I think we're talking about two sets of in principals. One is, is law for sale. That's the, what we're really talking about. That you, in that if you pay you can
20 buy the law or buy the making of the law or you can buy, you can buy, you can pay for somebody to make law for you or you can pay for somebody to implement law for you. And one would say in a democratic system that is an abhorrent proposition. The law should come about by people who are paid to be legislators doing their job, professionally, ethically and having the advice from a professional public service and the politician's weigh up all the interest and decisions are made in that way. So that's one set of issues about whether law is for sale. A second on the social obligation side of it comes about in following, in a number of multinational corporations who feel that they haven't, have felt over time that they've had no alternative but
30 to pay bribes when they're doing business overseas. And there's legislation, there's no legislation, there's no ECD Convention that says it's illegal to bribe foreign officials and people have said the world will collapse if any of that doesn't happen. Yet, there are some recent studies have shown, studies have shown that companies that don't pay bribes are more profitable and get their business done just as well as companies that do pay bribes. So there's no, you know, it's about breaking a cycle. It's about showing the leadership. It's about having an ethical stance.

40 So this, this legislation that you've been referring to in, in New Jersey appears to be attempting to break the cycle by outlawing some forms of Pay to Play but acknowledging or accepting others as a staged withdrawal. Is that - - -?---That was a staged withdrawal, but also getting exemptions. I have this, you know, a table of this, if you, I don't know, I'll leave it with you, in there was an educational campaign with a whole set of Powerpoints as to how to deal with the Pay to Play and I have a pro forma document here called Sample (not transcribable) and Open Contract Contribution Prohibition Language. Which in certain, it's about disclosing that they'd been through a Pay to Play process and this is a thing, a document that

accompanies or non-profits are required to fill out if they have a contract that not awarded through a fair and open process. And there are some contracts that are, that are not awarded through a fair and open process. And then they have to fill this out to say, but we didn't make a donation even though we got the contract on other then a fair and open process.

10 All right. Could we have that as- - -?---Yes, by all means. They're downloaded from the Web and this is the whole extensive PowerPoint slide that government officials are taking around the country on how to do the Pay to Play, how to implement the Pay to Play legislation and Illinois, which is, Illinois' a very interesting state,. The state of Illinois, every democrat that has been elected governor of Illinois in the last fifty years has either gone to gaol or been indicted on corruption activities and so too has the last republican, like, and they also have just announced they're going to do a Pay to Play Act. And people say, hey, you know, this is amazing stuff, would it ever happen. So, yeah, some of the big states are trying to do it. I mean, this is a world away from what we're on about here, I think.

20 All right. Now I'm going to take you - - -

THE COMMISSIONER: I think so too.

30 MR GORMLY: Oh, good. I'm going to take you somewhere else. I think we're all three at that point. Professor, I want to take you, if I may, back to your experience as the head of the cabinet office in South Australia. You I think were present during some of the debate or you were present during the evidence of Professor Warhurst this morning. I appreciate that it's some years since you've been in that position. Doing the best you can, could you without obviously having to intrude in the activities that you actually did for specific purposes back then, can I ask whether you saw from your experience of ministerial appointment-making, any reasons why a list of appointments engaged in by a minister in the course of his or her ministerial duties, why they could not be listed and made public?---This is a difficult one. Ministers have to wheel and deal. Ministers, I think it would be detrimental if their daily appointments were made public. Sometimes in their work they do play both sides of the same argument, you know, they play, they, they don't need to expose everybody, everybody they're talking to doesn't necessarily need to be exposed. There is a very important principle of accountability, there's no doubt that ministers need to be
40 accountable, they're public figures. I would look at it another way. IO mean it would be terrible to have it on the front or in the papers every day. The governor certainly has a list of who he or she is meeting every day, but that office is not a decision-making office in the same way as a minister's office might be. One of the things that most cabinets do and most sets of ministers do is, they list their pecuniary interests, for example, and there is a register and there is a public servant and (not transcribable) responsibility for looking at the register, they advise the premier and there is a register. And if there were things on the register that didn't look right, an impartial

public servant would raise it with the premier or raise it with the deputy premier, depending on the situation. Now, one could argue much the same for a list of appointments. I mean, this is just a suggestion. Making public every appointment they were doing while they were in the heat of the negotiation or running something might compromise the nature of the objective they were trying to aim it.

10 There seems to be, if I may say, professor, a fundamental problem or that analysis exposes a fundamental sort of problem about the public nature
though of the minister, doesn't it, in that it in effect means that a person in
an office of solely a public interest who doesn't get there other than by
being elected there in the first place, carries out meetings which no one will
know about except perhaps until later or through records or archives? That
is an activity that is in effect what Professor Warhurst describes as behind
closed doors and that seems to be the very activity, particularly if it's
engaged in by former politicians as well as lobbyists, which generates the
very problem about lobbying. Can you give us some perhaps closer
example or some closer indication of why it is that allowing the public to
20 know or even competitors in some arrangement that the minister is involved
in to know who he's actually seeing on a day-by-day basis, if you have one
large corporation, a building corporation seeing the minister one day, does it
matter that he and everybody, that everybody knows he is seeing a
competitor the next day? Not the contents, just the fact of the consultation.
---Well, there, what will inevitably happen is what we're seeing in this
election campaign at the moment. Somebody says, you know, did the prime
minister in the cabinet agree with this proposition or not agree with this
proposition? And then every, it would be very hard to defend the situation
as to what they may or may not have spoken about. But to give you an
example, many of the things that occur, occur not with private corporations,
30 but with citizen groups, with public groups, there are allocations of
resources, you've got enough money to put, you know, one childcare centre
up and you've got three or four people competing for where the childcare
centre might go. It's, you'd never be able to negotiate that with each of
them, look at their interests. Most of this work is done by bureaucrats.
Anyway, there are, while that is in play, you've got so many red herrings,
you'd be distracted from making your decisions. I fully support the
proposition that whatever has to be done, has to be done ethically and there
are probably ways of monitoring that ethical behaviour, but what many
people I think are surprised about is how many small scale issues, how
40 many things that might appear apparently trivial take a lot of effort,
management, thinking through data, sorting out the interests and trying to
work out the best decision. And if in the middle of it all you end up with
every meeting that's being had being made public, it could compromise the
process. That's my initial though.

THE COMMISSIONER: The idea is not necessarily to require disclosure of everything that's discussed but simply the topic, but I suppose- -?
---I mean- - -

- - -it is a difficult (not transcribable) ambiguous.---Okay. Let me give you an example. In the government, and it's sort of hypothetical, it's an example that we sort of worked through a bit. The government wants to buy some new IT equipment. First of all, if, and it wants to outsource some of the IT management. Now, it's not sure which way it wants to go, it wants to talk to some IT outsourcers, it wants to talk to some multinational companies. Immediately the Australian companies will say, hey, you're talking to, you know, the multinationals. The unions will come in and say, hey, are you going to outsource stuff, if you're talking to the outsourcing companies that means jobs are going to go. You'd never get your discussion worked through on something like making a rational decision on a ten-year IT plan and in order to get a ten-year IT plan you've got to talk to people that you're never going to deal with again, you're going to talk to people that might have outrageous propositions, you're going to talk to expensive people, you're going to talk to cheap people, you're going to talk to the unions. And the minister doesn't do most of that talking. You know, occasionally somebody might be brought in to see the minister. But if you're trying to negotiate a process like that, if you're trying to build a hospital, you know, and while I was in the South Australian government there was a lot of controversy over building a new hospital, if every meeting about just getting the positioning right for who the players were, were made public, the situation would be unworkable.

MR GORMLY: Why is that? Can you carry that analysis further?---Yeah, yeah.

Why does it become unworkable, because everybody knows - - -?---Who you're talking about.

