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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, Ms Kate McClymont is present and I call her to give evidence.

THE COMMISSIONER: Ms McClymont, you're becoming a regular visitor.

MS McCLYMONT: Indeed I am.

10

THE COMMISSIONER: Do you want to give your evidence under oath or do you wish to affirm the truth of it.

MS McCLYMONT: Yes, affirmation, thank you.

THE COMMISSIONER: Yes, would you affirm, please.

THE COMMISSIONER: Yes.

MR GORMLY: Commissioner. Ms McClymont, your full name is?
---Katherine Anne McClymont.

10 All right. I think you're a journalist with the Sydney Morning Herald. Is that correct or - - -?---Yes.

Now, I'm just going to take you a little bit through your background if I may. I think you graduated from Sydney University with an honours degree in English and you've been in journalism since then, so for more than 20 years. I think you've been the winner of a Walkley Award on some three occasions. Is that so?---Yes.

20 And you have written extensively on both New South Wales, state and local government politics and local government activities. Is that correct?
---That's correct.

Right. All right. Now Ms McClymont, before we start on any specific topics, I understand that you have a preliminary statement of ideas that you would like to express?---Yes.

30 Yes. All right?---The fees levying is said to come from people who waited in the hallways of lobbyists in the British houses of parliament in order to advance their interests or discuss their grievances with parliamentarians. At least they weren't behind closed doors. The difference today is that
40 lobbying is perceived as being private meetings in order for a client to gain some kind of advantage. The ability to get access is the key for modern day lobbyists. Perhaps this is why almost 50 per cent of lobbyists are former politicians because they more than most are able to get meetings with MPs and department heads as they were once colleagues and friends. The danger in this is that politicians who are successful lobbyists are usually the ones who still have influence in their respective parties. They can influence policy, threaten pre-selection and organise donations in return for access or favours for their clients. Some may argue that with our democratic system the fortunes of politicians turned lobbyists would fluctuate with changes of governments so that the influence will all even out in the end. But I'm not so sure of that. The most worrying aspect of certain lobbyists is when they perform no other function than that of a door opener. At the New South Wales parliament's inquiry into Badgerys Creek last year, former planning minister, Frank Sartor said, If a lobbyist does not add value to the merits of the discussion, then I do not see the point of having him there. In a perfect world there would be not need for lobbyists because decisions would be made on their merits. I know ministers claim that anyone can pick up a phone and, and be heard on their merits. If that is the case, why do most

blue chip companies employ lobbyists? Why not just get their appointment secretary to call the minister and organise a meeting? It would certainly be cheaper. In some cases lobbyists no doubt form a useful function in articulating a clients position. But what is a lobbyist? These days it's hard to tell the difference between a lobbyist, PR person or a consultant. I know one developer who engaged a former politician, now working as a consultant to a law firm to lobby for him because he felt that this person could float under the radar. Another lobbyist said as recently as yesterday that he wasn't registered, had no intention of being registered and only met politicians in private. He also pointed out that not all of his lobbying was paid. Sometimes it was just doing favours and passing on information. Certain large companies have lobbyists or PR people especially to wrangle journalists. If they are in dispute with the government or perhaps being prosecuted for something, their lobbyists are paid to try to get the best media outcome possible for their clients. Their tactics can vary between threatening and haranguing or sometimes they can be well researched and helpful. But at the end of the day as a journalist, you are aware they are pushing for a certain line to be adopted that will benefit their clients. I know that lobbyists sometimes use rival political parties to get questions asked in parliament in order to advance the cause of their clients or sometimes they arrange for questions to embarrass or threaten the opposing minister. In my experience, it is at the local government level that lobbyists can have the most harmful influence. While the stakes for the community are very high, i.e. the loss of a local park or an additional 10 stories on a building, lobbying goes on almost completely unchecked. This is particularly so where the lobbyist has powerful connections to a particular party. Their demands can carry a lot of weight. For example, one case I know of the Mayor was deposed after not dealing with a specific development request (not transcribable) , sorry, as speedily as the well connected lobbyist requested. Another developer told me he had engaged a particular lobbyist to deal with a certain council in hope that the councillors would be terrified at the thought of what the lobbyist could do to their careers if they didn't at least listen to what he had to say. With access being the key to lobbying, I know of examples where lobbyists have suggests to their clients that buying a certain seat at a political fundraiser will get them the ear of a particular minister. As lobbyists have the power to influence public decisions on behalf of their clients, it is important to have a public register of access visits, much like donations. If there is really nothing to hide, why not keep an open register. One line of the subject matter discussed should be made available. In the past politicians have argued that such information is already available under the Freedom of Information legislation but the cost of undertaking an FOI application is prohibitive and you can be fobbed off if you don't know exactly what it is that you are looking for. It is also easy for the information being requested to be classified as commercial incompetence. Anything that might be politically dangerous or embarrassing can be mentioned in Cabinet so that Cabinet in confidence can then be cleaned. There are also problems when former media colleagues become lobbyists. On certain occasions journalists find

them in exactly the same situation as politicians when former colleagues call. Journalists are much more likely to agree to at least have a cup of coffee when they know the person who has now become a lobbyist. I know of cases where the journalist might not have gone on to do a story but may have agreed to make a single phone call, that one phone call to a Minister may have the desired effect as far as the lobbyist is concerned of putting the Government on notice that the media is aware of any issue. Lobbyists have certainly used journalists to push stories. I think it's worth trying to limit success fees for lobbyists. To be paid a success fee indicates that you are
10 being paid on the outcome of your introduction and the methods of your persuasion rather than simply doing your job which is to get the Government official to consider your client's arguments but how would you ever monitor that without looking at people's tax returns. If you're going to have an effective lobbyist register then it needs to be well funded and monitored by an independent body and if there are no repercussions for breaching lobbying guidelines then there will always be some people willing to break the rules.

20 THE COMMISSIONER: Thank you, Ms McClymont, that was very helpful.

MR GORMLY: Ms McClymont, can I just take you to a register first?
---Yes.

In general terms I take it from what you've said that you would support the existence of a register that requires lobbyists to expose who they are?---Yes.

30 Can we just explore what a journalist would find useful in a register of lobbyists? So obviously the name of the lobbyist and presumably the client?---Yes. And not just the client but I think a list of Government officials and parliamentarians who have been spoken to should also be included on the list and in particular we don't have to be snowed under by reams of information but at least just the mention of the subject matter being discussed would be helpful.

All right. Now - - -

40 THE COMMISSIONER: Sorry, Mr Gormly. I'd just like to ask you about that. We've been told that the people who the Minister sees and the identity of the people can be very powerful information so, for example, to take a notional situation, if a Minister wants to support a building project to wants to create a building project in a particular area and doesn't want say a union to know or people in another area to know if the Minister were to disclose that he'd been seeing the representatives of the building company then the union, for example, would immediately know, realise or suspect what was going on and would mount a complaint against the building of this new construction?---Yes. Look, I understand what you're saying but at the same time surely that's part of the hurly-burly of, you know, public - - -

Well, it isn't at the moment?---This instance, say that your local council if you are thinking of developing something then other people have to be notified of your intentions so if that was the case then even just one word saying I've come to talk to you about, you know, Wolf Creek project you don't need to make it any more than that and if there was going to be dissent about this if there was some kind of body, a regulatory body surely there could be a panel that you could lodge particularly commercially sensitive information with that body and they could be the adjudicators of whether that was too sensitive to be released.

