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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 3 AUGUST 2010

AT 1.20PM

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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, we have Dr David Solomon standing at the witness box.

THE COMMISSIONER: Dr Solomon, would you like to give your evidence under oath or would you like to affirm the truth of your evidence?

DR SOLOMON: An affirmation.

10

<DAVID SOLOMON, affirmed

[1.19pm]

THE COMMISSIONER: Won't you be seated, Dr Solomon?---Yes.

MR GORMLY: Dr Solomon, can you tell us your full name?---David Harris Solomon.

20 Thank you. And I think you are currently serving the five year term as Integrity Commissioner for the State of Queensland having commenced on 1 July, 2009. Is that correct?---Yes, that's true.

You have been the chair of the independent panel appointed by the Bligh government to review Queensland's freedom of information laws some time before that?---Yes, I was.

I think two years before that?---Yes.

30 Is that right? And you've come from a history of public administration and journalism?---Yes.

All right.

THE COMMISSIONER: Legal journalism?---I'm sorry?

Legal journalism?---Thank you, yes, in part, also a political journalist.

40 MR GORMLY: All right. I think you've got an academic background in arts and law and a Doctorate in Letters as well, is that right?---Yes, I have.

All right. You are the author of a large number of books, I think a dozen is it?---One short.

One short, 11, all right. Now, Dr Solomon, you held the position of Integrity Commissioner before the commencement of the Integrity Act 2009. Is that right?---Yes.

In another capacity. Can you just tell us about the process by which you or by which that position existed leading up to the commencement of the Act which as I understand it formally commenced this year?---Yes. The Integrity Commissioner position was created by an amendment to the Public Sector Ethics Act of Queensland in 1999. The essential job of the, the Integrity Commissioner was to provide advice to ministers, members of parliament and others, including head CEOs of departments and senior officers, senior executive officers and senior officers about mainly conflict of interest issues.

10

Did that include written advice?---It was all written. All of the advice had to be sought in writing and the advice was provided in writing.

And that was secret?---Yes.

Right?---It was kept secret but, and not FOIable if I can use that terrible word, and, but the person who received the advice was able to publish it if they wished.

20

Right. All right, thank you. Now, that was the role until the commencement of this Act?---Yes. I should explain it was not a role of heavy duties, in fact, my two predecessors and I were employed on a 40 per cent of full-time basis so the equivalent of two days a week and while the number of people who could ask for advice was about 5,000, in fact the number of advices sought in each year until the last financial year was about 25 on average.

30

Right. And that was entirely a voluntary process, of course, no one was obliged to see you?---Absolutely and, and the Integrity Commissioner had no power to investigate complaints of any sort.

Prior to the commencement of this Act was there a structure for the regulation of lobbying?---Yes, there was. It was introduced by the Queensland government as an administrative measure through a direction by cabinet to ministers and public servants, of course it was limited to the public service about and what was established was a code of conduct in relation to lobbying.

40

And that controlled the way in which public servants could respond to lobbyists?---Yes, it did.

Right?---It required them to deal only with registered lobbyists and it set up a register and the register was set up within the Department of the Premier and Cabinet.

And what was required to be on the register?---Basically there were three or four questions, there was a good character question that people had to declare who they represented, who they employed as lobbyists, who their

clients that they represented currently, the clients that they had had in the previous 12 months, they were the main requirements.

Right. It didn't disclose the topic or the frequency with which any lobbying activity occurred?---No. That was not involved.

Right. Now I think - - -

10 THE COMMISSIONER: Sorry, Mr Gormly. If a, if a client was a firm of solicitors, say, or accountants, which in turn was acting for someone else, did the lobbyists have to disclose the ultimate client or could he just give the name of the solicitor or the accountant?---That wasn't specified in, in the regulations and still isn't specified in the Act.

20 Because a solicitor can simply, I mean one way of getting around this is for the ultimate client to retain a solicitor who then retains the lobbyist?---My experience is that the solicitors do the lobbying themselves. They hire someone themselves, if necessary. On their staff they have a term for it that escapes me at the moment, but will come back. And lobbyists, and real live lobbyists are very concerned about the fact that, that solicitors and accountants do in fact a lot of lobbying through people they themselves employ, but don't have to register. And some of them say they're losing clients to such entities.

30 MR GORMLY: So in effect it is a form of loophole, so to speak, and not put too finer a point on it. If you're trying to catch the representative lobbyist, that would be a category you'd be looking at?---Yes, indeed. And, and my, it comes up in another way too. We have in Queensland tried to keep tabs on former senior government representatives, but if they become senior people within say an accountancy firm or, or a legal firm, and are lobbying, they're simply not caught by the regulations as they were or the law as it is.

40 All right. Now that, that was the system under the old Code of Conduct. Can we move now to the Act. And what I'd like to do, Dr Solomon, if I may, is to just get from you a short description of the lead up to the introduction of the Act and the mischiefs that were seen that brought about the legislation or the benefits arising from the legislation. Then the change in your role, because you've now taken on the twin role of Integrity Commissioner and Supervisor of the lobbying regulation system. And then next to go to the operation of the lobbying register as it occurs now, the problems, the problems you've seen and any changes that you would think are needed, in particular its strengths and weaknesses. So can we start with the lead up to the Act and why the Act was brought into effect?---For various reasons, no, well, I'll explain some of the reasons. In July last year, we had the trial of a former minister, Gordon Nuttal on corruption charges. There was also the anniversary, 20<sup>th</sup> anniversary of the presentation by Mr Tony Fitzgerald of his report on corrupt, police corruption and other forms

of corruption in Queensland. And there was a very distinct feeling of unease in integrity issues generally in Queensland. The Premier decided in, in August, published a Green paper on integrity issues, which was very widespread. And for public discussion. And set up what she called a round table to supervise the public consultations and at the end, to make recommendations. The round table included the Premier and the Attorney General, but it was mainly, it was, the rest of the people were academics and other people involved in on the integrity side including the head of the Crime and Misconduct Commission and myself, as Integrity Commissioner and a number of academics, including Alan Felds. The process continued for a number of months, the round table made recommendations which were largely adopted by the Government which in November last year published a paper outlining its response to the, all of the issues that had been raised and saying when it would bring in various measures. The first of these on the list was the Integrity Bill, I should say that one of the items on the, in the green paper was a question of lobbying and there were a number of issues including how should it be regulated and whether success fees should be permitted because there had been a scandal, there had been a lot of publicity about some people allegedly receiving half a million dollars for a, for succeeding in lobbying the government over a planning issue. The Integrity Bill that was presented to Parliament effectively transferred the provisions of the Public Sector Ethics Act relating to the Integrity Commissioner from that Act into the new Integrity Act expanded the duties of the Integrity Commissioner on the integrity side slightly, to be specific before the Integrity Commissioner could basically just deal with conflicts of interest but after the Act was passed could deal with ethics or integrity issues generally. But it also included a new part dealing with lobbyists bringing over the whole of the administrative provisions that had been administered by the Department of the Premier and Cabinet into the Integrity Act. Doing that allowed the government to spread the requirement for people to obey the (not transcribable) that they should not deal with unregistered lobbyists from just the public service to include local government and what in Queensland we call government owned corporations. So it expanded that as well, it gave the Integrity Commissioner, made the Integrity Commissioner, in effect, the keeper of the register of lobbyists gave the Commissioner some powers in terms of admitting people or refusing admission and also required the Integrity Commissioner to develop a Code of Conduct for lobbyists.

40 MR GORMLY: Right. Let me stop you there for a moment. I just have some quick questions to follow up. Firstly, the green paper you're referring to that's the paper Integrity and Accountability in Queensland of August 2009?---Yes, it is.