Yeah, so let me, let me before you answer put to you a, a hypothetical example drawn perhaps from US experience. The government wishes to introduce some form of restriction on a particular form of therapeutic drug or drugs, a range of drugs, perhaps it wants to allow a cheaper form of the same drugs or same range of drugs. A description that we had from a journalist was you could see the pharmaceutical interests descend on congress and they sent their lobbyists in hither and thither but there was no record of it anywhere. The journalists could see it because they're there every day but there's no name written down in particular in any place. If there were and if there were a publication of who the relevant congressmen were it would be possible to see the influence of a whole series of drug company lobbyists lobbying?---Mmm.

Bringing it back then to your example, you say that the government wants to do something and so it's seeing people left, right and centre, it would compromise the government by not having to expose who it is that it's seeing but by the same token nobody sees that there is a descent of a whole group of people on the government for that purpose. If I, could I ask you to

just follow through your analysis so that we see whether the chaos occurs because people know who's seeing the minister?---Okay. The American example is different because the congress will vote on it and individual congressmen, the executive is not part of the decision. The, essentially the legislature is part of the decision. Here we have the legislative and executive branches fused. You know, here we have a situation where for something to occur you have input from the bureaucracy, you will have a decision that will ultimately go to cabinet and then ultimately you'll end up with an appropriation from the parliament or through the budget for this to happen. There are many aspects of exposure along that line, certainly, you know, when it becomes public. If you're dealing with scarce resources, if you're dealing with scarce resources it becomes very difficult to deal with each of the interests, in order to have the interests exposed while you're making those decisions, you know. There are ways and means of exposing the ideas somewhere down the track but, you know, and people often do put out, you know, discussion papers, exposure drafts, plans, indicative plans. If you go the therapeutic goods line in our situation in Australia it would be inconceivable I think for a minister to make a decision about whether a particular drug were to go on a schedule that would be subsidised without the advice of the Therapeutic Goods Administration. You know, you would have people who had done clinical trials, you would have had people, you know, it would have gone to a committee of experts in therapeutic goods, you know, to make that sort of decision and many, so on the one hand you can say well, yeah, perhaps we separate out things that are, the scientific decisions and the political judgment decisions but they're not as simple as that. You know, they're just not as simple as that.

All right. Well, if we were to accept, professor, for the purposes of the argument that it was unsafe to during the course of negotiations to disclose who a minister saw, a proposition I must say I am not with you yet, professor, but let's, let's assume that, what, what if the disclosure were to be done retrospectively?---I think that would be very reasonable because ministers are public goods basically, you know, they're there to serve the public and they need to be accountable for the decisions they make. At the moment we have a parliamentary election as the main mechanism of accountability though the debate on the floor and of the parliament, accountability I have no problem with, disclosure I have no problem with, the question to some extent is when and what was I starting to say was, you know, there may be ways of documenting that they do as they do and have some form of oversight while they're doing it but making it public at the moment, you know, that they see somebody might well be counter-productive.

If, if a minister's list of appointments were to be published, say within, I'm just going to pluck a figure from the air here that seems reasonable within eight weeks of appointments, from your experience as head of the cabinet office in South Australia, would that seem like a reasonable period for a retrospective publication? And if not, would you pick some other period?---

I'd have to, you know, analyse this a bit more. Some decisions percolate for months, years. Some are made very, very quickly. And you know, I'd go back to, you know, yeah, major capital works projects, building a hospital, building a desalination plant, doing sort of, you know, a large scale water policy. You know if you start to do something, you know, do a lot of work on, in water, and you have so many interests that are all so vital and the art of politics is balancing the interests to a very large extent. There is nothing necessarily manipulative. There's nothing necessarily sneaky about it. You know, but there are very, very significant rulings of losses in some of these.

10 You know, the debate about the River Murray, how much water do you let flow for environmental purposes and how much do you give to agriculture. You know, if you ended up, you know, and these things are debated all the time. If you don't have a decision on that, you know, in just eight weeks or six weeks or a year, I mean, you know, this something that will take a long time. So you get into a situation where some things can be done quickly and some things take a long time. And there's a real judgement issue as to which are the quickies and which aren't.

20 So in your, in your acceptance of possible retrospective publication of a list of appointments, you'd accept first of all that that would be an accountability measure?---It would probably be an important thing. I just, I'd like to, you know, ponder this a little more because when, I'm trying to think when would the right time be. You know, would it be on December 31 of every year, would it be before the election, would it after an election.

Yes. Well, there's never going to be a right time?---That's right. Yeah.

30 And I suppose whatever time you fix it is sometimes going to cause a problem. For example, if negotiations over the construction of a, a power station occur over a six week period and your period is eight weeks, but they get stalled and postponed for twelve months, there is the risk that publishing the identity short of the twelve months will cause a problem?---Well, you would go back, yeah, go back to the principal, and it's a rule of thumb issue. Is making the law for sale? Is, is the issue that we're dealing with something that is bought and sold or is it sort of within the normal course of government. If it, if the issue for sale, if the law is for sale, somebody to make the law for you or manipulate the law for you, if that's for sale then people are behaving corruptly. You know, if in fact it is part of the information gathering, judgement making in, and sometimes people make

40 silly judgements too, then we're dealing with a different set of issues. And it's the, sort of, what is normal politics and what is manipulative or corrupt politics. That's the sort of decision that you - - -

THE COMMISSIONER: I think I understand what you're getting at. I mean I can see for example, if a minister decides he, he wants to undertake a project, do you think that's an advantage of the people? And he knows that there's a group who are very strongly opposed to the project who carry a lot of weight and a lot of influence and who can make a great deal of trouble

for the project. And in fact he'll probably get it through, but it will take much longer and it'll be much more expensive and he won't have time to do other things. So it would be in his interests not to let that group know that this is what he has in mind and actually get it done before they even find out?---Well - - -

And if you're making public who he's seeing, he's got no hope of ever achieving that position?---Yeah. Well, I mean the only, to some, some of that is the cut and thrust of politics.

10

Yes. No, I know. I'm not saying that that, that's not, it doesn't seem to me to be a bad thing?---Mmm.

And if he wants to do that, I mean, that's what he's elected to do?---Yeah.

That's how he runs the country.---Yeah. Ministers make hard decisions, however, very few ministers make hard decisions on their own, they make them in cabinet, they make them, you know, with the advice of their bureaucrats. Very few ministers make hard decisions on their own.

20

All right. Now, you've told us how terrible it all is in America and the implication is that we really shouldn't allow anything like that to happen here. Well, what do we do to stop it once, what, what are the basic rules for stopping it?---Well, the basic rules are not to have a cover-all provision that questions every, you know, little bit of potentially damaging behaviour. One significant thing is the political leadership is the most important thing, political leadership to set high ethical standards to make sure that the government is not behaving corruptly, is not accepting, that individuals, anybody who accepts money for doing things for which they get a salary should be prosecuted, you know, and we have provisions to deal with that sort of thing. One way I've made a small suggestion that perhaps you might like to do a twelve-month trial with one industry or one department that has, well, considerable disclosure, that does make sure that meetings perhaps are documented within a small circle, that all payments, all potential benefits are identified. See we're sort of more away from making any of those work because we haven't defined what a lobbyist is. You know, a lobbyist could be almost anybody who tries for some sort of special interest and it varies from people who want, you know, a power plant built and a pipeline build or somebody who wants five extra places in an aged care centre. I mean, you know, these sorts of, you know, there are many variations. We need to be pretty clear about the terrain that we're playing on, we need to be pretty clear about who it is that is being, that might see what the potential benefit is, we need to be pretty clear about what the rewards might be and pretty clear on whether the behaviour for achieving those rewards is outside what might be regarded as the ethical and ordinary cut and thrust of politics.