It's expensive and (not transcribable)?---That's, exactly, I mean, that is the whole, the whole point of having a lobbyist register is that it's expensive to run. If you're going to do it you have to put money into it and is there actually any will to, to monitor it, to make sure that people are disclosing and if there are no penalties for not doing it are people going to be bothered?

Those are the questions?---Yes. But I do understand, look, there are certain issues that would be very sensitive, you know, if there was a line put in there but I'm sure that in the majority of cases that is, is, is not so.

MR GORMLY: You, from your opening statement, Ms McClymont, do seem to hold the view that lobbying in New South Wales, both at state and local government levels, is representing a mischief or a problem even if it has its good side you appear to think that it does have problems, is that right?---I often wonder though whether it's the perception that is actually worse than what is, is going on. I think that the perception of lobbyists getting an unfair advantage over other people in getting access to ministers, I mean, it would seem to me to be much fairer if anyone wanting to see a minister put in a two-page submission and the minister's staff actually read it and then allocated it on their merits but that just doesn't happen and well-known people do get the ear of ministers. If they know them personally they will let them in to see them. If you've got a short space in the day, you know, you're choosy about who gets to see you.

Well, that, that does mean that what lobbying is doing is in effect pre-selecting not on the basis of merit but on the basis of, of, relationship or something other than merit?---I would think so, yes.

They know one another. Well, that's a mischief in itself?---Yes, yes.

And I suppose you would adopt the view, would you, that a perception of lobbying anyway, if it's widespread, is itself a damaging thing?---Yes, indeed.

Does it have any good side, that is that there's say a scepticism about lobbying contact, do you think there's anything healthy about that?---I really don't think that there is much healthy about it unless your lobbyist is

particularly articulate and could argue your position better than you could yourself. In that case it might be advantageous and it might be advantageous if lobbyists actually know situations work, how long it takes to get things through, that might be an advantage but generally no.

All right. We're slightly at cross-purposes there. Sometimes a degree of public scepticism about any activity can be a healthy thing?---Yes.

10 It can, it can act itself as a, as a watchdog so to speak. There does seem to be scepticism about lobbying, some would form the view that the scepticism of the public is because they are right and there are things about lobbying which are unhealthy such, such as you've put forward already with access. Can you think of anything about the public scepticism concerning lobbying which would be regarded as healthy?---Sorry, can you rephrase that? It, sorry - - -

I may be drawing a decision - - -?---I think that might be double-negative.

20 Yes. Do you think there's something good about the scepticism the public have?---Yes, oh, yes, absolutely. I think people have the, the right to be, to be worried and concerned about the amount of lobbying because a certain group of people are getting unfair favours by getting access to those decision-makers.

All right. Well, what about what goes on behind the closed doors of, of lobbying, do you, you've said that there should be at least a one line indication of the topic discussed?---Yes.

30 Right. What's the, what purpose do you think that would serve?---Look, I think that that would at least serve that if a decision then is made in a fortnight's time and there is one line saying that, you know, X went to see Y about such and such and two weeks later there is a favourable decision, you can at least be aware that that person has had their views heard and also it gives other people a right that, you know, may be effected by that decision to get the other side of the story in as well. I mean, you're always trying to find a fair balance and if one only one side of a particular argument, development, lobby group is having their voice heard it's naturally unfair to the other side.

40 Can we just follow that through for a second. From a journalist's point of view, if there were a register that recorded the fact of a meeting between X lobbyist acting for some building interest and a minister and it was about a particular development, that would enable a journalist to know who was contacting the minister and about what, you see the decision so you start to draw some inferences?---You can also just focus on that particular issue. If X is going to speak to the minister about that maybe there were some concerns about this project, interest development that the public should have

a wider, you know, should have a closer look at, it might just alert people that that might be something worth a small amount of scrutiny.

I suppose what it also does is enable you to know who the players are in that decision?---Yes.

10 And you could then approach them and question them if you needed to do so?---Well, it's also interesting, just going sideways for a moment, when you see who people are using as lobbyists it also helps you toward inferences as to who their connections are, what that lobbyist might've been chosen for that particular role. It just broadens out the whole pattern of the network being involved in the decision making.

THE COMMISSIONER: You could get hundreds or thousands of entries in a day if you have that register?---Yes. I don't think so because there are, what, 30 ministers, they've only got a certain amount of hours in the day. If you're extending it as well to local - - -

20 Chiefs of Staff?---Yes.

And senior public officials?---But that's right but I mean that doesn't mean that, you know, I think there's probably, you know, 30 parliamentary press people, they can cast their eyes down there, draw what they like, members of the public can also choose to look at it.

30 But let's be conservative and say 300 entries a day, that's 1,500 a week? ---But I don't think you would need to put it in, I think it would be unreasonable to keep this register up on a weekly basis. And it's like donations, you look at how many donations there are that come out in the Electoral Commission but it's very interesting to go down to look at the dates, to look at the amounts, to look at what particular function it was for and they don't come out every single week and there are hundreds and hundreds of them.

But the practicalities of it are all important?---Yes.

40 So it's really, we're asking these questions to see - - -?---Yes. And then my argument about what, about, you know, something happening two weeks later if it was the register was only updated every six months then you're not going to be able to put those things - - -

You'd have to have it updated at least once a month?---And I think that's, who's going to do that? Or, you know, should it be that minister, departmental diaries should be made public, should they have a personal and a public diary and should access be made to those?

MR GORMLY: At the present time in your position as a senior journalist known at Parliament House are you able to know of the, let's say of the 30

ministers there are what, ten who are senior and active and who are constantly seeing people and the rest would have a much less busy diary. Would you agree with that?---Yes, but I mean even some, even backbenchers, powerful backbenchers who have no ministry at all they are often the people that are lobbied the most.

Sure. Can we come to that in a second?---Yeah.

10 But just dealing with the minister's diary at the present time. Can you in your position find out or work out what is on a particular minister's diary or not?---No.

Right?---As I said before you can put in FOI requests but they are quite difficult and unwieldy to do and you have to be specific about what you're looking for. I think a few years ago there was FOI request put in to look at ministerial diaries in relation to Alan Jones' lobbying and that FOI was successful and it was interesting seeing what he was lobbying about and who he had seen.

20 But what's your experience of the time span for FOI applications though? ---Weeks if not months.

So from the journalistic point of view that's a very limited tool?---Correct.

You said in your statement that you were fobbed off by FOI applications? ---Yes.

30 What did you mean by that?---What happens is that if you put in an FOI application you have to almost know precisely what day, what the subject matter was, you can't go on a fishing expedition so generally FOIs are only used when somebody comes to you and says there was a paper tabled on this date under this name, it is essential that you get hold of it. You can then put in an FOI application for that document but you can't put in an, if you do put in a vague FOI application it will come back saying that will cost you \$3,000 for an FOI officer to go through all those topic headings that you have suggested. Now, media companies might be able to do that but in this, you know, time of tight budgets, no, and certainly members of the public just find it prohibitively expensive.