Secondly, so far as your powers are concerned as Commissioner to admit or reject applications for inclusion on the roll of lobbyists, register of lobbyists is that a reviewable decision at present? I know that there's a long answer

to this but just the short - - -?---The short, short one is there is nothing in the Act about it but there is judicial review available.

Of course. All right. And I think that that's an area that you would like to see changed is it?---Yeah.

Yes. And next - - -?---I should explain not to remove judicial review but to have a reference instead to, to a tribunal.

10 Yes. All right. Now, next can I just ask was there a change in the content of information on the register from the time that it was under a code to the time that, to the present time under the statute?---No, there wasn't, that was simply written, transferred from, from the administrative direction into the, into the Act.

Okay. And the contents of the register now consist of name and details of the lobbyist?---Entity, of the lobbyist - - -

20 Lobbying entity. Right. Its staff?---Its lobbying staff.

Yes, its lobbying staff, right. Its client?---Yes. And its previous clients for the previous 12 months.

Right. And is there any other information?---No, not at the moment.

Right. Is that something you would wish to see changed? Just a short answer first because we'll go to it in detail?---Not really.

30 Right?---I should say that I will be reviewing the Code of Conduct for lobbyists next year after consultation with lobbyists and others and as I understand it there is a chance, good chance that the government will reviewing the way the Act has, well, whether there need to be any changes in the Act.

40 All right. And two other short matters before we move on. Firstly, can you tell us in relation to the way your Commission as Integrity Commissioner operates can you tell us roughly what your staffing is and an outline of what your budget is just on a global basis?---Yes. On the integrity side if we go back to the start of last financial year there was one person, an executive coordinator was her title, who was fulltime and the Integrity Commissioner was as I mentioned before part time. After the, after the 1<sup>st</sup> of January when the Act came into force there were two additional staff to look after the register and the Integrity Commissioner was increased to fulltime and, but after some negotiations at my request I, my time since the 1<sup>st</sup> of July has been back to 80% of fulltime but there's the, me, my executive coordinator on the integrity side and two other people on the - - -

So it's a total of four people involved?---A total of four people with provision for another one if, for example, there was to be an expansion in the number of people who had to be put on the register.

All right. Do you operate from an office or offices?---Yes. We have an office on the same floor as the Public Service Commission in Central Brisbane, that's very handy because they look after our finances basically.

10 All right. And a budget overall?---I actually can't remember, can I let you have the exact details?

We can find that anyway, I just thought you might have it. All right. Now, if, with the register the registrar I understand, well, I've seen is searchable online?---Yes, it is.

Is that register physically handled from this office of yours?---Yes, it is.

By one of your staff members?---Yes.

20 The information that is provided to maintain the register I take it is received externally to the register, that is, by internet or mail or something of the sort?---Yes.

All right. So that any information that goes on the register is put there by your staff it's not a self-maintaining register where registrants can put their details on the register?---No, we've considered that but thought it necessary to have the staff actually determine whether an item should be put on the register.

30 Right?---We, it, it, we would like to make the register more searchable than it currently is, presently it's simply a sort of alphabetical listing in terms of the entities, the lobbyists and the firms that are represented.

The clients?---The clients, I'm sorry, yes. We think we could do more with that but we're, I've just had a staff change so we're going through that but we think it's best to supervise what goes on the register ourselves.

40 Okay. Now in terms of allocation of time between the integrity side and the register side or the lobbyist side, are you able to roughly apportion how much time would go to the lobbying side?---I would, I would say about 20 to 25 per cent of my time.

Is on the lobbying side?---Is on the lobbying side.

Yes?---And that mainly because I have made a point of going out to talk to in particular to local government groups to tell them what their, that they do have real responsibilities under the Act not to talk to unregistered lobbyists

and that is, that is a real problem and also talking to government departments about what their responsibilities are.

All right. Well, that leads us into the next area then. Firstly, those lobbyists who must register are lobbyists who are going to register any government officer as defined I think in section 12 of your Act. Is that right? Have I got that right, a designated person?---No.

10 Can you tell us - - -?---Sorry, no, they're, that's the, the designated person refers only to the integrity side.

The integrity side, all right. Dr Solomon can you just tell us before we get to the definitions in sections 41 and 42 which I understand are your definition of a lobbyist?---Yeah.

What levels of government, to what levels of government does this system apply?---The lobbying side?

20 Yes?---It applies to the whole of the public sector which includes local government plus government owned corporations.

And state government itself?---And the whole of the state government.

Right. So it's all levels of government?---Yes.

At the present time how many lobbyists do you have, entities do you have on the register?---I think it was 99 yesterday.

30 Right, all right. And growing?---And growing, for a number of reasons which I can explain.

Sure, all right. Are you able to say how many individuals are on the register roughly as employees of lobbyist entities?---There are just over 200.

And are you able to say roughly how many clients that corpus of lobbyists represents?---About 800.

40 800. I don't know if you know this but is there much crossover, that is, that a client will appear on the list of more than one lobbying entity?---I think there might be a little but not much.

Right?---Could I just add a bit of information? I, the last time I checked, which I must say was a few months ago, I found that there was, that about 70 to, over 70 per cent of the people on the Queensland register were also on the Commonwealth register but I didn't check to see New South Wales.

What per cent, I'm sorry?



THE COMMISSIONER: 70.

MR GORMLY: 70, thank you?---I suspected it would be about the same number.

Right. In order to get registered, do the registrants need to pay a fee?---No.

It's free?---Yes.

10 Do you carry out any verification or checking of the details provided by applicants for registry?---Yes, my staff, the applicants are required to provide a business number, Australian business number and we check the records for that. They're also required to provide a statutory declaration. So far as we can we check that that's valid just on the face of, the face of the document. But that's, and we check carefully the details that they've entered.

Right. And they're required to put in returns for variations in their registration?---They're required to put in variations and each year by the end  
20 of July they are required to put in a further return, either saying that there are no further variations on the existing return or any extra changes that have been made.

And do you know how frequently the registry is being searched, is there a hit number available?---Several thousand a month.

Hits per month?---Yes. But I can provide that to you, I had a look at it the other day but - - -

30 THE COMMISSIONER: Who do you think wants to know?---I wish I did know that. I suspect it's mainly other lobbyists checking on their, but also departments and local government are checking to see whether someone's registered.

MR GORMLY: Is it your impression, Dr Solomon, that there is a, I withdraw that. What is your impression of the level of compliance that's occurring with this system?---Well, I have no reason, I'm sorry, at what level? Compliance of those who, who are on the register I have no doubt that they're complying fully with the registration requirements. I am sure  
40 that there are people who should be on the register who aren't. There is a real problem in persuading people to register, well, there are several real problems in persuading people to register who should register. First, there's a reluctance to be labelled as a lobbyist and that's a whole area we could explore later if you wish. But secondly there is a different, a significant difference of opinion as to the interpretation of the definitions of what is a lobbyist and who needs to register and I can give you an example of a real problem that's arisen if you - - -

Is this section 41(2)(d), is this the incidental?---Yes, yes.

Commissioner, could I hand up a copy of the Queensland Integrity Act 2009.

THE COMMISSIONER: Yes, thank you.

MR GORMLY: If we could go to sections 41 and 42. Can you just take us to that issue, Dr Solomon?---The definition of lobbyist is in section 41.

10

Can we just look at that first?---Yes.

Yeah. So a lobbyist is an entity that carries out lobbying activity for a third party or whose employees or contractors carry it out for a third party and then there are some exceptions?---For the moment the one we're most concerned with is 41(2)(d), an entity that carries out incidental lobbying activities and incidental lobbying activities is defined in (5), subsection (5) of, of that, of 41. An entity that carries out incidental lobbying activities if, if the entity undertakes or carries on a business primarily intended to allow  
20 individuals to undertake a technical or professional occupation in which lobbying activities are occasional only and incidental to the provision of professional or technical services and there are some important examples, architect or architectural practice, engineer or engineering practice, a lawyer or legal practice, an accountant or accountancy practice.