30

40

I've been asked to ask you to sit a little bit back.---Okay.

But my overall impression from what you're saying is that it actually all depends on the individual and there's nothing that we can do to make better regulations?---No. No, no, no. Well, first of all, ethical behaviour is of fundamental importance.

Yes?---And that's a political leadership. That is a political and community leadership issue.

10 Yes?---Right. And then to make regulations we've got to know what the problem is and I haven't heard the problem clearly espoused. I mean, we can take a stab at what the problem is, and to me the problem is, if your law is for sale, then you've got a problem and then we can start to deal with that problem. But I haven't heard what the problem is.

When you say the law is for sale, you mean the making of the law?---The making and the implementing of the law. If you can, if you can buy that, then we've got a problem.

20 But isn't it more than just the making of the law? It's also the awarding of contracts?---Yeah. Well, I suppose that's the implementing. Like, you know, sort of money is appropriated, it is given out in a certain way, it is implemented and if the contract is awarded for sale for a consideration, then we have a problem. If the contract is awarded because there's - - -

Right. Assuming that's the problem, assuming that all of what you've described is the problem, how does one control it?---Okay.

30 Assuming that the law is, to a degree, not nearly as much as in the United States, but to a degree for sale, and assume that contracts are awarded to please particular interests, not for genuine bona fide disinterested reasons, assume all of that. What does one do? And assume that that's done because of pressure groups for whom others are agents and communicate their desires and threats and inducements to government?---Okay. Well, there are standards that can be implemented in procurement practices, the way in which bids are done, the way in which due diligence is done, the way in which you can have procurement teams that report independently on the bids that are before them. There's a sifting process, a filtering process, a scoring process. I mean, we used to do this often in the government I worked for. There would be different teams that would have a scoring
40 mechanism on every major project and this would be, you know, everything from price, reputation, risk of not finishing on time, quality of work, reputation, I mean there would be a whole thing you'd score.

Are you saying that the best thing for contracts is just better procurement policies and rules?---Well, this is one very important process, to make sure that the process is rigorous and there is, you know, considerable due diligence. That is important.

And what about law for sale?---With law for sale, again this is a matter of, you know, very significant political leadership. This is something where you have the leadership and agencies such as yours and others, you know, continually proclaiming that law is not for sale and being very diligent and vigilant when there are suggestions that law might be for sale. And you have powers to investigate, you have, well, not investigate, you have powers to inquire and there is a very very important process of knowing that there are watchdogs, that there are standards that are expected within the community and that these standards are not going to be compromised. But whether another piece of legislation is the way to go, I don't know yet. I'd like to, I'd like to workshop, I'd like to workshop some situations, some real life situations. You know, in a situation like these people aren't naming names, they're not giving examples, they're not talking about particular cases and so we're sort of talking fairly hypothetically. It would be, you know, maybe as part of this inquiry you run a one-day seminar with half a dozen people, take a case and just work it through step by step by step, looking at the risks, looking at the opportunities to be corrupt, looking at the possible controls that you could put in place, looking at the ramifications, the public disclosures, the ethical processes, whether a law would have helped it or whether it's a behavioural thing, whether more exposure in the media might have done it. I mean, you know, we need to yeah, workshop something or, you know, work on a couple of things empirically

So I don't have much faith in the agency side because agencies can be restricted by lack of resources and lack of evidence and as you said, the FBI has not been able to establish corruption in many cases that they've investigated because actually corruption in this context is often extremely difficult to prove.---Well, just before I left New Jersey I had a meeting with the senior FBI people, the regional director and the people in our region and they had just done a few months before a big bust of forty-nine corrupt local government officials and others. And in this seminar, they came and we talked it through with some of our Corruption Institute staff. They said, you know, "In the stimulus money that's coming to New Jersey, there's eighteen billion dollars coming and we're pretty sure that two billion dollars is going to be misappropriated." And they said, "Can you help us develop some preventive mechanisms?" And so, I mean, you know, there's a sense, they know, and yes, there are mechanisms you can develop in terms of regulation, in terms of crime prevention, in terms of, you know, the law is all there, the law's in place to say, you know, you can't steal money, you know, you have to account for what you've got if you're a public official, and yet they figured that two billion dollars was going to be misappropriated, they probably wouldn't ever gather the evidence. They wanted to prevent it and that wasn't their role.

But there is, none of this answers the problem that there is a general perception that things aren't what they should be, that law is for sale, rightly or wrongly?---Here in New South Wales?

Yes, well, in Australia I would say to a degree?---To a degree.

MR GORMLY: That's a view you share, isn't it?---Things could be a lot better.

That access, for example, is something that's more or less for sale?---Access is, access for sale, I have particular views about, you know, politicians who are public officials, who are public property, charging money or their parties charging money for somebody to talk to them. I think - - -

10

You mean by way of fundraising?---By way of fundraisers because they're using their public office, they're selling their public office which is not for the parties to sell, it's not theirs to sell and then there's the whole view that, you know, in doing that, you know, somebody would be getting an unfair advantage. That is the position I think I find, you know, very, very difficult. When we're talking, but, you know, what we're looking at, we're looking at, as one of the earlier people said, an insurance policy is being laid down for the long-term future and you can never nail, you know, what quid got what, you know, quid pro quo. If it was a one-to-one relationship, you know, then that would be, you know, pretty easy to deal with.

20

THE COMMISSIONER: But it's much complex?---Yes, of course.

And what this inquiry is aiming to see whether it can do is to recommend ways in which that perception is at least reduced?---Well, in one of the ways, one is the ways is to take one exemplar and I, you know, made this suggestion earlier on to take one exemplar, work it through, see what, you know, what does happen and what has happened, whether we do it on a, whether you do it on a voluntarily basis or whether, you know, you have enough power to mandate somebody to comply for a period of time. One of the great tragedies would be to have, to develop a whole set of excessive and counterproductive regulations that may be subverted anyway. You know, once we're into the position of making law, this is very serious and it's very major and we've got to know that it's going to be right and that it's going to be supported and there isn't enough evidence that legislation always works and I take that, you know, from the United States' example. You know, the United States has all the legislation you'd ever want to have in place. You know, it's illegal to behave corruptly, it's illegal to, you know, take considerations and there's been the legislation in, in that area for a long time and yet the corruption in many areas, where I lived in New Jersey, is endemic and it was about relationships, it was about a lack of an ethical culture, it was about lack of enforcement, it was about, you know, people saying well, this is the way we've always done it and so on and so forth. So the law alone isn't sufficient. There's an enforcement issue as well. There's a culture issue as well and to talk, you know, hypothetically, you know, we, we know what's wrong and we can have some suggestion but if we make suggestions that says the solution is, you know, a complex law then you'll probably end up with some counterproductive regulation as

30

40

well and, you know, just think of all of the people who lobby, you know, do you catch those who are lobbying for childcare places or to be allowed to go fishing on Saturday afternoons, you know, when, you know, you can only fish from Monday to Friday or whatever, you, you'd catch so many people in the net or you'd end up with so many exemptions so it's important to at least try something, you know, empirically first, to do a trial of some sort. That's the way I would see it.

10 MR GORMLY: All right. I don't think, I mean, it's the usual problem, we could spend a day I suppose but I'm not sure that we need to go any further.