40 Well, I suppose even putting aside any poor motive on the part of suppliers of documents under the FOI system it's inevitably going to be a slow and difficult tool - - -?---Yes.

- - - no matter how well you did it. So the question is whether you can secure enough information as a journalist on a day to day basis from the plans in order to dispel a perception or the reality of cover-up or lack of transparency. Is that right?---Yes, that's right.

You would prefer to get it from the players than through FOI?---Yes.

Right. Well, just going back to the diary for a second. I think when I asked you that question about getting knowledge about what's in a minister's diary assuming that you asked and you were refused are there other ways just by chatting to people, by talking and knowing what's going on around about the offices of ministers that would enable to know who a minister is seeing or not?---Not really, no, and it's one of those things that if it's a particularly sensitive matter that somebody is seeing somebody over and see, lobbying doesn't always have to be done in person it can be done over the phone, it can be done, you know, via email, not everything is, is face to face.

All right. So even for somebody who really wants to know what's in a minister's diary and who the minister is seeing you really can't do it?---No.

Right. I'm not sure if you're aware of this, Ms McClymont, and perhaps it doesn't really matter but the Freedom of Information Act application system or the whole legislation was altered in, I think it was Premier Rees' period and replaced with a similar system, the Government Information Public Access Act which just calls it by a different name but does introduce some reform and some streamlining of the application process. Have you found that that's made any difference?---I haven't used that, no.

All right. Thank you.

THE COMMISSIONER: I'm really concerned at this register because people talk about a register but when you go down to the detail of it it becomes really fuzzy. I mean if you start talking about ministers, there are 30 ministers and you've got chiefs of staff and there's a query about other civil servants then you've got, as you mentioned, backbenchers. Now, if each one of them could see a lobbyist three or four times or talk to, rather, a lobbyist three or four times a day or that might be a bit much but even if once a day - - -?---But, Commissioner, that's I think another issue as well is what constitutes lobbying. If you've paid for a seat - - -

If you take a broad - - -?---Yes.

If you take a broad - - -?---What if you're just chatting, what is you and I run into each other - - -

Let's regard that as lobbying?---Yes, but they wouldn't regard it.

Well, that has to stop. I mean if these things are going to, if they're going to be reformed you've got to actually plug the loopholes?---Yes, and there are a lot.

And if you're going to use a register to plug the loopholes there are these problems that I've been asking you about?---Yes. And we don't know what

the answer to that is unless should it be the lobbyist's duty to keep the register? I mean can they be trusted to do that rather than politicians doing it or it is like donations, both sides have to make a declaration and if that is a job of somebody in your staff each day just to enter in to a computer saw so and so, talked about this, if you're keeping an official diary that's not a great difficulty I wouldn't have thought.

10 No, except that you'd get thousands and thousands of entries?---I don't think so. I mean, do you enter into that, I received a 12 page letter from lobbyists - - -

No, no?---No.

Oh, well, I don't know. I mean that's a question, why, why would you only do the oral entry?---But then what submissions are regarded as, as lobbying and what submissions are regarded as arguments from community groups that say, don't have a lobbyist?

20 That's a very good question. I mean - - -?---It's a very difficult area you've embarked upon here.

We're realising that. But I mean, it's a very serious problem. It can be, would you - - -?---Yes, I do think it's a serious problem.

There are those, there are those who say it is and are those who say it isn't? ---Look, I think that there are certainly elements of lobbyism, sorry, of lobbying that the community has a right to be seriously concerned about.

30 Well what do you say are the worst things about lobbying?---I think the worst things about lobbying are those people who due to their previous positions of power and influence continue to exert that power and influence by gaining access and gaining favours on behalf of their clients. And I'm absolutely have no doubt that that happens.

Yes, one of the witnesses yesterday spoke of law for sale and you can add to that contracts for sale, instead of law being made because of genuine bona fide view that that's the best for the community and for contracts being awarded because that's the best person to award the contracts to?---Yes.

40 Right. Those two things are, I think, which people are concerned about it. Do you agree with that?---Yes, I do agree with that. And I mean it is one of those things that, it works the other way as well in that if there are four tenders going out and one of your friends are lobbyists, and you can ring up and say, look perhaps your firm might care to put in a tender for this.

Yes?---It doesn't necessarily mean that they're going to win that tender, but it's, it's knowledge. Lobbying provides knowledge and it works both ways.

You've spoken, both of our lobbyists at a government level and the local authority level. But if you're going to have a register for, for local authorities, you, I suppose would have to have one for each local authority. You'd have to have an independent register?---Yes. And I think that it's local governments that are far more open to abuse because there's so little oversight in local governments.

Yes?---I think that's where a lot of lobbying goes completely unchecked.

10 There's something else I'd like to ask you about, which actually demonstrates the reach of lobbying. And I, because we've been talking about and we've spoken to most others really only about the relationship between the lobbyists and the person lobbied. But there are lots of indirect ways in which people in government or local authority power can be influenced. One way is through journalists. I mean Mr Mitchell was explaining to us how lobbyists entertain journalists?---Mmm.

20 And, and influence journalists who in turn influence politicians?---That's what I was saying in my introductory remarks. I know that lobbyists have rung up journalists and it works in a variety of ways. They can give you information that's beautifully prepared and their deadlines now are, you know, so pressing, journalists are lazy and will just accept what is given to them. That in itself is dangerous. But lobbyists can also, they can get journalists to do them a favour, which is they don't even have to write a story, they don't have to broadcast, but I know that journalists say a lobbyist has rung up and said, would you mind ringing up Minister X and just saying what's happening about the light rail and the tender for such and such. Now that call might be nothing to the journalist, but that call might send the most profound waves through parliament, they're on to us, they're looking at this,
30 we have to change this, we have to do this. It's, you know, it can be quite dangerous.

And do you, do you, are you of the view that that should be regulated?
---How, again, how can you regulate that?

I don't know. But I mean if it's not going to be regulated then do we simply accept that as a fact of, of our modern life?---Yes. Well, I, I'm just thinking that, you know, journalists can't be, we're not above politicians in this. Journalists have been lobbied as much as politicians. And in some ways
40 journalists affect public opinion, can affect decision making in a profound way. And we are just as much - - -

That's how the system works?---Exactly. But I mean, we are just as much responsible for controlling how we are lobbied as much as politicians are. Sorry to introduce that nightmare scenario, but it's, it's a fact.

MR GORMLY: Well, Ms McClymont can I put these things to you?
Would you agree that at the moment it's important to journalists to be able

to get access to the decision makers to politicians of all types and carry out all functions?---Yes.

And unless you can do that you can't really do your job as completely as you would like to and the public can't be informed as well as it would like to be. Correct?---Yes.

10 At, at the present time lobbyists have much better access to government decision makers than journalists do. Do you agree with that?---Look, yes and no. On, on certain issues, yes, they do. On other issues, it really depends on - - -

THE COMMISSIONER: It depends on the journalist doesn't it?---Well, also it depends on the decision being made and it depends on the political outcome. It's, it is a tragic world where everyone is used for a benefit, for a motive, for an advancement, it just, it depends.