Might that also include a planner or a planning practice?---Indeed.

All right?---And these are the areas where I would say the most problems have arisen under, under this Act. I first encountered it in January of this  
30 year when the, I received a letter from a planner who said his local mayor now refused to talk to him because he wasn't registered under the, as a lobbyist. He showed me, he detailed his income from his activities and he said that lobbying accounted for less than five per cent of his income. I said that sounded to me very much like incidental lobbying activities. However, I subsequently changed my mind about whether that was the appropriate way to judge what incidental lobbying activities were. This arose through an indirect approach by the Office of Liquor and Gaming who wanted to know when if they were approached by someone, by in effect a third party representing someone who wanted a licence to argue for the licence was that  
40 lobbying and my answer was yes, they then sent out emails to a number of their clients saying you'd better get on the register or we don't think we can talk to you any more. Some of the clients registered. Others did so under protest and said, how can we get out of this? While the lawyers who were caught by the emails approached the Law Society of Queensland. They wrote to me and said, look, we're exempt under this provision. I wrote back and said, well my understanding is that if, if a client comes to you and says, look, I want to get this license and you give them a bit of legal advice, but

you then go out and represent them and lobby and argue for them, then that constitutes lobbying.

MR GORMLY: Outside the incidental lobbying provision?---Yes. And it's not exempted by the incidental, because they will in most cases actually started a file which says - - -

Sure?---application for a license.

10 All right. If you, I understand that you may be developing a list of, of matters that might require amendment. Is this something that would fall into it?---Yes.

All right. It's caused trouble?---Could I, could I just say one thing. The Law Society didn't bother replying to me, instead they wrote to the Premier saying, please will you change the Act.

THE COMMISSIONER: I have some, at some point questions about these exemptions. I don't know whether - - -

20

MR GORMLY: But now is good, Commissioner. I mean, we're there.

THE COMMISSIONER: Why should a non-profit entity be exempt? I mean charities are powerful organisations, why should they have the right to influence politicians when others don't?---Commissioner, so are churches.

Yes?---I, I agree entirely.

30 You're speaking to the wrong person. I see no reason why, whoever seeks to, I don't regard them as sacrosanct?---I, I agree entirely. I think the whole list is, is a problem.

And why should an employer group be exempt?---It, in my view it shouldn't be.

And why should a trade union group be exempt?---In my view it shouldn't be.

40 Well, I don't see, I can understand why members of trade delegations as is in Queensland possibly might, I mean (not transcribable)?---We had an example in Queensland a few months ago where a court made a ruling about the, about property taxes, basically. And the government didn't like the ruling and decided to change the Act, brought in a Bill and there was an extraordinary amount of heavy lobbying by the property council, by a number of groups that rented a large amount of property in shopping centres and so on. It turned out that none of them was registered as a lobbyist, but they spent a week of advertising in newspapers and lobbying directly - - -

I mean, the point is that this Act doesn't stop them from lobbying. It just requires them to register?---Well, they weren't even, well, and none of them was required to register. But they certainly lobbied.

And why should an entity carrying out incidental lobbying activities be exempt?---I can't give you (not transcribable) answer.

10 MR GORMLY: It was all, it was all scheme focused at the third party lobbyist. Is that right?---It was. And, and I should explain that this was a scheme that, that the Commonwealth established, I think, first of all and most of the states then copied pretty assiduously.

THE COMMISSIONER: Can you just explain, what is meant by a third party?---Well, someone who is employed to do a job for you.

A lobbying activity for a third party client?---Yes.

20 So what's a third party client and what's an ordinary client?---It's badly expressed.

Well what does it intend to mean?---It's intended to mean where a lobby group represents someone else. Third party - - -

You just have to say client?---Yes. Well, a (not transcribable)

30 MR GORMLY: Could it be an attempt to try and distinguish the, the lobbyist who appears for anyone for a fee, we're call the professional lobbyist on the one hand and the peak body, who appears for an array of member - - -?---Yes.

- - - member organisations - - -?---They're, they're exempt at the moment as well.

Yes, yes?---And - - -

Everybody's exempt except - - -?---And probably least deserving of being exempt.

40 The peak body, yes. All right. Now, so this scheme is just for that, that group who are the professional lobbyists for anyone. And I think you've, you would like to see an alteration to Section 41 (2) so as to expand it. Can we just have an understanding as Section 42, do you accept the definition of lobbying activity and contact set out in Section 42 as a workable definition? Generally speaking?---Yes, yes, I do. 42 (1) I think is, is excellent. I'm not all that sure about all of the exemptions in 41, in 42 (2), but certainly 42 (1) I think is quite good.

All right. So, because it's calling, it's calling in those people who want government to make a change one way or the other. It's not just a consultation for the purposes of information or an expression of view or a meet and greet. They want something?---That's right. Yep.

Okay.

10 THE COMMISSIONER: And what are the ones you, in 42 (2) that you have some scepticism about?---There's, there's really a problem possible with 2 (e).

Yes?---Contact and response to a call for tender. That can be, you can get into difficulties with that.

Yes. Well, although I can understand a building contractor, I mean, does a person responding, is a person responding to a tender or a lobbyist?---It should not be.

20 Should not be - - -

MR GORMLY: Tenders should be subject to other rules than lobbying?---Yes.

MR GORMLY: And in fact they are?---Yeah. And that really is the answer that there's no need for 42 (2)(e) because it should be elsewhere.

Yes. All right. So as an exclusion I suppose it's reasonable, but your point is that it shouldn't be mixed up with lobbying?---Yes.

30 Okay?---But I, I on the other hand, there should be quite specifically an exclusion for, if someone is filling in forms and providing information that is required in order to get a grant, for example, from the local council or to obtain a license.

Right?---If they're doing what is required to be done, then that should be (not transcribable).

And that's not there at the moment?---It's not there specifically.

40 All right.

THE COMMISSIONER: Dr Solomon, I have another question about this, about 42. 42 is extremely wide?---Yes.

It really embraces, it's not, it's not, it, well, it's contact in an effort to influence. So why is (h) there just as a matter of interest, with that, so you would need (h)? I mean a social chat would not - - -?---I agree.

- - - fall into that at all?---No.

That's just by the way. But that, that classifies lobbying as any attempt to persuade a government to make any kind of decision?---Yes. It is extremely broad, as opposed to the very narrow definition for what is a lobbyist.

So a, again I, a neighbourhood, a neighbourhood community wants to ask a local council to establish a park, you can't do that unless it's registered as a lobbyist?---Well, they're excluded in the definition of lobbyist.

10

Why are they excluded?---Because they're representing themselves if they go and hire a lobbyist.

Because they represent themselves?---Yes.

Because it's under (b), (2)(b)?---And it's also a non-profit entity probably.

20

I see. Right. Yes. And do you not find that a problem as in do people complain about that?---That hasn't been a problem to me yet. I can see it coming.

How can you see it coming?---Well, well, if, if the Act is expanded I can see there will be a lot of objections to people being called lobbyists simply because they're involved in genuine, what we would normally call acceptable local political action that there is a real problem in distinguishing - - -

30

And is there any other element which you could suggest which would help qualify the width of this to make it more acceptable?---Not at the moment.

No.

40

MR GORMLY: Can I take you then, Dr Solomon, if we largely accept, subject to a review largely accept section 42 as a generally reasonable definition of what lobbying activity is and perhaps we adjust, well, you might for your purposes would want to adjust the exclusions in (2). Can we go back then to section 41(2) and just discuss for a minute those entities who do lobbying that are currently excluded under 41(2) that you would like to see included? What is the, what are the groups that you would prefer to see included beyond just what we're calling the third party professional lobbyist?---Well, basically I go back to 41(1) and my problem is the lobbying for a client, I think that, I'm sorry, no, it's 41(2)(e) An entity carrying out lobbying activities only representing its own interests. I mean that includes, for example, BHP or any of the large mining companies that have their own in-house lobbyists.