THE COMMISSIONER: Yes. You're not optimistic about regulations are you, Professor Graycar? You don't, you, it really requires a cultural change basically?---Well, having worked in criminology for a while the, what you learn I'm sure, you know, many of you would know this, you know, the bad guys are usually one step ahead and by the time you've got the law to catch them they've moved on to something else and the law is there, you know, it says you can't do it and there's so many things, you know, you're not
20 allowed to do and people do it and by the time you've sort of, you know, got, you've plugged the whole, you know, they're one step ahead so it's, it's getting ahead of the game and there are ways you can get ahead of the game and a lot of them, it is cultural and in my academic work I'm trying to apply some elements of situational crime prevention to dealing with corruption behaviour. I mean, in traditional crime prevention activity you have a target, you have a motivated offender and you have the absence of a capable guardian and when you've got those three elements you've got a crime. If you can get rid of one of those you haven't got the crime. Now, getting rid of the target, no, that's, you know, and you're looking at getting rid of the target to some extent and, you know, that's not really feasible. You're also
30 looking at getting rid of the motivated offender, that's not really feasible but if there's the, in the absence of any sort of guardian, you know, then the issue will run rife. So if we can work on sort of the guardianship, the prevention we're probably, you know, some way there.

Thank you for your time?---My pleasure.

THE WITNESS EXCUSED

[3.06pm]

40

MR GORMLY: Commissioner, there is present, Mr Julian Fitzgerald is our next witness. I'd ask him to come forward.

THE COMMISSIONER: Mr Fitzgerald, do you want to give your evidence under oath or would you prefer to affirm the truth of your evidence?

MR FITZGERALD: Under oath.

MR GORMLY: Mr Fitzgerald, could you tell us your full name firstly?
---Julian David Fitzgerald.

And I think that you have had a various career but you've been a
Commonwealth public servant for both the Howard and the Rudd
administrations but also a Federal parliamentary press gallery journalist?
10 ---Correct.

But in addition you have been the author of the book Lobbying In Australia,
You Can't Expect Anything To Change If You Don't Speak Up which I
think is becoming a fairly standard text in university courses about
lobbying, is that so, including at the ANU?---Yes, indeed.

Right. And I think in the course of preparing that book you have reviewed
the literature that relates to lobbying in Australia, you've seen the survey
that was conducted by Bulletin, I'm so sorry, the, was it 2006 survey by the
20 Bulletin Committee or Committee Bulletin?---Client services, yeah, sorry,
go on.

Yes, that reviewed what it was that parliamentarians wanted out of lobbying
and I think you've also, because of your journalistic experience, seen
lobbying on the ground so to speak. Is all of that correct?---And as a public
servant.

Mmm?---And as a public servant.

30 And as a public servant. Right. Now, Mr Fitzgerald, firstly, consistent with
the offer that's been made to other witnesses, expect Professor Graycar, is
there anything that you would wish to say at the outset by way of an
opening statement or something of that nature?---Yes, I will avail myself of
the opportunity, thank you. I welcome this public inquiry and recognise the
value of the Commission's work in the field of lobbying research and
education. Hopefully this inquiry will help create greater understanding of
the industry and prevent corruption of the political system in New South
Wales. It is only by conducting research and holding inquiries like this that
40 the New South Wales public can retain its confidence in the political
process and the administration of government. We have become a country
of aspirational public relations companies and non-government
organisations that now seek to influence and control public policy initiatives
and programs, not through debate in parliament but through accessing
millions of dollars in public funding grants and running programs. There
are thousands of lobbyist in Australia and hundreds in New South Wales try
to influence politicians and public servants. According to lobbying in
Australia, the 150 lobby groups analysed have a combined budget of \$713
million or an average of \$6.4 million each. They employed more than 260

public relations officers and have more than 2,431 staff. Their expenditure was growing at three times the rate of inflation and I estimate that the top 250 lobby groups in Australia now spend around \$1.5 – sorry – billion per year. Australia’s not for profit sector is worth up \$80 billion, employees over 600,000 people and represents more than 700,000 organisations. In 2006 at least \$40 billion or 18% of the total Australian Government budget was spent on third party service provision. More than half of this money went to non-government organisations. These powerful lobby groups appear to be adopting a practice of Washington lobbyists who spent most of their time and dollars on ensuring their members get their share of Federally funded programs. The lobbyists have become more pro-active in their own interests rather than concentrating or protecting their members interests from any adverse legislation. What they now want is a bigger slice of the pie. The growing and intensive public perception of the primary role of lobbyists is that they seek to influence government and public servants to either defend or promote their clients vested interests. Lobbyists do this day in and day out throughout the year. They don’t limit their activities to parliamentary sessions but maintain constant contact and informal and formal levels of parliament and government administration while attempting and largely succeeding to keep themselves and their achievements out of the headlines. The Rudd/Gillard government established a lobbying code of conduct and a lobbyists registry in July 2008. As at 21 June 2010 there are 294 entities registered on the register with 642 individual lobbyists registered. Lobbyists can sometime play a valuable and important role in our democratic society. They may provide governments with strategic public policy advice but usually, this is for the benefit of their members or business interest.

MR GORMLY: Thank you Mr Fitzgerald. Can you assist us with any information about the growth of the lobbying industry in Australia, perhaps particularly New South Wales over the period since it started?---Sorry, which period here.

As I understand it, lobbying is activity that has always been with us but the existence of the lobbying industry is relatively new.---Yes, correct. Basically, in the 80s, the 1980s as one of the previous speakers had said, they were sort of one out outfits, they were very small, I’m obviously concentrating here on the Federal city and basically they grew larger and larger in the 90s and 2010 and when I started writing my book aroundabout 2003 I decided to examine the annual reports, essentially the financial annual reports of 150 lobby groups in Canberra at random. Obviously, some of them would be in New South Wales and Melbourne as well. The majority of lobby groups were in Canberra and they’re the ones that I examined and the interesting thing there was the growth of the industry was way above inflation obviously since the 80s. Most of those small business would have, in the 80s turned over aroundabout \$1,000,000 or under and of course, now days they are multi-million dollar companies and I think as the previous speaker outlined they are being bought and sold by international

companies or they have merged with their state counterparts et cetera and they've become larger industries. So, since I wrote my book I've still examined occasionally the size of the industry and just to give you one example in 2010. In 2006 I said that the certified practising Accountants of Australia was, had \$94 million in 2005. Now in 2010 it's grown to \$134 million with 128,000 members. In the 2010 report it had a surplus of \$3.5 million, revenue growth of \$8.7 million or 6.8% over the year. Their marketing and promotion and publication expenses which seem enormous was at \$22 million. They have a multi-million dollar asset base with total assets of \$84.5 million. So, I think it's interesting that's just one example out of the book and it's quite a stunning change to go from \$94 million to \$135 million.

Over what period?---From 2005 to 2010. So as you can see if that's replicated as I think it is in most cases and let's face it, we've got the Global Financial Crisis, we're told that everyone's struggling but certainly not in the lobbying industry.

Right. So when you say that the CPAs have \$94 million, what's the body you're referring to?---The Certified Practicing Association.

Certified Practicing Accountants is it?---Accountants, yeah. They're obviously a very large group but they're based in Melbourne actually oddly enough. But I was looking for examples to highlight for you and that's one I - - -

THE COMMISSIONER: That's just a professional body.---Yes but, well, yes it is but they do a lot of advocacy and lobby work and I'm not suggesting for a moment that the \$135 million is obviously not spent on lobbying but I just make the point that if you replicate that in all the other associations - - -

MR GORMLY: But you're just talking about the association.---I'm talking about the growth of - - -

You're not talking about the body of its membership you're talking about the association.---Well it's one in the same. I mean, what I'm talking about, I mean, we can only go off their annual reports and we can only, as a - what is publically told to us and they don't use the word lobbying they use the word advocacy.

THE COMMISSIONER: But that's their main function.---Their main function as a professional association but and we'll sort of come to this further in the evidence but all professional associations have vested interests and they have vested interests in lobbying the government at various stages for the benefit of their members.