20 MR GORMLY: Sure. Would you agree though that perhaps one of the reasons why that happens is because lobbyists use relationships and journalists generally speaking, can't?---I don't think that's true either.

Can I, can I - - ?---No, look, can I just say that yes, you are right to a degree but journalism works like any other profession. We only have to look at the current Kevin Rudd, you know, which journalists are being the recipients of certain leaks. It's all about relationships. It's all about networking. And it's no different from lobbyists or journalists into how this works.

30 But if you were to treat lobbyists as another profession like journalism or law or any other profession, there would be to some extent a detachment either by circumstances or by regulation, a detachment of the skill of the journalist or the skill of the professional from personal relationships?---Yes.

Right. Well, in the law for example, no matter how long a lawyer may have known a particular judge, there is an absolute and categorical rule prohibiting contact between judge and lawyer during the running of a case, except in certain circumstances, they're never to discuss the content of the content of the case?---Yes.

40 Right. And that's a practical rule and it works?---Yes. And if there is an accidental meeting, it is disclosed to - - -

Sure. Right. To the other side?---Yes.

With journalism what you want, with lobbying what you want out of lobbyists is the use of their undoubted experience and skill and their capacity to put a case together that's useful, but you want to separate that practical skill from the relationships?---Yes. My beef is that often the

lobbyists don't have that skill in putting together an argument. Their skill -
- -

That's a different issue though isn't it?---Exactly, is just getting a favour done in getting their clients issue heard.

All right. Well, that's the door opener theory - - -?---Yes.

10 - - - of, of lobbying. And I accept that it has merit. We have heard a lot of evidence that lobbyists can package together something and understand what someone wants?---Certainly.

And make those things match quite well, so I agree it's a question of the skill of the lobbyist such as it might be the skill of the lawyer or the journalist or anyone else - - -?---Certainly.

20 - - - in putting together the job. But there does seem to be a problem about the use of relationships by lobbyists in that it precludes contact with or it facilitates contact with decision makers for private means. And even journalists can't achieve the same degree of contact?---That's true.

Because you're there for public means?---That's true.

30 Public purposes. Well, can you see, however unpalatable it might be, the possibility of introducing rules that would prohibit former politicians from using their relationships to lobby by, for example, prohibiting personal contacts. They can work in the lobbyist firm, they can put the case together, they can produce written documents, perhaps they could even sign written documents because in that way at least a source is known, but you don't let them go and have private meetings on behalf of a client when they've been sitting in the ministerial room next door two years before?---Look, I think that would be a fantastic idea but I think the reality is, is somewhat different. But even if there was an enforced cooling off period, at least that would be a start that, you know, if you left the health ministry you were not allowed to lobby on that topic for at least years or in fact on any topic where you still have relationships among a wide range of government officials. There, there should really be a period of time that should elapse.

40 We're hearing two mixed stories and I'd be grateful for your assistance on this, one is that lobbyists are just everywhere. You can go up to Parliament House and you turn a turn a corner and it doesn't matter what function you're at or where you go, there's going to be a lobbyist there because they're constantly generating and maintaining relationships. That's one story. The other is that in a standard professional third party lobbyist business of competence and repute that most of the staff are back in the offices doing research, compiling documents, understanding their client's case, going out and getting information and generally compiling material enabling a brief to be put and that the contact between that staff and

decision makers, government decision makers is almost nil, that the contact is left to perhaps a few principals and the rest are out of touch with the decision makers all together. Now, from your experience which of those would you say is more likely to be the case?---Look, I think that they are both the case and certainly a lot of the, the larger blue chip companies do employ, you know, fairly big lobbying firms and they do exactly what you're suggesting. If there's a defence contract they will go through, you know, pick out all the issues. But there's also the other type but as far as we journalists are concerned, we are now being assailed at every point by lobbyist PR consultants. If there is some kind of corporate argy-bargy going on you will be called by if not one at least two lobbyists. They will suggest the line of the story that you will write. They will, if you're covering a court case they will get the transcripts, they will highlight, you know, pieces of passage favourable to their clients and they will send it to you. They sometimes threaten you. It's - - -

In what, well, how do they do that?---If you should happen to miss my client's arguments we would have no hesitation in taking you before the Press Council if you do not do a fair and balanced report. They are, you know, quite scary at times. Well, scary for younger journalists. I think older journalists take it all with a grain of salt but they sit in court, they come up to you, they, if you're having coffee they'll arrive and be in your ear. They'll thrust documents at you or give you CD-ROMs. They are all pervasive.

THE COMMISSIONER: You're not suggesting that that can be controlled or are you?---That is your role as a journalist, to sift out information but as Mr Gormly said, there are some lobbyists who do fantastic work, they have distilled ideas into succinct and, you know, palatable, they're not all bad.

I'm asking about the manipulation of journalists, that just seems, that's a matter for the journalists to deal with really?---That is, yes, yes, exactly.

I mean, it's a really, it's a question of ethical conduct?---Exactly. You know, we have a Code of Ethics which if you adhere to you have no problem at all in dealing with these kind of people. I sometimes worry about younger and more inexperienced people being dealt with by very experienced lobbyists.

That can, the Ethical Code of Journalists, is that, do journalists monitor that or is that just left for each individual journalist to deal with?---It is left for each individual journalist to deal with but I'm actually on the, the ethics committee of our union organisation and breaches of those ethical guidelines are given to us to deal with. We have a panel here where we make adjudications on breaches of ethics so it is taken quite seriously.

All right. Could you let us have a copy of the Journalists' Ethical Code?
---Certainly.

MR GORMLY: Commissioner, we - - -

THE COMMISSIONER: We have it?

MR GORMLY: We do have it. I've actually discussed it with Ms McClymont this morning. I might just get this bit of evidence. Ms McClymont, I think we, I was discussing with you before the hearing started some of the evidence that Mr Mitchell had given yesterday
10 concerning whether or not the activities of lobbyists in relation to journalists required some amendment to the Code of Ethics and I think your view is that the Code currently covers it?---Yes, that is correct.

All right. Commissioner, I certainly have a copy and - - -

THE COMMISSIONER: Yes, I see it.

MR GORMLY: All right. Ms McClymont, there's just one more topic we, we have to watch time in this, but there's just one more topic I'd like to
20 cover with you. You've already raised it, it concerns lobbying and backbenchers. Can you just tell us firstly what it was that you had in mind when you were referring to backbenchers as being those who lobby and those who are lobbied?---Yes. The ones that both are lobbied and lobby are usually the ones that control the, control the factions and therefore they control the grass roots branches, you know, out in, you know, various sections of the community and that's where the fundraising and the money comes from. So a lot of people will go directly to that backbencher and say, look, I need X done, I need Y done, that backbencher will then, then will do the lobbying on behalf of the person and say listen, you know, Joe Bloggs is
30 a very big donor of ours, we need to look after him. I want you to see that X gets done. And it's come through a back doorway but it's just as effective or in fact more effective than a lot of other means.

THE COMMISSIONER: You raised the party machine?---Yes.

I mean, the party machine is another entity that is lobbied?---Yes.