THE COMMISSIONER: I thought you would be happy if (2) was deleted?

---Yes, I would but it's, I'm concerned about in-house lawyers, in-house, I'm concerned about in-house lobbyists and law firms and so on.

MR GORMLY: All right. Well, look, can I put it this way? The in-house lobbyists, that is, the staff of a large corporation that are lobbying are really lobbying for their employer so in a sense it's the company lobbying for itself?---Yes.

10 And generally speaking one would've thought that that would be okay but your concern is that the groups that are within this company can sometimes consist of and often do it seems consist of ex-chief of staff, ex-staffers and sometimes even ex-politicians who know the system and so they are, all the people who suffer the problems of lobbying, that is, relationship and closeness and benefits of access and all of the rest of it. Is that right?  
---Indeed and not just employees, they may have been appointed, for example, to the board or to a very senior position with the company and be lobbying on its behalf from a position of considerable influence.

20 All right. Is a possible way to deal with that that you have a category where you require any entity that does lobby government in a direct way to be registered either when or in addition to disclosing staff who have a background as a government officer as defined in the Act?---Yes, I think that's - - -

That's a way?---Yes.

30 All right. Because of the great body of corporations out there there would only be a relatively small number that want to directly contact government officers would there not to lobby them?---There'd be relatively few who might get in the door but - - -

If they wanted to and they didn't have their own government relations staff they could hire a lobbyist?---They could.

And then they'd be on the register anyway as a client?---Yes.

40 If they decided to do the job thoroughly themselves and they were big enough they can do what professional lobbyists do and that is hire people with the contacts?---Yes.

But if they were required to disclose those people as the Canadians require then you would at least know which company was using ex-political staff?  
---Yes.

All right. You seem to have a sceptical look on your face, Dr?---No, no, no, no, I was just thinking, I mean there are other people who do not use - - -

Ex-political staff? - - - ---lobbyists whether ex-political staff or not who, because they can't afford to and they lobby themselves but they tend not to have the - - -

Pernicious affects?---Of, yes. And, and they tend to lobby their local members rather than, and try to get them to lobby on their behalf.

No lobbying regulation system would want to interfere with that would it?  
---No.

10

So that if a company wants to go to its local member or it wants to go itself to see a minister because it has an issue or it wants something changed that's not where the mischief of lobbying lies?---It depends what you regard as the mischief. It's a question of what you want to achieve from a lobbying register and from the disclosures that follow. In my view open and accountable so that the people can know who is lobbying and about, and preferably about why though that may not always be possible.

20 THE COMMISSIONER: The register alone doesn't show that?---No. And that brings you to the next step of what you require of those who are lobbied.

What was, I mean you did give an answer to Mr Gormly's question about why this Act came into force but you didn't actually directly explain what the problems were with lobbyists in Queensland that required this Act?  
---The problem was that the media thought that some ex-politicians had too much influence as lobbyists and were achieving goals for their clients that, and for a lot of money that maybe they shouldn't have. I avoided using the work scandal because I didn't quite get to that though it was being painted  
30 as though it might be.

So it's really a perception?---Perception problem I think is very important.

MR GORMLY: (not transcribable) because nobody knew that was going on the perception may have been sound might it not?---But, but, but we, we have had problems particularly with the local government people of developers seeking to obtain influence.

40 All right. So the perception that brought the Act into existence was a combination then of a belief that ex-politicians were getting favours. Is that what it boils down to, a perception that they might be getting favours for their clients?---They might be getting favours. Yes. But not just but that lobbying firms, ex-politicians but also ex-public servants and lobbying firms generally.

Were, were doing better than they should be?---Yes.



THE COMMISSIONER: Well, how does the register help?---It's not so much the register as the requirement in section 72, section, section 71 that government representatives should not talk to anyone who's not on the register.

But how does that help?---Well - - -

10 How does anyone know who's talking to whom?---Well, because government departments under the, under a directive really of the Crime and Misconduct Commission are required to keep their own register of contact with lobbyists and that is, would generally be accessible although, under the Right to Information Act, though some matters on it would be confidential but it makes government conscious of the need to deal very fairly and squarely with representations that are made to them because of recordkeeping requirements.

20 Does recordkeeping relate both to formal and informal contacts?---Yes. If, if there is any contact in relation to lobbying there has to be a record kept. Informal contact where there's no lobbying, no, there wouldn't be.

MR GORMLY: Is that prescribed at the departmental level or local government level?---It's, it's, well, the Crime and Misconduct Commission requires it of all Queensland departments. In my view it's a requirement under the Public Records Act anyway which also extends to local government.

30 So you could then in theory look at the register, see a lobbyist and client, you could see that the client is somebody who has been involved in some government activity and that would then inform a Freedom of Information Act application directed to a department - - -?---Yes.

- - - so that you could at least provide enough information then to trigger the finding of the documents you're after?---Yes.

Okay.

40 THE COMMISSIONER: And how, what's an easy way for us to get hold of the directive? Just ask the Commission, he'll just ask the Commission? ---I can, yes. I don't think there's a problem with that.

And this is in practice complied with by all government departments?---I am, I wrote to all government departments in April saying that I would like a copy of their June register, that is June this year and asking if there be any difficulty in me obtaining this and they all replied that of course I could have access to it although a couple brought up problems about personal information might be a bit of a problem but I understand that there's legislation introduced into the Queensland Parliament today which will clarify my ability to seek that information from the departments.

But what about local authorities?---Well, local authorities haven't been required to keep a register as such though it's my view they are, they are required to register to, to keep records of each contact.

By virtue of what?---By virtue of the Public Records Act, simply recording what their activities are.

10 But they're not required to keep records of communications between council officers and lobbyists or are they?---Under the Public Records Act almost certainly.

And does that happen in practice?---I don't think it happens enough. I'm sure it does happen in some places and that's a matter which I hope to have clarified.

20 And are there sanctions for non-compliance?---There are sanctions under the Local Government Act for people who disobey the law, disciplinary matters.

MR GORMLY: So just going back then to section 41, to the categories issue, as I understood your preliminary comments if you wanted to perfect this legislation, that you would extend beyond the definition of 41(1) to the other, to other categories of lobbyist?---Yes.

30 Can you tell us firstly why you would wish to extend it to the other categories and secondly can you give us some idea of what those additional categories are?---Well, to, to make the whole system more open and accountable essential.

The lobbying system?---The lobbying system so that, so that people can be confident that contact between lobbyists and government representatives is not detrimental to the system and that the people's, people's interests are not being, you know, that the democratic system is not being flouted by influence that is in some way underhand or improper.

40 Right. So effectively the reasons that brought about the lobbying component of the Integrity Act are really only applying to a segment of the lobbying market that's going on of the industry?---Yes. Looking at the Canadian system for example that registers in-house lobbyists and these other self-representing groups, I, my estimate is that if, if that system were to apply in Queensland for example the number of people who would have to register would be multiplied by a factor of four or five. That is, that, that say 80 per cent of the people who are actually or are of the entities that are actually involved in lobbying, don't have to register under the current system.

THE COMMISSIONER: So your system only covers 20 per cent of lobbyists?---Yes.

10 And what would be the, would there be many practical problems if it was to embrace 100 per cent?---Apart from making, I mean, we might, if it were to apply in Queensland we might, we would have to have applied there that extra person but I don't think there would be. The Canadians, mind you, have introduced a very extensive policing system of their lobbyists register as well, investigating whether people are properly registered and so on which has turned out to be fairly expensive but I don't think one needs to go nearly as far as they have.