And that's the advocacy.---Yes, correct. And I'm not saying that that's necessary the majority of the work but I'm just saying that if we look at those 150 groups we look at 250 lobby groups, some of them will use larger portions of their budgets to lobby Federal Parliament and State Parliaments but my point is to say that's the only way we can measure their growth and we can sort of go from there.

MR GORMLY: So over the, I see your point that you're saying that there is a significant increase in the size and financial ability of lobbying bodies.
10 What about the number of lobbyists, is that been capable of being measured?---No, because traditionally the Federal Parliament has kept that data to itself – certainly in the 80s and the 90s the public wasn't allowed to know who was accessing the building. There was a parliamentary pass and it's coloured orange as opposed to the journalists yellow pass, and we had a various stages tried to ask the Howard Administration and they wouldn't tell us the who was on the lists or even release the names. But obviously now, under the Rudd Administration – the previous – the former Rudd Administration we had a list of entities as I just told you.

20 THE COMMISSIONER: Are you satisfied with that list?---No, no, completely unsatisfied because it, like our friends, the CPA, it basically, it's not a broad base. I mean if you're talking from an economic term, the old addage is the broader the base the more likely you'll have an accurate assessment and I think the last speaker was sort of saying that he wasn't sure about the, you know, he didn't want to sort of capture necessarily all people. I'm in the reverse of that position, I think we need to have a broad base – capture everyone that is a professional lobbying association, third party, in house/out house whatever house their in and let's measure that,
30 let's quantify that and study it. It's only by that sort of forensic examination and by getting access to their financial reports then we can build an evidence base that then flows into our public policy and makes better decisions – makes them more open and transparent for the public but it gives better decisions to the public servants and then obviously flows up to the administrating cabinet.

MR GORMLY: All right. Well, there's now two things firstly, you've pointed out that if you did have a registry that registered all forms of lobbyists that carry out lobbying with government then you would at least be able to measure the size of the industry, the number of players and you'd
40 have some idea of what the corpus of lobbying was. That, there's certainly a benefit in having a registry for those purposes. Is that right?---Yeah, correct. I just make one final point on the previous question. The way that there's about six, under Howard there was about 6 or 900 people who had an orange pass but those were only the CEOs who had to sign in and then they could then sign in as many lobbyists as they liked, they could sign 100 if they wanted to on that pass. We were only counting one person – so just using that as, you know, anyone who throws that figure at you you need to be aware that it's kind of one figure but it's not a true figure.

Yeah?---And what I'm after and what you're driving at is for us to establish the true size of the industry. And that goes to the question - - -

THE COMMISSIONER: All right. Well how would you do it?---Well you'd, well you'd ask them, the way that the current registry is set up you'd ask them to apply for a pass.

10 Who, who would you ask?---Well, in this case they ask through the Prime Minister in Cabinet. They apply for their, for their pass - - -

What people? What people would have to get a pass?---Anyone who wanted to lobby the federal government or receive funds from the federal government to run a federal government program, who are lobbyists. See - - -

MR GORMLY: Can we just our get our parameters here?---Yeah.

20 Are you talking about the range of people that go and see ministers, that is where there is a person to person contact or are you talking about all lobbyists whether in-house or peak body or professional lobbyists?

THE COMMISSIONER: Or who see public servants?---Yeah. Well, I, I believe that the best answer to that is the broad base essentially, as I said in my submission, that you can break it down into - - -

MR GORMLY: Broad base what, sorry?---You can have the broad base of registration.

30 Right. So you're talking about a registration system that includes everybody who is going to lobby the government?---Yes. Anyone who, who wants to be a professional, I think should be registered.

All right?---Anyone who makes money out of the system should be registered.

If you had a broadly based register that would be a substantially accurate way of measuring the size of the lobbying industry?---Correct.

40 Right.

THE COMMISSIONER: That would include in-house then?---Yes, that would include all lobbyists.

And so that somebody who would be employed by an entity and whose job it was to go and lobby for that entity would be on the register?---Correct.

MR GORMLY: That sounds like a substantial list of names that one's going to end up with?---It will be.

All right. I suppose there are hundreds, maybe thousands of businesses in New South Wales that would never lobby. That would be true too wouldn't it?---Yes, of course.

You're not going to end up with a telephone book, you'll end up with a list of those businesses who do try to make direct contact with government?

10 ---Correct.

All right. There was another component. I said there were two points. One was that if you have a register, then you can measure the size of the industry. The second point I think you were making was about obtaining financial information. It's a point made in your book as well. Mr Fitzgerald, can you just assist us by telling us what benefits you see in there being made public the internal financial details of a lobbying business, why it's in the public interest for a business to have to disclose its internal financial information?---Well, in the book I sort of outlined that most of the lobby groups that I'm talking about receive substantial funds from the government and it's almost impossible to track that money, as opposed to Canada where they actually, it's part of their registration processes to say how many commonwealth funds they have. And I'm saying let's replicate that part and roll it out into the states, so that we all know, if you're receiving money from a council, from the state government or entity or an agency or the commonwealth entity or agency, you list that. I don't think that's onerous. They've already done it in their financial reports and I think it's beneficial to the understanding of all speakers that you're going to hear and myself and it helps inform the debate and I think it's essential that we know the size of the industry and I don't think that people who object to the commercial confidence nature, we're not talking about each line item being discussed, we're just talking about the total and I don't find- - -

20

30

Sure. Let me just go back through that if I may?---Yep.

I'm not changing the topic. Firstly, I think you suggest that the kind of disclosure required in Canada about receipt of commonwealth, receipt of government funds is something that a lobbyist should disclose. Is that right?---Correct.

40

And I think are you there talking about funds that are received by the lobby group or the industry as a whole?---Ah, it would be to the lobby group.

Right. So if we were talking about respectable bodies, the AMA or the Real Estate Institute of Australia or something of that sort, would you expect that they might, one or other of them might be receiving government funds?

---Ah, well, I'd assume both of them would be ah, and for various purposes, but I think essentially, and look, the health sector by and large is very good

with their annual reports um, but yeah, I think it's essential that we know how much money they're getting and why, because if we, if we, if you look at it from a journalistic side, and we try and get that information, we can't get that information.

All right. Well, I understand that point. You're saying that if there is a receipt of funds from the commonwealth to a peak body or- - -

THE COMMISSIONER: Anyone, any lobbyist?---Correct.

10

MR GORMLY: All right, then that should be declared. Okay. I understand that point. What about the kind of declaration that discloses payment of money by lobbyists and amounts of income received? Now, I infer from your book that you think that that is the sort of information which ought also be disclosed by lobbyists.---Well, I think it would be- - -

20

Is that correct?---Correct. I think that would be helpful but I think if we're just looking at, I mean, there are certain steps that one could take, and obviously the one I've just articulated, the first step, I think is straightforward, it's simple. I mean, the previous speaker was sort of saying that you needed to sort of defer it, do a study, look, I disagree with that sentiment. I think you should, frankly we should just get on with it and set up a commission, which no doubt we'll come to. But I think it's important that we get the parameters right and we make them as simple and as clear and as concise as we can, so it's not onerous, it's not burdensome, the paperwork is simple and then that helps inform where we go from there.

30

All right. So I just need to finish off this financial thing, Mr Fitzgerald. It seems to be important. In America, payments by lobbyists are required because it is a way of determining whether payments are being made to someone in effect as a bribery guard. Do you have that in mind? ---Oh, well, it could catch those sort of payments as well.

But if it, if it's not for that purpose do you see any other purpose in asking them to disclose payments and sources of income? Because I don't, Mr Fitzgerald, so if there's some, if you have a reason we'd be interested in hearing it.

40

Well, my reason is purely sort of academic. I want to study the size of the industry and that will help me to make parameters.

All right. I understand that. I understand that point.