And its activities are unseen?---Yes. And I think a lot of minister are far more terrified of being lobbied by, you know, certain people on their
40 backbench because if you don't toe the line your pre-selection can be threatened, your ministerial position can be threatened, it's something that really can't be underestimated.

MR GORMLY: So that, I think you have in mind that being something that's tied to lobbying or are you talking, to donations or are you talking about lobbying generally?---About lobbying generally.

Well, that would be to some extent part of the risks of political life too, wouldn't it, balancing the forces that keep you in your position. Where it might become inappropriate is where money is involved. Is that a distinction you draw or do you see it as bad anyway?--- Bad anyway.

10 Have you seen activities of lobbyists, of backbenchers lobbying ministers where you have thought that it was inappropriate?---Yes, and not just that. Backbenchers lobbying directly local government officials, backbenchers ringing up a local mayor and saying listen, my friend Bloggs put in an application and as far as I can see you haven't done anything about it. It's, you know, it's quite blatant.

Are you talking about a state government backbencher ringing up a local government mayor?---Yes.

20 Yeah. All right?---And I've known that to happen on more than one occasion. If it's not the mayor, because the political parties in local government, although they're not meant to, they vote as a block so there's no room for individuality. So if you just approach one councillor and say, right, your team line on this is to support this project, then that's what the team line is.

Can you think of any basis for prohibiting contact between state members who are there for their own constituents prohibiting contact between them and local government over development matters?---That would be marvellous.

30 You think that could be - - -?---Look, if, if things were just done on their merits in every capacity in political life none of this would be at an issue but it just doesn't happen like that.

All right. On that note, Commissioner, I think we may have to end?---It's a bit depressing really.

No, it's just a big ask, that's all.

THE COMMISSIONER: Yes, thank you?---Thank you very much.

40 MR GORMLY: Thanks very much.

THE WITNESS EXCUSED

[10.51am]

MR GORMLY: Commissioner, our next witness is Mr Mike Ahrens from Transparency International. Mr Ahrens, can I get you to come forward?

THE COMMISSIONER: Mr Ahrens, do you wish to give your evidence under oath or to affirm the truth of your evidence?

MR AHRENS: Under oath is fine.

MR GORMLY: Mr Ahrens, can you tell us your full name?---Michael Clifton Ahrens, that's A-H-R-E-N-S.

Thank you. And what is your position at the moment?---I am an Executive Director of the Australian chapter of Transparency International.

10 How long have you been with Transparency International?---Six or seven years since I left the law.

Right. And can you tell us when you left the law what was your position then?---I was a senior partner of Baker McKenzie, the Sydney office.

And how long were you with that firm?---Close to 40 years.

Right. Thank you?---35 years.

20 All right. Now, Mr Ahrens, I think Transparency International has taken something of an interest in lobbying, is that so, but internationally?---Yes. I've been looking at the papers they produced last year and they contributed to that OECD paper which I think you've had a look at.

We have?---Yes.

Now, Mr Ahrens, - - -?---Although I might say globally, you know, it's a very difficult topic because it is so dependent on the situation in the country and, you know, Transparency International has a big problem dealing with
30 that huge imbalance between developed and undeveloped systems.

All right. Now, look, is there something that you would like to say at the outset by way of an opening statement?---Well, yes, if I may. If I may just deal with three points. One is the, I think that the problem with codes is in any event a problem that it is just a low level response to what I call a demand for transparency in government. The ethical underpinning that codes require that's an essential factor in the culture of integrity and openness and, you know, the conduct factor which needs watching totally and my views are the creation of the register is, is, is an attempt to
40 distinguish between a lobbyist and others who do lobbying which is totally unofficial and I think unworkable. The same services can be provided just as easily by a lobbyist as, by a whole range of other people, in-house executives, lawyers and others and I think that that distinction doesn't carry us very far at all. Second, and there are all these problems with the lobbying register which I could go into if you like, weaknesses identified in section 10 of the issues paper, very good, I'd agree with those. The second point is this linkage, essential linkage between lobbying and money. The political party financing, question by the way is just tonight there is a panel in

Melbourne, high-powered panel discussing the new book Money and Politics: The Democracy We Can't Afford by a senior lecturer of Melbourne Law School, I've met him, Joo-Cheong Tham, very impressive man and he's done a lot of work on that and I think that there's this linkage with, between lobbying and fund raising a something which in this inquiry should not be overlooked. It is, whenever we speak to, I know I speak to lobbying, I don't do it myself of course. And by the way I should say with Transparency International we don't, we make a policy not to get involved with individual cases at all, it's the systems and reform of systems that we're, it's hard enough lobbying for those for reform of systems but not, don't deal with individual cases. The third point which I think may be easier in a way to handle is that the shroud of secrecy in relation to lobbying is as much a problem as that of the connections, the connections factor which has led to what I see as suspicion of distaste in the public mind, removing that cause of the negative implication of lobbying ought to be a priority. As far as lobbying activity is concerned and I think it's absolutely right that this inquiry should focus on the activity rather than the lobbyist, I believe that in addition to the disclosure of the funding, back to I referred to, we should have a system of online reporting of lobbying activity i.e. that is what's referred to as a real time basis that is current not, not six months later as to the fact of instances of lobbying with ministers, particularly ministers, parliamentary secretaries, heads of department. The general nature of the issue raised could be put up on a site administered by the Premier's Department or preferably independently but could be done and I think that's the, the necessary step to be taken next to get such a system up so that this, the secrecy is minimised. Certainly I can acknowledge that, you know, there's many instances of private contacts which with a lack of discipline ministers will not require formal meetings and I believe there's been a recent inquiry dealing with the lack of note taking such like have these lobbying activities. But the software that is now available and especially with search, search mechanisms, search engines it should be able to be something very valuable for, for the public of this state to have that and it shouldn't be a, what referred to I saw in the OECD papers, a regulatory ticket. One advantage of course is that it would be then not necessary to try and distinguish between lobbying, lobbyists and others. Thank you very much, I think that's all at this stage.

MR GORMLY: All right. Now, Mr Ahrens, there are some things that I want to go back to in what you've just said. Can I start with codes? I think you said that there was a limitation in the utility of codes and I take it that you are referring there to the fact that you can have a code that has an ethical underpinning and it's not a question of whether you enforce it or not it's just a representation of a culture or an ethical culture that you're trying to pursue. That's the kind of code one often finds internally. Another form of code is a statement of rules that can be enforced and obviously there are distinctions between the two. Do we take it from your description that the use of the first kind of code is probably not one of utility when dealing with lobbying?---Well, yes, I think that's right. You're trying to cover a whole

range of people some of whom don't want to be known as lobbyists and I don't think we can rely upon that unethical underpinning being there in all cases.

Right. So that would rather suggest legislation rather than some other form of code?---Yes, yes. I (not transcribable) Queensland have, have an (not transcribable).

10 Yes. All right. Now the next thing, can I raise with you is that you do seem to be of the view that lobbying does represent something, I withdraw that. That there are aspects of lobbying which are publicly damaging at the present time here in New South Wales?---Oh, yes. Much, I mean the journalists would know much more about that than I. I only read mainly what they produce.