Why?---Well, I think most of, I think the requirement to register and the ability to investigate some complaints is all that's needed.

MR GORMLY: If we look at the Canadian system just, just for the purpose of answering this question about other categories, they have required the production of information by lobbyists about their internal workings, haven't they?---Yes.

20

They want financial information?---Yes.

The other path they could have gone down is not to look into the lobbyist but to look at what the lobbyist does?---Yes.

Now, as I understand it, your preference would be not to look into the lobbyist but to look out and look at the lobbying activity?---Yes.

30 So that if you were going to add information it wouldn't be financial, it's more likely to be contact?---Yes.

Is that right?---And, and that the registration of those, of the contacts is recorded by the government representatives, not by the - - -

Yes. The lobbyist?---You don't rely on the lobbyist to do that. Sure.

THE COMMISSIONER: But you're satisfied with the present system of the government, of government's recording, through the Crime Commissioner's requirement?---Yes. I think I will be when I get the, I haven't seen them all yet.

40

But you're not, but, and what about local councils, you - - -?---No, I think it's got to be extended to them as well. In fact, I'm sure it has. I'm sure the Crime and Misconduct Commission would like to have those records at, would like to have the ability to access those records if they need to. And I think, I think there's a, there's a sort of preventative angle to all of this. Mainly that if people are required to register all contact with, with lobbyists,

and they know that if the Crime and Misconduct Commission is going to - -  
-

MR GORMLY: Check up on them?---check up on them, you're less likely to have things going wrong.

All right. Now can I just take you to Section 41 (2). We'll look at the other categories of lobbyists that are currently excluded, but that, as I understand it, you think might preferably be included?---Right.

10

Now firstly, there is the non-profit entity, that's a pretty wide category, but lets assume that it includes churches and charities as referred to earlier. They are lobbying groups. Is that right?---Yes.

And they lobby not only - - -?---Actually, they're lobbying groups.

Yes. They lobby not only on issues of social policy, but they might also issue on lobbies of funding, lobby on issues, I'm sorry of funding for their own activities?---Yes.

20

Perhaps education or whatever else it might be.

THE COMMISSIONER: And issues relating to land development.

MR GORMLY: Yes. Property?---Yeah. Yes.

So there's no doubt that those bodies are active lobby groups. Correct?  
---Many of the them, yes.

30

And some of them are powerful and well resourced and have government relations departments?---They do.

So that apart from practicality issues which we'll come to, there's no reason in principal why you would not include them in a lobby registration system. Is that right?---Not in my view.

Right. Can we just move then to groups in (b) and we'll call them just for the moment, peak, peak industry groups?---Yep.

40

We're talking there about any industry that had a guild like nature, so Real Estate Institute, AMA, manufacturers - - -

THE COMMISSIONER: Law Society.

MR GORMLY: Law Society, Bar Association - - -?---Property Council.

Property Council. But also - - -?---Mining Council.

Hmm?

THE COMMISSIONER: Mining Council?---The Mining Industry Council.

MR GORMLY: Yes. Now there is a very large number of these peak bodies. Is that right?---Yes.

10 A definable number, but still a large number. And would it be true to say, Dr Solomon, that most of them exist with a prime purpose of carrying out lobbying?---Yes. Most of them yes.

And they do it fairly actively?---Yes.

And most of them will employ expert lobbying staff, that is staff with government relations experience and training?---Yes.

And they are resourced by the whole industry sitting behind them, whatever that might be?---Yes.

20 Right. So that there's no reason in principle apart from issues of practicality why peak bodies of that type, including trade unions and employer groups and all the rest of them would be excluded as bodies that tend to go in and carry out the activities that are set out in Section 42 (1)?---That's correct.

Right. Now even if one were to try and break up what we've been calling peak bodies into industry groups or other kinds of groups, for example, representative professional groups, they're all still doing the same things. Is that right?---Yes. Yes, they are.

30 So that leaves then the group that we were talking about earlier, the in-house lobby group, that is departments or sections of corporations that do their own lobbying?---Yep.

And there are obviously other - - -

THE COMMISSIONER: Or, or (d), there is (d).

MR GORMLY: Yes. That is 41 (2)(d), Commissioner?

40 THE COMMISSIONER: Yes.

MR GORMLY: 41 (2)(d) is capable of being repealed is it not?---(NO AUDIBLE REPLY)

That would leave then anybody who carries out lobbying on behalf of one of the entities we've been talking about must register?---I, I can imagine a situation where, and I use this example, where, where there is an incidental lobbying activity. For example, an architect who is employed, who is hired

to design a major building and is going to supervise its construction. But on the way through has to, plays a part in trying to get development approval for it. And that would be relatively incidental to the major task of designing and having the building constructed.

I understand your point, Dr Solomon. But can I suggest to you, I understand, you're saying that there are incidental lobbying acts carried out by people who don't otherwise lobby?---Yes.

10 We don't have, can I have put this to you, for your comment. At present we do not have this culture, but it would be possible to set up a, in effect, a line or a barrier between government decision makers and everybody else such that if you want to step over that line, then you must register?---I think that's correct.

And that could easily become a culture if registration was simple. Would you not agree?---Yep.

20 So that if the architect is going to go and see a minister and lobby that minister for some change or some decision in favour of his client what he must first do is put his name on the list so that everybody knows he's seen the minister?---Yes.

That if it were part of a culture and simple and inexpensive to do would not be a problem would it?---No.

30 What you might do is exempt that person from paying the registration fee? ---Yes, well, I don't think that's probably necessary anyway, I mean, it's not necessary in Queensland.

But it would become necessary if all those parties in 41(2) had to register and you had a very large task of chasing down all peak bodies, in-house lobbyists, churches and charities, you would then need to be charging a fee would you not to finance the process and control registration?---I'm sure governments would probably do that but I don't think the amount of money involved is, would be huge. I mean, the amount of staff you would need to do that would be huge. I mean - - -

40 You do not think?---I do not think that the registration process is hugely expensive, it's the investigative policing of the system that is going to cost money.

All right. Thank you?---You mentioned the culture.

Yes?---Could I come back to something I mentioned before? One of the problems with the registration system and the reason we have resistance to people going on the register is they don't want to be called a lobbyist.

THE COMMISSIONER: Why not?---Because it's become a dirty word.

It's a (not transcribable) term?---Yes. And I've - - -

That speaks volumes for the degree of perception?---It does. And that's the problem, one of the problems that I think needs to be addressed. It may be that one needs to expand the term so that you have a register of lobbyists and government consultants or something of that nature to overcome this, this resistance to being called a lobbyist.

10

MR GORMLY: Is it that, Dr Solomon, or is it the fact that the way, the kosher of lobbying at present is essentially a covert activity, that is, we have allowed it for so long to be a private thing that we've lost sight of the fact that lobbying can be public?---I, I think that's the problem and that's why we need to make it more public and have much more openness in terms of who sees who because lobbying can be beneficial, you know, a lobbyist can bring to government views that, and facts that they may not have within the culture, within their own resources, within the government's resources.

20

We've heard, Dr Solomon, many instances of governments who after all don't know how to, don't know much about poisons, a specific technical field making regulations through their department and then altering them because they're told something entirely sensible by people who are experts in the field?---Yep.

There's no reason for that to be a private exchange though is there?---No.

30

Dr, I just need to quickly, I know you haven't finished talking about culture and I'm not - - -?---No, no, well, that's, that was the main point I wanted to raise.

THE COMMISSIONER: Mr Gormly, I would like to adjourn for ten minutes some time this afternoon would now be a convenient time or would you like to do it later?

MR GORMLY: No, certainly, Commissioner, we can do it now.

THE COMMISSIONER: We'll adjourn for ten minutes.