THE COMMISSIONER: That's both payments in and payments out?--- Well, I think definitely payments in. You could argue a case either way for payments out, but definitely payments in.

Why do they get payments in? Why does the government make payments to the lobbyists?---Oh, look, various reasons. I mean, if you cast your mind back to the GST and the implementation of that, it wasn't the place of the public service to educate professional members associations and groups, they paid those groups, like the National Farmers' Federation et cetera money to roll out an education campaign obviously around the GST program, which I thought was interesting. And, an they were very large payments, I mean, we're talking hundreds of thousands of dollars.

10 THE COMMISSIONER: The relevance, what do you say the relevance is of a payment in. The fact that a particular body receives a lot of money, what is the relevance of that?---Well, I think again, not looking at just singular line (not transcribable) issues, it's looking at the entirety of the amount of funding that is required, because at the moment nobody in this country has any idea about the size of the industry. And this is what I'm saying. What we're asking for here, Commissioner, is very basic simple information so that we can all be informed about what's happening. And I think you'd be stunned and surprised that all of that money adds up and it all flows into hiring researchers et cetera et cetera which then flows back into
20 lobbying and advocacy. I mean, it goes into one bucket of money and then gets mixed up by the (not transcribable)

MR GORMLY: You're concerned that it is a very big industry and we don't know how big it is but if they were required to provide this information then at least- - -?---It's a starting- - -

- - -you can see how big it was. Is that the point?---Correct.

30 THE COMMISSIONER: And are you saying that that money is used to fund their own lobbying activities?---Oh, I believe some of it is, yes. I believe most of it is obviously still, you know, it's, certainly coming from a public service point of view, they would have to make milestones and, and the money would be tracked, but I mean obviously there's ways of moving buckets of money around as we all know and that's what they do with it.

MR GORMLY: Okay. Well, I understand that, I think that's a good point, I understand that point. Can we move Mr Fitzgerald to the question of what you think might be done to try and regulate and make transparent the lobbying industry as it stands in say New South Wales at the moment and
40 now as I understand it you would support a register that included, perhaps in categories, the identity of all persons who wish to persuade the government or contact the government to achieve or derive some benefit. Is that right? ---Yeah. Look essentially, look, I'm a small businessman so I like to see things done in simple form like ways. I mean, I'm not one of these people who wants to see oodles of paperwork and - - -

Sure?---I mean, I want a simple system in place, I want something akin to a Commission. Sorry, I'm just talking about New South Wales, I'm talking

(not transcribable) so I think what you need is a Commission to be established that is independent of the bureaucracy so it would, it receives its funding directly from parliament and I believe that that is one way of establishing an open and transparent system of registration and then obviously if we can make it a simply system and we track the money then I think everyone's informed and we can see that if there is a problem, which at the moment we're really talking about perceptions, but certainly public perception of a problem, but I think we're talking about, we're really yet to prove other than some isolated case, cases and they're basically individuals, we're looking at the perception of a problem in the public and my argument in 2006 has been that with the size of the industry growing we're going to be like America and we are going to have those problems in the future. So I think if New South Wales wants to resolve any future problems that would be a good starting point and if through COAG you could have, you know, a simpler registration system and more, more power too.

You're talking about a mutual system across Australia, a mutual system?---I think, well, yeah, I mean I can see lobbyists saying well, look, hang on, it's all onerous, we're all in different state jurisdictions so I would agree with them that if we could have a simple form that incorporates federal and state, perfect.

So you have in mind then legislation rather than just a code?---Yes. I think it's important to probably have both.

Right?---But a lot better to, I mean, I just want to see the parliament take up this issue because I think part of our problem and I think the last speaker was quite correct when he was talking about, I mean, a lot of the laws we have are strong enough. We don't need more laws. We just need the current ones enforced and I think that perhaps part of the problem, again, that goes to a perception and certainly many of the politicians federally that I've spoken to in 2005 no, didn't agree with me, move forward a couple of years and now they're all agreeing with me.

Okay. Well, so as I understand it we've got perhaps a commission, a mutual system, legislation to enforce it, a register that's kept relatively simple but it does identify all lobbyists, it requires them to provide information including some financial information, would you require them or do you consider an important part is for them to disclose their clients?---Well, currently they disclose their clients.

Yes, in New South Wales they do, so?---Yes, so well, nothing new there then, no change.

THE COMMISSIONER: At all?---Well, we'd keep it going.

The client yes, the ultimate clients because sometimes the clients are, they are agents of clients?---True.

MR GORMLY: So you would, you would expect then that the disclosure of clients should be a proper disclosure, would you, so not just an agent that, that you do what the Canadians do and endeavour to get to the true client? ---Yeah. Look, I think that's reasonable and I think if we took it further and we were talking about who they are holding meetings with in the public service, a list of the meetings attended, I think the average in Canada was around 650 meetings, so I think that - -

10 THE COMMISSIONER: Who, who, 650 - - -?---That was in the Commonwealth, sorry, I read it last night so the average is about 650 meetings, well, they say communications I think is the catchall phrase that they use and I think that that - - -

MR GORMLY: Is that per, per what, is that per minister per year or - - -? ---No, sorry, that was 650 per month.

Per month.

20 THE COMMISSIONER: What, per, per minister?---No, per month.

MR GORMLY: For all ministers?---I believe so but look I'd have to recheck the data but it's in the last report they've just released.

Well, that's a useful figure?---Yeah.

Do you in effect say that if there were to be a register that did register all meetings as well that would you would have is around about 650-odd entries per month?---Well, no, that's just using the Canadian example, that
30 wouldn't necessarily replicate itself in New South Wales.

Sure, but - - -?---But I think - - -

- - - pro rata that's the kind of thing you're talking about?---Yeah. Look, I, I think there are two ways of looking at it. I mean, I think the first step is the important one about registration and regulation. We could always go those sort of extra steps. I mean, from what I know as a journalist and as a former public servant, there are huge numbers of meetings as we found with Sam Haddad like in Planning New South Wales and now obviously you're
40 building that new system and I think, you know, one of the speakers before was saying, I think meeting with ministers, it's, you don't necessarily have to worry about that so much and I could see what they're driving at but of course they, they missed the vital point, that it's not, a lot of the decisions are, the lobbyists meet in the implementation phase of the policy so, you know, if it gets to the stage where they're walking into the minister's door it's almost too late. What you have to understand, Commissioner, is that these people are imbedded in the system with the public servants and the sort of areas that you've touched on, and obviously Planning is just one of

them, I mean, you've got to understand that they're meeting public servants all the time, day in and day out talking about the process and that's where we're talking about these billions of dollars worth of taxpayer funds and that's why I want to say let's take the first step, the simple step, follow the money trail and then we can lead off on all these other arguments, you know, later on.

10 So, so would this be a fair summary of, of your position that it's not really feasible to constrict or try and record all of the contact between lobbyists and ministers but if you're concerned about an overgrowth in lobbying what you would do is try and restrict lobbying as a whole?---No, I'm not talking about restricting lobbying as a whole, no, I'm saying, well, lobbyists can have open slather to see who they want but as long as, I mean, there are two parts in that, either we track the meetings or we don't but I'm saying if you look at the first part, which is the simple part, let's just try for registration, find out the size of the industry and then as an offset of that later on you could bring in analysing meetings. I think you need the evidence based first, about the size, and then subsequently if you established a commission, well, you could do that part of the research and perhaps you need it.