Sure?---But talking around, I, I spoke to one person who didn't want to appear here because he didn't want to be lumped together with other lobbyists that he had distaste for.

20 Mmm. He was a lobbyist?---Well, he does lobbying regularly.

Mmm. When were referring to the things that you thought were adverse, it was in effect the public perception that was causing the problem, that is, the use of secrecy and connections. And the perception that that creates in the public mind?---Yeah.

What is that? What, how would you crystallise that perception?---I think it's damaging, damaging in, and that's the whole purpose of - - -

30 THE COMMISSIONER: What is the perception?---The perception, negative, negative implications of people saying hey, they've engaged in lobbying, it's a - - -

THE COMMISSIONER: Well, what, what is the perception that the lobbyist does that's bad?---Unequal access, high powered connections as well as the secrecy.

40 Misuse of influence?---Misuse, yes. Well, yes, use of influence in a way which is not seen and therefore suspected to be misuse.

Bribery?---Could be. But in this state bribery, that is personal, personal gain, you then have to extend the definition to indirect benefit rather than personal benefit.

Yes. But I'm only asking about perceptions?---Yeah. Well, it could be. But the way I see it, I mentioned, was the use of close connection between the lobbyists effectiveness and their unraising for the benefit of the political party in power.

MR GORMLY: Mr Ahrens, sorry, Commissioner, have I - - -

THE COMMISSIONER: That's a general benefit. Is there a perception also that there are personal benefits?---Personal benefits come by paying the power of these, the party, paying power. I'm not, I haven't - - -

10 I understand?---I haven't seen anyone pinned legally except, apart from the minister in the, in Queensland recently, he's being gaoled. But so, luckily we are extremely fortunate there seem to be very few instances of that in this country.

Yes. That's why I, I emphasise the perception rather than the reality?---Of bribery.

Of corruption?---Of corruption in that sense.

20 Of lobbyists, of the, of a pernicious influence of lobbyists?---Mmm. I need to think about the question, that is that I think it's pernicious in so far as there are two factors. One, the belief that things are being, there's undue influence. And the second is that because it is so closely connected with fund raising, it's pernicious.

30 MR GORMLY: Could there be a third but separate area which is not criminally corrupt, that is that because relationships become involved, even though there's no benefit, there's the inevitable social preference given to people who know one another. That is that you have decisions in the public interest being made based on relationship and the preference that relationship gives rather than merit?---That's highly related but it's, I think that's going to go on anyway, these relationships. The question, whether taking those relationships and utilising them for particular concrete issues that are brought to people in power having those relationships, yes, I suppose I'd agree with that.

40 It's not only necessary that relationships form, it's inevitable that as people do business, a relationship develops and indeed everybody spends time to make sure that that happens and happens well. But there's a difference between people generating a relationship in order to carry out a task on the one hand and someone being chosen to do a task because of a pre-existing relationship. The first one would be merit based and the second is not. Would you agree with that?---Yeah, I'd agree with that.

The task then would be, wouldn't it, to try and eliminate the use of relationship for the selection of a task?---It'd be very difficult, I think it'd be extremely difficult to do that. I think that that's why I settled for the exposure, exposure of the fact of the utilisation of those by simply making it open.

Yes?---I mean, I think those relationships, the fact of utilising relationships is always going to go on.

THE COMMISSIONER: So your solution is a register?---Is a, a register in the sense of publishing the meetings in which, which take place with, as part of lobbying. That is the - - -

All meetings?---All meetings, yeah. All - - -

10 Even informal?---Well, that's the problem. The discipline, if you're going to have important matters discussed informally, then as - - -

They're the most serious?---Could be the most serious, and they don't, and then if, to the extent to which you can't have rules which require that those be dealt with on a, formal meetings. This system won't work. People can, can bypass it I suppose by, by not, not requiring any formal meetings. But that'll happen anyway.

20 And how do you police compliance with the register?---By a combination of first of all setting it up. Setting up the, the, and then - - -

How do you force people to, to publish their meetings?---Well, you'd have to have a statute.

30 But, but how do you police that?---How, well, in the same way as so many other interactions in this area, very difficult to police. But as least the requirement ought to be there that these important, that any important matter be dealt with at a meeting which someone's taking notes. Once you get to that - - -

MR GORMLY: (not transcribable) Go on, sorry?---Once you get to that point then it's a very short step it seems to me to have someone enter it on a, on a (not transcribable).

On a register.

40 THE COMMISSIONER: Well, you could prohibit informal meetings? ---You could. I haven't looked into how far you could be effective on, on that. But I think that in effect what (not transcribable) by requiring that, as part of first of all the ethical underpinning but also the way in which the public service and ministers operate, that, that happen.

Judges and meetings between judges and lawyers are prohibited in most circumstances?---That's why they're very careful to do it properly.

Why shouldn't that be done between - - -?---Yeah.

- - - lobbyists and - - -?---Especially, especially between the people I'm picking out, ministers, parliamentary secretaries and heads of department. Now, this is not again to say that, that irregular conduct may happen, as I've heard in some departments, but lower level - - -

That would be less serious?---Less serious, hopefully.

10 MR GORMLY: There are situations, Mr Ahrens, you'll be familiar with where lawyers, for example, are not permitted to appear for people because it will produce an unlevel playing field or you can have some small tribunals where people are expected to appear in their own right unless by leave or where there's an agreement they need to be represented. One of the, one of the reasons for that seems to be that a recognition that by having one lawyer present and not another that, well, I've said it, that there'll be an unlevel playing field. Would you accept the proposition that the effect of lobbyists at present and the perception of them may be such that you could justify limiting the contact that they have, that is the lobbyists rather than the individual or the company, the contact that they have with decision, government decision makers, unless recorded?---By statute form.

20

Yes?---I thought about that, I just think it's very difficult to, to - - -

MR GORMLY: (not transcribable)?---(not transcribable) into the definition of whose a lobbyist.

30 Sure?---And you have a minister at a lunch, query how private that lunch is and these happen every day in this city, to put the obligation on a person who may or may not qualify under your definition of a lobbyist seems to me a bit difficult, that's all. I think it's got to be an obligation on the, on the ministers of state and the bureaucrats. They are the people who ought to be the guardians of, of this sort of system and, but to have a further prohibition, I, at least as far as I've thought about it, seems to be a bit difficult.

You're suggesting perhaps that lying on the government officers is an obligation to maintain a detachment from or some distance from, by whatever form, those who lobby them - - -?---Yes.

40 - - - rather than being personally entangled?---In a way which bears scrutiny.

Right?---In a way that bears scrutiny not only as to the fact but also of course to the content as, as I think it was someone in Canberra recently said, can you justify it before an estimates committee as to what goes on as to being the criteria.

Well, one way of maintaining distance between lobbyists and decision makers without starting to be intrusive about personal relationships would be to formalise lobbying contact, that is, to cause them to do it only in

formal circumstances, that is the actual lobbying activity by doing things in writing or by meeting in specified recording venues, that is where somebody's taking notes or something of the sort?---Mmm.