40

SHORT ADJOURNMENT

[2.31pm]

MR GORMLY: Dr Solomon, first of all can you tell us have you received any complaints in your role as Commissioner regulating lobbying about improper conduct by lobbyists or improper lobbyist behaviour?---No, not by lobbyists.

You mean not conduct by lobbyists?---Not conduct by lobbyists.

Right. Have you received complaints concerning lobbying?---I've received complaints from lobbyists about the way people avoid the requirements to be on the, on the register.

10 THE COMMISSIONER: Is that the only reason that lobbyists don't like the system or are there other reasons?---So far as I can tell that's the only reason. They, I haven't had any objections other than from the people who were forced to join as a result of the Liquor and Gaming and their essential problem was they didn't want to be called lobbyists.

Right.

MR GORMLY: Now, and you haven't had any complaints about the registration procedure itself - - ?---No.

Is that a simple procedure?---It is.

20 - - - as it stands at present?---And it normally takes 24 hours for people to get on the register provided they can get the right declarations.

All right. Is the moment of registration some time that you approve it or is it actually getting on the screen?---It's when I, when I approve it.

30 Right, all right. Now next, Queensland apparently I'm told has an active lobbying industry association, is there scope for industry regulation of lobbyists?---There is, it's called the Government Relations Professional, Professionals Association and it's incorporated but it doesn't represent the whole of the industry.

All right?---And one of the reasons it doesn't is that some of the people who have a national representation, a firm that is in Sydney and Canberra and elsewhere as well as Brisbane, feel that it's not appropriate for them to join basically a Brisbane based group. They, I understand they wouldn't object to there being a national association.

40 All right. Might it be that if there were widespread registration requirements that it might provoke the existence of a more organised industry association or a more thorough industry association?---I think it would.

Right. The next question is is that just looking back at sections 41 and 42, even if you were to widen the categories of registrant to include peak bodies, in-house and professionals, do you consider that there is anyone who fits the definition of lobbying activity in section 42(1) that should be exempt from registration?---I can't think of any.



All right. So essentially if someone wants to go and see an elected representative exercising executive power your view is they, unless they're, unless they're doing it for themselves they ought to be registered?---Yes.

Or out in the open anyway one way or another?---Yes, yes.

10 Right. Next, Dr Solomon, is there is in the EU a register of interest representatives who do not use the word lobbying and I think you've been referring to nomenclature, there is, there has in the past in this investigation also been some discussion, I think in part with you, about what other words might be used than lobbying. First of all, do you have a comment to make about the term register of interest representatives and secondly, do you see any value in endeavouring to relabel or re-badge those currently called lobbyists?---Interest representatives doesn't really mean much to me and I must say my preference would be to have, in terms of re-badging is to have it lobbyist and something else, like government representative, government, not representative, what did I say?

20 Government relations?---Relations or something like that.

So that those who are sort of scuttling away from the expression lobbyist might still feel themselves - - -?---Think of the second half of it but not the first half but I think, just in terms of for the public benefit it's essential to keep the word that most people know.

30 I suppose too would you agree with the view that if there is something that is publicly perhaps slightly odious about the term lobbyist but it is well understood and widely used, there is a benefit in retaining that label for people carrying out that activity because there is then an inducement to in effect make the industry clean?---Yes, I think that's right.

40 Now here's perhaps a very significant question, Dr Solomon. How practical would it be in your view to require disclosure of details of meetings that are lobbyist meetings, that is, meetings falling into the category of your section 42(1) to be disclosed on the register together with details of who was lobbied?---I think that's quite practical, I mean, that's what is required in Queensland now of departments. Now, not all of the material will be made public instantly and there may be some of the material that may be, may be personal information and there may be occasionally, well, there may be business in confidence type information as well if we're dealing with the subject of the lobbying. My concern is that there are proper records kept so that, for example, a body like ICAC or CMC can, can discover what happened at meetings but also so that the public can know that contact is being properly recorded.

All right. Can I - - -?---Even, even if the public can't themselves access every item, every matter that is discussed it's, I think it's important that

there be a, that there is public knowledge that these matters are not being hidden away forever.

I can deal with practicalities here. Assume that you could amend your online register you had a collapsible list so that you've got what you've got at the moment but if you were to click on to any particular lobby entity let's say you would open it up and there would be a date, public representative seen and topic, those three things?---I think that's getting near the Canadian system. I, I still prefer a system whereby the government departments or  
10 local government keep the records rather than this being the register that's kept by my office.

Can you tell us your reasons for that?---Because that really would burden the office, I mean, there would be an administrative burden that I think wouldn't achieve very much.

All right. Let's assume we follow your system, we say that it's not practical to put it on a public register?---Mind you the, some departments might wish to put it on a public register and I understand that at least one department in  
20 Queensland is planning to do so.

Right. Can I suggest that if it's going to be available on one departmental register that technology will enable that to be immediately placed onto a central register without any additional data entry?---Yes.

That would be feasible?---Yes, it would.

So you could at least, if a department kept a register of contact as our Department of Planning does here in New South Wales that it would be  
30 possible for that data to appear on a central register?---Yes, it would. Or for it to be meshed up by someone else.

You mean a mess made of it?---No, no, no, it's a technical term.

I see?---I'm sorry, I'm showing off. I was on a taskforce last year.

All right. That would depend would it not on whether the department thought that it was appropriate to make the contact between themselves and lobbyists public?---Yes.  
40

And the topic that was discussed, the subject of the lobbyist?---Yes. And I think there would be cases where that would not be appropriate. Commercial in confidence.

THE COMMISSIONER: And who's going to decide that?---It would be the same process for FOI, as for FOI, I mean, it's the department's records so the department makes the first call but because it involves a third party the

third party gets the opportunity to argue that that matter is commercial in confidence.

And then who is the arbiter?---The Information Commissioner.

10 MR GORMLY: That means that almost every meeting technically would have to become the subject of an assessment as to whether or not it would be published?---I think it's unlikely, I think there'd be very few cases where lobbying is about something that might happen in the future which is the sort of commercial in confidence. If it's something, if it's about amendments to an Act, for example, or about getting an approval, getting a licence that's unlikely to be commercial in confidence but if it's about a plan for a possible power station, you know, two years in the future that might be commercial in confidence.

20 It's a troubling one, Dr Solomon, because it seems to fly in the face of a concept of transparency and it's difficult to find an example, an actual example of not publishing at least the fact of a contact between a private interest and, a seeking private interest and a public interest?---I, I can't see an occasion when that could be commercial in confidence, when the actual meeting and who was there would be commercial in confidence. A question of the subject matter might be commercial in confidence.

Would you think then that at least publishing the fact of the meeting so people can see how often this or that officer is lobbied by this or that party would be useful public information?---Yes, I do.

30 But as I understand it you'd say that for reasons of practicality that might best be kept by the relevant public department of which the officers are members?---Yes.

And not necessarily loaded into a lobbyist register?---Not necessarily.

So how would that be accessed from the department, do you have a view about that?---Well, some departments might, might decide under the FOI Act that it's proper that they publish it.

40 All right. So in effect you're saying it should be public unless there's an FOI reason not to?---Yes.

All right. Dr, would it be feasible for lobbyists to make monthly returns listing who they had lobbied and for whose, sorry. So if you had a system of monthly returns where lobbyists had to list who they lobbied and then publish that on the lobbyist's website, is that, you could do that by regulation. Do you see a difficulty with that?---You must've read the draft, my Lobbyist Code of Conduct.

You would approve of that?---That was my, my first thought, yes, that that should be the case. The lobbyists argued that administratively that would be a significant burden for them. It's a matter that I intend to raise again.

THE COMMISSIONER: But I mean once you've got it on the government, once the government departments have got it it's not necessary?---It's not necessary.

10 MR GORMLY: And I suppose the government department too is going to be able to monitor a Freedom of Information component?---Yes.