20

THE COMMISSIONER: What's the commission going to do? What's the functions of this commission?---Well, I would see the functions is to, as I outlined in the submission, there is almost no research in this country, federal or state or even to local councils, dealing with lobbying. I mean, obviously ICAC is probably the exception to the rule here but there is almost not knowledge base. If you look at the literature, other than Professor Warhurst and myself and now Guy Barnett's joined us, there are very few - - -

30 MR GORMLY: And Peter Sekules in the beginning?---Sorry.

And Peter Sekules?---I stand corrected, of course Peter Sekules' books in '91 and previously in '84, I think, correct. I mean, you know, there's, so that's five books in 30 years. I think that the Commission would need to monitor the, the register which is what they do in Canada, they, they monitor, they're on the public record to make sure that lobbyists are being honest with their registration forms.

40 THE COMMISSIONER: And how do they do that? Sorry, to interrupt, I'm - - -?---No, that's, well, they do it publicly, Commissioner.

What do they do?---Well, I assume by publicly they, they're using the newspapers, radio, TV, anything - - -

Are they looking to see, what are they looking for?---Well, presumably, well, they're monitoring to see if there are any misrepresentations on the forms that are filled out or whether indeed they have filled out a form and I

think, I think they've found compliance with their register was running around about 90 per cent and - - -

So they're, they're looking to see whether people are lobbying who are on the register or not and whether they're lobbying for clients, who are registered or not?---Yeah. Yeah, they had 3,294 lobbyists registered in July 2010 so they monitored the system via public information, they found 60 errors out of those presumably 3,294 listed people.

10 MR GORMLY: So they're doing checking?---Yeah, they're checking - - -

They're checking the accuracy?--- - - - and they have, yeah, correct, 16 review cases, obviously I didn't have time last night to dwell into all of that but I think, look, Canada is a very good model for us to follow obviously because they're very similar to Australia in many ways and the same size of country. We don't need to sort of get too caught up in examining the US other than my suggestion that money leads to corruption. I think if we follow say the Canadian model then it's a good test case to
20 look at and certainly the way they do things I would, I would suggest is a recommendation for New South Wales and to get back to, sorry, Commissioner, your point, obviously we, I would see that the commission itself would also run the, like a web-based portal where all of this research and analysis would be to obviously benefit anyone who needs to see it and I think in Canada they had almost 90,000 web hits on the website so it's obviously being, that information is being utilised and I think if you look at, like when I wrote the book it was almost impossible to find any information and it took me years of research to come up with the book that I did, there was nothing publicly available.

30 THE COMMISSIONER: It has been suggested to us that the Canadian system is much too detailed and onerous and won't work here.---Well, look, that's an interesting assessment and as I said, I would like to see, like I said, I'm a small businessman, publisher and a journalist. I mean, I would like to see simple forms and certainly, I've said that the beaucracy you can tie yourself up in paperwork and it goes mad but unless people are reading the paperwork – there's no point in it. So I think that simple easy forms, I don't think the Canadian registration is that incredibly onerous but that needs to be tested but I mean that I think that we can make it simple and it's feasible and it's easy to do.

40

MR GORMLY: Mr Fitzgerald, do you know if – you and your submissions suggested that people who register on this commission that you propose might pay a registration fee of say \$1,000 per lobbyist.---Correct.

Which would help to fund or possibly completely fund the proposed commission. Do you, have you ever carried out any research even anecdotally with lobbyists to see whether they would be resistant to the

payment of registration fee?---I would imagine they would be very resistant o the payment of a registration fee.

I suppose, I asked for that.

THE COMMISSIONER: If you get a large organisation could have 600 people say, just to take a figure, it's not just taking a figure because that's a figure that's been mentioned to us by a particular organisation. 600 people who - - -?---No, per entity.

10

Right. But they have 600 people who say on a monthly basis will speak to the government and ask for favours and make requests and so on which can technically be regarded as being in-house lobbyists. So you're not saying that each one of those should pay a fee, it's just the - - -?---The entity.

20

The entity.---Yes, so the industry would, I mean, and to sort of drive the point home. As part of the press gallery I pay rent, you know where Alec Mitchell's press gallery here is rent fee but we pay rent in the Federal Press Gallery, we pay market rate or slightly above market rate of the suburbs surrounding parliament house Barton and Deacon and we raise, look I think last year it's probably about \$1.3/1.4 million and that obviously goes into consolidated revenue – presumably somewhere in parliament house. What I'm saying is, that's just using what we do at parliament house. So why can't lobbyists who earn – who have multi-million dollar budgets pay I think \$1,000 fee for the entity which then covers obviously all of their 600 or so lobbyists or whoever – that seems an incredibly large number of people lobbying I must say. It would almost be chaotic and I would question that figure, Commissioner.

30

It's a national company.---National company – yeah, it still seems, I mean if, usually a national company they'd be paranoid of having 600 people wandering around talking to the ministers. I believe 6 may be, I wouldn't believe 600.

40

MR GORMLY: That may be a combination of lobbyists and PR and other activities though, might it not?---It would but surely somebody would be controlling those 600. I find that a very large figure. Sorry, to come back to the point. I think \$1,000 in this day and age is quite reasonable. As I said, the average was \$6.4 million when I looked in 2005 so we would only assume that that average has probably increased. I don't think, I think we need to fund these things properly. I think Canada's I think Miss Shepherd's budget is \$4.4 million I think. So in New South Wales, presumably around about 3 million, just pulling a figure out of the air, I think about \$3 million would be reasonable. And if we could off-set the taxpayers funded that by a third or a half, I think that's totally reasonable.

But you're talking about third party lobbyists and peak bodies and everybody of course?---Yes, correct.

Yes. Because at the moment that's 115-odd entries on the register for the third party lobbyists and at a \$1,000 a head that would produce \$100,000 a year.---Yes, but if you went for a broad base, all the one's in Canberra, some of them do have state based offices or are increasingly coming back to open state based offices, the trend is clear and I think you would easily – I'd be surprised if you didn't have about 500 at least.

10 Right, can we just press on through you. So we've gone through those various components of Commission legislation perhaps mutual, across-state mutuality registration of certain information. Do you, would you consider that in a good lobbying system there would or would not be a declaration of the part of government that would be lobbied as the Canadian's have, that is – you have to indicate whether you are going to lobbying immigration, taxation, health et cetera. Do you regard that as being something that would be useful in a register?---Well, look it would, yes, you could say yes it would be useful but the really useful part is meetings I would have thought. So it depends on how onerous you want to make the, like as we discussed it, the more onerous we make it the tougher it is to bring it about.

20

The most onerous you could ask a lobbyist to do as I understand both from your evidence and the evidence of Professor Graycar, would be to require a lobbyists to - - -?---Track.

- - -track or register the meetings that they have with government representatives.---Yeah, and look there's two ways of looking at it. There's obviously, we look at the lobbyists doing it or the flipside is you get the public servant to do it which is obviously what Haddad, is the conclusion of Haddad and the planning department have reached. I don't think it's
30 onerous for the public servant to have that information so you could mount a strong argument that, let's not get the lobbyists to do it, let's get the public servant to do it and again, as a journalist every time I ring up a Commonwealth entity, I'm tracked. You know, the public servant has to write everything down, has to go through the system which, obviously this is in my second book about the parliamentary press gallery but everything I do as journalists is tracked through the public service, the ministers informed that a journalist is asking questions et cetera. So if they can do that at the Commonwealth level, why can't we do that for lobbyists, I think it's quite a – in other words they already do it and if they do it at the
40 Commonwealth level with public servants, I'm sure New South Wales public servants could replicate that quite easily.

Okay, thank you. So is there any other component to a register that you would think would be necessary to make it a good or useful register?---No, I think we've - - -

(not transcribable) No, there's some more things. First of all, assume a register and a commission carrying out the tasks you've suggested. The

result would be an exposure of lobbying, a method of measuring lobbying and a monitor of the lobbying register.---Correct.

Do you consider that there are things that can be included which are beyond the register which do not include a register and which might help to regulate lobbying, so that is non-register lobbying controls?---No, no, I think - - -

Can I suggest some just for your comment.---Yeah, sure.