Have you yourself given consideration or has Transparency International given consideration to just how much actual content changes hands when people meet socially?---Not a lot, no. I mean, we see it all the time and in my career I've seen it a lot but I, I don't, have not given a lot of thought to how you'd regulate that I must. I mean, it'd be tough to do that I think.

10

Well, would you accept this as a general proposition, that if a lobbyist is pressing for a client's interest - - -?---A lobbyist as defined - - -

That is a third, let's use a third party - - -?---Third party.

Yeah, professional lobbyist for the moment, meets a minister at a function at which there are 150 people and they chat and talk and there's some discussion about the proposal that the lobbyist is then pressing such as where are you up to with X or Y or I've got a new piece of information that might assist you to make a decision about something of that sort and it is conveyed at a social function, it is undoubtedly a piece of well, I would suggest to you there is undoubtedly a piece of lobbying going on there but, and it's incapable of being outlawed other than by a rule that says no discussion of business but realistically speaking the next stage that makes it fruitful is going to have to be a formalisation of that into a meeting, that is usually followed up with something. Would you agree with that?---Yeah. I think, and that should be part of the rules of those people, people holding those, those offices that I referred to but in terms of crystallising that, particularly giving of information which I call price sensitive information, borrowing from the private sector, that ought to be another part of the rules, that is the giving of the information is different from listening. That's when it starts to become a problem.

20

30

Can you just expand what - - -?---In other words - - -

40

- - - you're referring to price sensitive information, go on?---Well, the, if this, if the discussion that you're referring to is, is such that this is not just how do you advance my cause but something which is, should be known about, that is in order to not give a totally unfair advantage to someone, then, you know, the private sector deals with this in a totally different context of course but I, I can imagine there'd be a great difference between someone saying hey, it's going along, someone saying hey, I believe it's getting along and someone saying okay, I will go and make sure it happens. I would think there'd be a lot of difference in that.

Well, that's a decision?---Yeah, it starts to be a decision, yeah.

And that's the communication that a decision is made?---Yes, that that person is bringing the influence of someone in those senior positions to bear on that particular proposition. That should be a decision which is recorded.

THE COMMISSIONER: It's very, it's a very difficult situation?---It's difficult, yeah.

10 I mean, because if you take the, if you take the politician who goes doorknocking just before an election and sees a constituent and the constituent says you should build a park nearby in this area, is that lobbying?---It's all lobbying.

But that is how the democratic system works. That cannot be controlled? ---That's right. Well, that's why I was backing off from the general public.

20 There is a very serious question of definition of what should be allowed freely and what should be controlled?---I agree but there are certain black and white areas where nowadays you would think of engaging a lobbyist in order to pursue the cause as opposed to building a park.

Well, if a constituent can tell a member you should build a park here, why can't a huge company go and see a minister and say you should build a huge factory there? What's the difference?---I think that you're right, difference in degree but important.

Well, I'm not sure?---Okay.

30 MR GORMLY: Mr Ahrens, can I just take you two topics and one of them I want to lead, I was to use your background as a lawyer if I may as well. We have - -?---This is rusty, my experience.

40 I think that you'll find that this will work, I'm not going to ask you a legal question. Third party lobbyists have made the complaint that on the current register system they are in effect sliced out of a much larger group of people who professionally lobby, that is, lobby for a fee and that it's producing a distorted impression of them and it's hiding the fact that others can lobby. One of the arguments that's used for causing them to lobby is that they are a representative profession and by forcing them onto a register at least you know not only who they are but who they're acting for. It's been suggested that some people will prefer to go and see an accountant or a lawyer, and it seems accountants are more commonly in this role than lawyers surprisingly, because it will mean that their approaches to a minister won't be publicised, that is, they won't end up on the register and yet the accountant or the lawyer is lobbying just the same as a third party professional lobbyist is lobbying, making representations to a minister on their behalf, using their skills to pitch a case. That seems on its face to be a good argument from the third party lobbyists that if you are going to allow, if you're going to have a register and if you wanted to limit it to the third

party professional representative lobbyists that it would be difficult to exclude any representative profession including lawyers, accountants and perhaps even planners or other representative type bodies. Can you see any argument to the contrary of that?---No, as part of what I said I think it's totally artificial and in fact I don't think it really works at all because I looked at the register the other day and I saw that one firm represented about 20 different companies. Well, who, who are they representing on a particular occasion? You'd have to dig deeper to find out. It would work under the system I'm proposing, that you would, you would have to disclose who, who you were representing at the meeting with one of those senior officials but at the moment I don't think it works at all. The fact that they represent 20 different companies is no, nothing.

It's not an act of transparency?---Not of interest. Not particularly of interest either. That just shows they have some good clients. I mean there's, there's an attempt made in, I see in some of the US states to not only pinpoint the fact, the lobbyist position but to penetrate into how much they charge, what are their earnings. The state of Washington there's been a huge study made comparing Canada and the US, various US states and that seems to me going down the wrong trail as to how much they charge, how much they earn. I don't think that's a, that's a useful line at all.

You go down the other trail, down through the client to the government officers?---I would say the point of the meeting, the fact of the meeting and what was discussed, the date, with whom, by whom and two lines as to what was discussed. That's the sort of thing to get it, at least get it out the fact that it's happened and happened recently. This interesting one that Macquarie Bank, the very point and crisis in October 2008 where they met with Minister Sherry, this was only revealed and it's absolutely right that they met with Minister Sherry a federal minister in July this year through FOI requests. Now, totally legitimate I think but, you know, totally legitimate but the fact that it's not being made public the fact that they met with Minister Sherry to me is the, is the issue.

So it has come out through an FOI application that that meeting occurred, it is two years later I gather is it?---Year and a half later, yes.

Year and a half later. So it's discovered but it's not discovered at the same time so to speak but the content of the meeting I take it is also disclosed? ---The topic, yeah.

The topic?---Yeah, that's all, all you need.

Well, now, looking at this from a transparency point of view are you suggesting that that meeting should have been available to be known about at the time?---By each of the parties, yes, prepared to look around and do a search of a register, keep an eye on the register, yes.

At the moment it's available on the internet, the original Commonwealth scheme for lobbying was not a publicly available document it fell into disuse about 1996, I don't know if you're familiar with that but there was at the time some arguments to the effect that you could have a register which was not made publicly available unless there was a reason for accessing it and then that would be by following requests and on the consent of the government of the day. It obviously has its limitations but do you think that there would be any benefit in having some form of register which required meetings and the subject matter of meetings to be recorded but limit access to that register to circumstances where a reason for accessing it could be justified?---I don't know, I don't know the answer to that but I'm going to be very interested to see the way the new FOI legislation works in Canberra, that is really quite far-reaching and embarrassment to the government is not a reason for holding back information and the new Commissioner's just taken office so it will be very interesting to see how that works but I don't think keeping it, waiting for people to ask and seeing if they have a proper reason I don't think that's, that's a right basis.

20 The, perhaps the basis for, a basis for doing it I agree wouldn't be embarrassment to the government but might it at least overcome the suggestions, and we heard one yesterday from a former senior Director-General from South Australia it might help to overcome the problem that disclosing who ministers see can in fact interfere with government business?---I'm surprised. I'm not a public servant, never been a public servant but I'd be surprised that that is a legitimate reason not to disclose who they met with in, no.