All right. Doctor, just a couple of quick things before we finish.

THE COMMISSIONER: Sorry, I'm not sure if I quite follow what happens then. I mean your presence, the practice is that the lobbyists, the lobbyists have to submit returns to you as to whom they've seen and - - -?---No, they don't.

20 So that you can put it on the register?---This was something that I, that I considered.

Yes, I'm sorry, I did understand that, Dr Solomon. What I'm mainly asking is what happens now? To get your, to get the information from your, you get the information from, for your register from the lobbyist?---Yes.

So the lobbyist, instead of putting it on its own website, will send it to you to put on your website?---No. The lobbyists aren't going to put it on their website.

30 No, they don't. But they send it to you to for you to put it on your website, on your register?---That was not my intention. I was, I was simply wanting, considering it so that I would know - - -

I understand that?---what was happening in the lobbying industry.

40 I understand. We're at cross purposes, I'm sorry. I'm asking you what the present position is today?---Oh, the present position is I, the lobbyists send me nothing, other than the material that, of their identity, who they represent.

Is that, they send you nothing, they just give you, they just tell you who, what's required for your registry?---Yes.

The government departments assemble the information relating to the meetings and the topics of the meetings?---They don't send it to me.

They don't send it to you, they just retain it?---Yes.

And, but, but the Crime Commission can get hold of it when it wants to?  
---Yes.

But nobody else?---No, though I've asked for it.

And do you get it?---I'm going through that process at the moment.

So that's no publicly known information?---Not yet, but I imagine, I'm sure that a lot of that material would be available under Freedom of Information.

10

And did the, what is the general attitude of the lobbyists to that information being made public?---They are concerned only about material in it that would be commercial and confidence or personal information.

And what is the attitude of the government department as to that being made public?---Their main concern is personal information, at the moment. But we're still working through that.

20

Personal information meaning?---The definition under the, under the Act, under the Privacy Act. There are - - -

MR GORMLY: So (not transcribable) information about a person?---Yes.

A persons private life?---Yes. But it's difficult to see how recording a meeting, in my view, it's difficult to see how the Privacy Act is engaged in that, but as I said, this is, this is ongoing at the moment.

30

Three other questions, Commissioner. Dr Solomon, we can't go into this in detail, but I'd just appreciate having your views about this on the record. Firstly, Queensland like Canada outlaws success fees. Has that been a problem of any kind now in Queensland?---No.

Have there been complaints that it's been outlawed?---No.

So far as you know, apart from the, the widely publicised success fees cases in Queensland, those incidents, were success fees much charged in Queensland by lobbyists?---I don't know, is the real answer.

40

And certainly there's no pressure to try and have that rescinded?---No, there's not.

Right. The next thing is I recall from our prior discussion that you were of the view that cooling off periods, I think you've said it in your submission, cooling off periods after separation from parliament or from a senior public office was a good tool of perception, that is you could create periods that would at least distance the public officer from their work. Do you have a view about the other component of cooling off, that is the speed with which information ceases to have currency? That is information that a minister

might have about his portfolio, ceases to have currency after separation, a safe period?---I, I think that the two years is a reasonable period for people to get out of, out of sync with, with their information. But of course it doesn't, they don't lose - - -

The relationship?--- - - - relationships, personal contacts and so on.

So the information might drop out with a cooling period but the relationship will persist?---Yes.

10

All right. Now the last matter is just on the issue of post-parliamentary career options. It would appear that there are arguments lining up both ways about stringent cooling-off periods and the effect that they might have on parliamentarians. There is one view that it's unfair to the parliamentarian because they have limited career options even if they've had ministerial experience and that the post-separation period can be an exceptionally difficult one, particularly with the absence of a pension arrangement. The other is that there is a public interest in excluding relationships from lobbying because it tilts the playing field and provides  
20 unfair access because the relationship will open a door that wouldn't otherwise be opened so on that basis as a public interest matter you would stop former ministers from lobbying. Do you have a view about those two extremes and where one might reasonably lie?---Well, I'm sympathetic to the parliamentarians because I think the superannuation arrangements and pension arrangements don't meet the real problems that they face when they leave office, either voluntarily or otherwise. On the other hand, I think the public interest in openness and accountability really requires a cooling-off period and I think in the future one has, these rules should be put in place so that politicians can be aware in advance that they're not going to be able to,  
30 and I don't mean this in a pejorative way, profit from what their post-political career.

30

40

One argument we've heard, Dr Solomon, I'll make this the last point if I may, one argument we have heard is that appropriate conduct by a parliamentarian really precludes them setting up a post-parliamentary career, that is, they really can't start to put out feelers without compromising themselves as parliamentarians before they leave and in any event we're told that separation from parliament can frequently be a fairly sudden event or the lead up to leaving is so intense that it precludes any opportunity to  
40 arrange one's affairs. One possibility to cover that is continuation of salary or some form of redundancy arrangement otherwise familiar in private industry to cover the period that might otherwise be the cooling-off period. Do you have any view about that?---Well, I've always thought that the superannuation arrangements were around the wrong way, that politicians who serve very short-term should, should get a bigger slice of super than those who have served for a long time to cover this problem of, of, well, particularly of premature departure from parliament. So I have certainly some sympathy for that idea but I'm really convinced that there needs to be

a significant break between ending a career in, in parliament and beginning a career as a lobbyist. The Canadian idea of five years I think is a bit over the top but the Americans actually have criminal laws to stop senior public servants and politicians from being involved with their former departments for example.

Well, ideally you wouldn't have any involvement at all I suppose?---Ideally. Thank you Dr Solomon.

- 10 THE COMMISSIONER: Thank you very much, Dr Solomon. You've been really helpful. Thank you for coming all this way?---Yes. Thank you.

**THE WITNESS EXCUSED**

**[3.10pm]**

MR GORMLY: Commissioner, we, we have present in the hearing room Dr Kaye. If I could perhaps call him.

- 20 THE COMMISSIONER: Dr Kaye, would you like to give your evidence under oath or affirm the truth of your evidence?

DR KAYE: I'd prefer the latter, Commissioner.

MR GORMLY: Doctor, could you tell us your full name, please?---Yeah. My full name is Roland John Kaye, but I'm known universally as John.

All right. You're a member of the upper house at the New South Wales parliament. Is that correct?---That's correct, Mr Gormly.

10 And you have been I think since 24 March, 2007?---That's correct.

All right. I think professionally your career has started with engineering training?---That's correct.

You hold a PhD from the University of California, Berkeley?---That's correct.

20 And I think that you've done extensive studies, not only in engineering, but as I understand it, in, well not generally in engineering but also in energy. Is that correct?---That's correct. Yeah, my speciality was electrical engineering and my, within that, my sub-speciality was electrical energy, renewable energy.

Right. Now you're in parliament as a member for the Greens?---That's correct.

30 All right. And Dr Kaye, I think because you're a member of the Greens, if I may say, I assume that you would probably both be lobbied and engage in lobbying in the ordinary course. Is that a reasonable statement?---Yes, indeed. And taking the very broad definition of the word of lobbying in that statement.

Yes. All right. Now, Dr Kaye, as we've offered to other witnesses so far, is there anything that you would like to say about lobbying as a preliminary statement?---If it's to the convenience of the Commissioner, I'm happy to make a brief introductory statement.