10 You've already touched on one, one being having a form or ordinary good business practice – that is noting and writing down the content of meeting. Another, I think you have heard us discuss with Professor Graycar, listing ministers appointment.---Yes, I came in a bit late for Professor's testimony. That's another possible way of going, I think that John Warhurst was touching on diaries as well. But as I said, I make a point, really, when it comes to seeing a minister, often that's at the end of a problem, usually most of the problems are solved within internally within the public service of New South Wales and that's why I think if you're tracking those meetings it's important but look – in Warhurst's case here, he's quite right,
20 having a diary is helpful as well.

But I suppose we're not endeavouring to track a minister's conduct or to intervene in his conduct what we're seeking to do here is to monitor or regulate lobbying so that if we adopt that view – do you consider that there are any other actions that could be undertaken or should be any other actions undertaken to try and control lobbyists?---No, no, I think that sounds all right.

30 Right, right. Now that leads us to this position. Mr Fitzgerald, there's three purposes that your structure could be said to deal with. The first is just to look at an industry that your concerned about and measure it. So, not just an academic interest but a general survey of what's going on in the community.---Correct.

Secondly, you could use it for, as an anti-corruption measure, that is for those people willing to engage in deliberately corrupt activity. The third, and I suggest that may be this is the one that you have in mind, seems to be the one that deals with the concern that lobbyists cease an agenda, that is the interfere with and distort government intentions by using their strength,
40 experience et cetera to divert governments from the path they might otherwise take.---Correct.

Right. Now, can we just set aside the first goal, that is the measurement goal and the public information. Can we set aside the second one, that is the deliberately corrupt, because there are other ways of finding and dealing with them. Would you see the register, the registration structure that you've defined, as being one which would assist in determining whether or not government agenda is being hijacked or taken over in some way by

lobbyists, which as I understand it is the principal concern behind your book?---Yeah. Look, I would agree. I think that is the best way we can go forward and I think that there are enormous problems both federally and obviously I would assume in the states, around the size of the access and the influence that these groups have. And I think one of the reasons why so many people, Commissioner, are telling you not to do it is because they're terrified of in essence the truth getting out. And I think that there's an awful lot of people who are involved in the system and who have a lot to lose by public disclosure of what's happening in the industry and how influential it is on public policy and the programs that are run out of the benefit of the taxpayers.

THE COMMISSIONER: Mr Fitzgerald, I have a, I don't understand how this information that you propose is going to stop the lobbyists?---Well, I think well, yeah, yeah, I think I see what you're driving at and, and I can see your concerns and they're quite legitimate, but if you cast your mind back to 2005 when I was writing the book, there was almost nothing on the industry so I wrote the book and obviously luckily I had, Brian Burke had, but the point is that, Commissioner, is that the media suddenly realised that there was a problem. They've suddenly started to investigate. We've obviously had all the other state-based issues happen. I mean, the book was precedent in saying what was going to occur. It said that corruption's not here and now in 2005, but with the money trail it will expand and there will be a problem. I think, Commissioner, that if you were to go down the path of establishing an entity in New South Wales it would explode a lot of what was happening in New South Wales and people would I think come out of the woodwork to say, well, this is what's been happening and I think you'd be, I think you'd be surprised.

Would it show us, would it be enough to show who's meeting with whom and how much money was passing?---Yeah, I think, look, I think that what would happen is that the, the New South Wales press gallery and the politicians would suddenly realise that the agenda was being somewhat hijacked and I think that it would have a good impact on public policy in New South Wales. I can see what you're saying is sort of, you know, are there any sort of explicit examples and you're sort of saying would this resolve those. Not, not necessarily. It's not going to be some sort of catch-all. What it is going to do is flush out the evidence and then allow people like myself, the journalists, the academics, academics to examine the evidence and then build, and mount a case. It's a chicken and egg argument I'm afraid.

Well, look, I mean, we get, we get complaints about influence being used or donations being given or, let me start again. Evidence about donations being given in one month and some decision being made a year later which benefits the donor, but it's quite impossible to provide that the decision has been made because of, of the donation that was made a year earlier. How

would this system help in the, in revealing that because you can, it's known now, the press know now, because that's often articles are written?---Mmm.

The article will say that well, so and so, all the article will say, this decision has been made and in his area the following members of parliament or his cousins or, or his associates are living and they're really going to be benefited to be prejudiced of others. And that's in the press, it's in the newspapers?---Mmm.

10 And then there's a complaint to us but there is no evidence, other than that. Now, how will this systems top that kind of thing from happening?

Well, it won't stop political donations. I mean, it's as old as time and it will continue. I think what it will do is, it will- - -

Forget donations, take the mere fact of decisions being made to benefit people, but without any evidence that that's being done for anything other than a desire to benefit them and all that being known?---I think it's important that there's open, openness and transparency in the system and if
20 you have that and the reporting requirements are met, I think you will see a-
- -

An improvement?---An improvement in public policy outcomes and I think since the book has come out, John, Professor Warhurst's book, we have seen at least people are examining the issue.

MR GORMLY: At least you know who the lobbyists are?---Yeah. Oh, well, look, I think- - -

30 Who they're appearing for?---That's right. I mean, probably I'd imagine the majority of people are going to come in here and say, no, Julian's wrong, Warhurst's wrong and, you know, they're all right, but it's up to you, Commissioner, to make that assessment. But I mean, just because we're in the minority doesn't make us wrong.

All right. Do you, in not referring to political donations I take it you don't take the view that political donations has got nothing to do with lobbying?
---Oh, I think as the Commissioner said, I mean, political donations are relatively well-tracked. I think there's obviously a long delay between
40 when they're receipted in the various parties and when they're given out in the ASE. I'm not quite sure what happens in New South Wales but I think it's twelve or eighteen months delay and then the journalists, yes, that's on the public record but then they have to do a lot of digging. And the Commissioner's right. There's no correlation between a donation being made per se and a decision being pro a company et cetera, whereas obviously I think as everyone realises, they donate money for a reason, the reason is influence and the influence is brought to bear not necessarily through the minister's office but it might be brought through the party

headquarters who obviously talk to the premier or the premier's chief of staff or other staff or the prime minister's staff and sort of say, well, this donor's looked after us, X Y and Z.

Well, would you agree with Professor Warhurst that there is an, that it would be desirable at the very least to prevent lobbyists from being involved in the process of fundraising and political donations?

10 ---Look, I can see, I don't mind people donating money to political parties, I don't have the same sort of concerns as Warhurst does on that particular issue. However, I think - - -

Well, we're talking about lobbyists being involved in donations by clients? ---Yeah, by clients. I mean, look, it happens a lot at the moment and a lot of, I think a lot of lobbyists don't, like I think somebody was saying that they don't - - -

20 I suggested that we'd heard that?---Yeah, and that's quite correct and I can see because they don't want to be sort of tainted as having raised the money, maybe 'cause it onerous or not, so I can understand where the lobbyists are coming from on that particular question?

Well, there's a significant perception issue, isn't there?---Yeah, if money is coming from a lobbyist, from a client, and the lobbyist is also asking the government for something for that client it's impossible to separate the motives of one from the other?---Yeah, that's right and I mean - - -

30 (not transcribable) outcome of the lobbying?---Correct, and there's various ways of donating money so I'm not sure I would necessarily agree with Professor Warhurst there.

All right.

THE COMMISSIONER: Thank you very much, Mr Fitzgerald?---Okay. Thank you.

THE WITNESS EXCUSED

[3.59pm]

40 THE COMMISSIONER: The Commission will now adjourn until 10 o'clock.

AT 3.59pm THE MATTER WAS ADJOURNED ACCORDINGLY

[3.59pm]