30 So you yourself would not adopt the view that for example publishing a list of appointments by a minister, a prospective list, that is, next week's appointments or perhaps retrospectively the previous month's appointments that would not interfere with government business?---Well, I'd need to see that justified, I think the onus is on people who make those claims and show how it would, sure.

40 It was suggested yesterday that the reason that it might interfere was because for A to know that B was seeing the minister when A and B are in some form of contentious dispute for example between union and employer or union and industry would interfere with negotiations the minister might be trying to conduct between the two warring camps or between two camps involved perhaps in negotiations over some substantial deal. One way of looking at that is that that's underhand negotiation in any event of the old style, another is that it's a legitimate tactical consideration. Do you have a view?---All I can comment on that is that there's a difference between exposing the appointment diaries and recording the fact of the meeting having taken place, it seems to me quite different. I don't know about but - -

All right. Generally speaking you would prefer exposure, transparency?

---Of course.

All right. Just give me a moment, Mr Ahrens. So that leads us then I think to a final, sorry, there's one other matter.

THE COMMISSIONER: I think we should have an adjournment.

MR GORMLY: All right.

10 THE COMMISSIONER: Mr Gormly, would this be a convenient time?

MR GORMLY: Yes, Commissioner.

THE COMMISSIONER: We'll adjourn for ten minutes.

SHORT ADJOURNMENT

[11.27am]

MR GORMLY: Mr Ahrens, I want to take you to some short topics.

20 Firstly, at the present time there seems to be a substantial increase in the amount of lobbying activity by professional lobbyists compared with, as we understand it, 10 years ago, there's been a significant increase. Do you have a view about what factors might be driving the increase in the number of lobbyists operating for a fee in the market other than the use of relationship?
---No, I'm sorry, I don't.

All right?---Is that, this is in all jurisdictions, in the state as well as federal?

30 Yes, it is, yes. Would you then see the growth as being related to the use of relationship for door-opening purposes?---I couldn't rule it out but it's probably just as much the importance and recognition of how important government is in a lot of these situations and I'd like to look at the numbers to see whether it's more in the local government area, just as much in that area as in others but whether that's recorded - - -

40 Some evidence has been received that one reason why people use lobbyists is because of delay in the process of government decision-making, that is, that once a queue of forms or a delay occurs, that there is a desire to use lobbyists to try and either pull things out of a too-hard basket or to have them jump the queue in some way. Is that consistent with what you understand a lobbyist's role to include?---Yes, to get decisions expedited if they are bogged down in the bureaucratic chain somewhere, to the extent to which queue jumping takes place, I don't know. I mean, I don't have personal knowledge about this but again, again the fact that the meeting's taken place and the minister says yes, I'll look into it and expedite it, that, there's no reason why that shouldn't be up, the fact of the meeting taking place shouldn't be there, openly.

Let me take you to another topic. There has been in recent times noted the fact that a government decision-maker, somebody in office, will have a partner who is a lobbyist. Now, do you yourself consider that there are any rules that could safely be adopted which would prevent conflicts from occurring when that situation arises?---Yes, if there's, if there's no self-imposed constraints there should be rules about that in all jurisdictions. I think people who are, have an interest in it, in pursuing a decision by government, they should be quarantined from having such, even if they don't see the problem themselves they should be barred from getting involved like that, directly or indirectly I should say. If the decision maker knows that the partner is involved in it in a certain firm that should be the same as directly representing. In other words, the fact that there is not a personal direct involvement should not be the criteria.

All right. Now, finally on the subject of donations and fundraising, in so far as it relates to the activities of lobbyists, do you consider that an involvement of lobbyists with raising funds for political purposes, for political parties, generates any form of conflict when the lobbyist is also acting for a donor seeking the benefit of a government decision?---Well, yes, I mean, you can, you can impose these rules but I think they'll more likely be avoided rather than complied with. In other words, you can, direct participation of a lobbyist may not happen. I mean, you can have it happen by indirect means through different channels and to start having, I mean, you can, it's useful to have a rule, it may be, however, that it's important to show the fact of the donation rather than the participation of the lobbyist up in, up in lights.

All right. So do you think that at the moment if, if it's known that the lobbyist is raising funds and for whom they are raising funds, or from who they are raising funds and to whom, that that kind of disclosure is sufficient? ---Yeah, that's right. I mean, I wouldn't put a bar on it. I mean, until they overhaul the whole system of political party financing which is, I'm hoping for, I think that it's going to be very hard to, to really deal thoroughly with that area. People of influence generating funds, whether it's in the union side, the corporate side or whatever, but what I, what I was very interested in was, in this context was a whole number of people on the big business side saying how distasteful they found it to have to be constantly lobbied for money. They, they are happy to publish what they give eventually but they wish they didn't have and to, to do it deeply to the main, the two main parties.

So when you say an overhaul of the current political financial position, are you, would you then support the view that there would be public funding of, for example, political parties or of elections?---Well, I say that in general times but I really haven't got right into how that would work.

All right?---I've seen statements out of Canberra and it sounds great in principle but how you'd actually get that through with fair treatment to

minority parties and independence, I don't know how it is going to work. I'd like to see the, see much more about it before I make a comment, thanks.

All right. Now, Transparency International has produced a policy position paper, number 06 of 2009 called Controlling Corporate Lobbying and Financing of Political Activities. It's I think a four-page document that you've provided us with before. At the bottom of page 3 there is this proposition which I'd like to ask you about. The paper refers to a blend of methods and regulations to curb undue corporate influence in public policy.
10 One of the things that it says business must do is make decisions on political engagement at the board level, decisions on public policy engagement and political spending must be decided among companies' board and in consultation with shareholders and it then refers to the engagement of a company in the political arena, being mainstreamed into corporate sustainability reports which I presume means reporting on what they're doing. Is that a proposition that Transparency International is raising just for the corporate sector or do you see that as being capable of enforcement externally?---It would have to be taken up by ASIC I think it would have to be done at that, on that level and it would seem to be healthy, I can't
20 imagine BHP allowing any of its executives to go off and to do any significant public sector lobbying without it being at the board and in fact they've been stung in the past and I think they've got it under very tight control now. So it's a question of good practice first of all in making sure it's accepted as necessary good practice before you start to regulate it.

All right. Commissioner, that's all?--- Can I make one disclosure?

THE COMMISSIONER: Yes?---My chairman is Sir Gerald Cripps, known to this body. He has not participated in this submission. I sent him a copy,
30 but I haven't heard from him.

MR GORMLY: Yes, all right. I don't think it raises any conflicts, Mr Ahrens.

THE COMMISSIONER: Is that good or bad, Mr Ahrens?---Well, I'll leave it to the audience, I'll leave it to audience participation.

Yes. Mr Ahrens, thank you very much for coming and giving evidence here? ---Pleasure. Thank you. Thanks for the opportunity and I do
40 commend the body, that is ICAC, the ICAC for having taken it up. It's long overdue in my view.

Thank you?---And an excellent issues paper.

Thank you. We will adjourn.

THE WITNESS EXCUSED

[11.52am]

LUNCHEON ADJOURNMENT

[11.52am]