40 THE COMMISSIONER: That would be helpful, Dr Kaye?---Thank you. First of all I'd like to thank the Commissioner for the opportunity, excuse me, to be here today and to give, to give evidence and to congratulate the Commission on taking on what is a, an exceptionally important but also a very difficult area. And as I prepared myself for today I thought through some of the intricacies of what the Commission will need to come to grips with and recognise this is not, it's not like campaign donations where, at least my party and I'm certainly one of those people who believes this, thinks that there's a very simple, simple solution which is just to ban them. Lobbying is a much more diversified, a much more complex activity and in many senses in its broadest definition it lies at the heart of a healthy



democracy. The capacity for individuals and groups of individuals to get together and put forward their ideas to decision makers, put their view points to decision makers and allow those ideas to be part of the mix. I preface my remarks by saying I don't have any particular expertise, but I really speak from 30 years of my own experience and the collective experience and wisdom of 5,000 supporters and members the Greens New South Wales. And that experience is largely one of huge frustration. The sense of going into a council meeting or going into a meeting with a, with a minister or going into, watching a determination being made, for example, on Part 3 (a), where it's predecessors, Part 3(a) of the Planning Act or its predecessors and recognising that it was a done deal. That the decision was not being made in front of your eyes, but the decision was, had been made previously elsewhere by other people. Now that's a perception and I, it's always hard to prove those perceptions, but the aggregate of the perceptions across the community and I work with a large number of small community groups who are battling some development or other, the perception is that this is a badly tilted playing field and one of the props of that tilt is the capacity of lobbyists, professional lobbyists to have their opinions heard ahead of the community. It really comes down to a matter of how you determine the public benefit and where you have one particular interest group with the capacity to tilt in their direction, the, the proper functioning of democracy is not allowed to play out and in many cases, at least it's our opinion, that we get outcomes which are adverse to the best interest of society. There is also, of course, within this the implied undertone and certainly the strong perception that adverse decision making itself occurs, that the influence, I'm avoiding using the word corruption although many, many of the people I talk to would use the word corruption that there is an outplaying of adverse, adverse influence either through networks of influence, through personal connections or in many cases through the transfer of favours. I'm saying that is a perception, I'm not making allegations that I have any evidence but it's certainly a strong perception and it's a perception that I feel very strongly, Greens feel very strongly we need to address as a, as, as lawmakers and as a Commission there needs to be some addressing of that. Having said that, in addressing that it's a baby and bathwater situation. I just want to refer to my own experience which Mr Gormly foreshadowed and I see myself involved in lobbying or being lobbied in three different categories. Firstly, as an MP, as every MP we receive information and we receive information from a whole variety of sources, from the environment movement, from the business chambers, from, from the developers, from individual developers, from community groups, from activists, from activist organisations, from trade unions, employers. The volume of information coming into our office seeking for us to do one thing or another, to vote in one way or another is huge. It's also extremely valuable. Even the information that comes from sources that I don't personally find, I don't find much ideological sympathy with I still find out valuable information. I'll just make one reference here to a meeting I had in the presence of somebody who in many senses is a professional lobbyist quite recently from the citrus industry, the citrus growers of, of the

Riverina and you'd think as a Green I wouldn't have a lot in common but one of my portfolio areas is consumer affairs and I have great concern about the, the issue of country of origin labelling and this, the citrus growers are able to give me information about the source of oranges in the Sydney market, the issue of functioning your country of origin labelling. Now, I'm not going to agree with them on a lot of the irrigation issues although I agree with them on some of the irrigation issues. I'm not going to agree with them on a number of marketing issues but on this particular area there was valuable information and we were in agreement. I think that's an important functioning in democracy even though they're not people I would normally have much track with. The second, the second area in which I'm involved in lobbying really relates to my, my, the definition that many MPs, I'd say all the Greens and many other MPs would have of themselves as campaigning MPs. I spend a lot of time in the media, in Parliament, in public meetings arguing for one position or another and I think that's a very valid role for an MP. Teddy Roosevelt referred to the US presidency as the "bully pulpit" and I'm not equating myself to Teddy Roosevelt but it's the same idea that it does give you as an MP, as an elected representative, in my case of 8% of the population of New South Wales, it gives one some access to the media and some access to Parliament and some access to public meetings. I am advocating positions, positions based on publicly available policy, positions based on, on our reasoning of the situation but nonetheless I am seeking to influence decision making. And in some senses, in a very broad sense I'm paid to do that so I see it from that aspect. The third aspect I see lobbying from - - -

Sorry, you were paid to do it because you were a member of parliament?---  
Yeah, I'm paid a salary, Commissioner, I'm paid a salary and part of - - -

30 I understand (not transcribable)?---Part of my definition, no, I'm not, I'm not paid separately, I accept no other money other than my salary as a parliamentarian, but I'd see it as part of my, the third, the third way in which I interact with, with lobbying is as a, as an MP who works with community groups and I'm constantly talking to community groups and getting information from them and working with them, advocating on their behalf but also being given advice and suggestions from them. I see that as a very valid role for MPs to do, lower house MPs do it for, for community groups within their electorate, as an upper house MP I do it across the entire state. So those are all activities I think we should be careful about how we  
40 regulate, not just because I'm involved in them but because I see them as an integral part of a robust democracy. I also would argue that there is a asymmetry and there are a number of asymmetries in the lobbying area and one of those asymmetries is between, and I accept that wherever you talk asymmetry there's an element of subjectivity but one of those asymmetries is between public interest and private interest. I just want to, without making any adverse reflections on any of these gentlemen, I just want to think of Mr John Della Bosca, Mr John Watkins and former senator Graham Richardson and their post-parliamentary careers. I'm not seeking to make

any adverse reflections on any of them but John Watkins and John Della Bosca are both paid to advocate. In the case of John Watkins, as a former deputy premier, he's now advocating for the Alzheimer's Foundation. In the case of John Della Bosca, he's advocating for disabilities and for a national disabilities insurance scheme. I find it hard to say that either of those people are in any way behaving adversely although in both cases they have party connections, in both case they have ministerial connections, particularly in the case of John Della Bosca who was a very high-profile and very successful disabilities minister in New South Wales. Because they are  
10 advocating for what is the common public good I find it hard to say that we should deal with them in the same way that we deal with former Senator Graham Richardson who is advocating for, for developers, who is advocating really across, without, I don't wish this to sound negative but indiscriminately for developers. He's there for hire for developers. I see that as a very different situation and I, if we can find ways in which we can recognise those who are working for charitable organisations or those who are working for, generally for the public good as against those who are working for the, working for the private profit of developers, then I think that's a positive thing. But I do think that that's complex and I just give you  
20 one example and I'm aware I'm talking too long but I'll just cut this down. The one example that I have is that I often work, I'll give you one concrete example. I'm currently involved in a campaign to stop the state government from building a dam at Tillegra on the Williams River in the Upper Hunter. I'm doing so for a variety of environmental, economic and social reasons but I work constantly with people who are in a position where if the dam is built they will be materially worse off, they're, the communities both above and below the dam wall will be materially worse off and they're pleased to have me working with them. So then you have to ask well, certainly my motivation is about the economic, environmental and social impacts but I'm  
30 also working with people who have an interest. I want to just skip ahead and talk briefly about where I think those opening remarks takes us. I'm increasingly convinced of a number of things. Firstly, that we do need regulation of, of the lobbying industry. The lobbying industry does have a significant impact on democracy, it's having a, it's certainly having a demonstrable impact on the perception of the health of democracy. It is also mostly likely changing decisions in ways that are driven by an unequitable access to power because some people can afford to purchase the lobbying assistance of professionals. I'm also convinced that lobbying behind closed doors does create the preconditions for adverse and corrupt behaviour.  
40 There are two may opportunities and I think your discussion paper makes some very valuable suggestions as to why that might be. I think the third issue, the third issue is the development, the perception of and in fact I suspect the reality of the development of networks of influence. Former MPs, former public servants being in a position where they can exercise power because of, not because of their knowledge or their skills but because of their contacts with people within those, within their former portfolio areas or within government departments. I think where that leads me is to a belief in a system of regulation of lobbying, professional lobbying that looks

a lot like the Canadian system. I was persuaded that five years is possibly too long for shutting out former MPs but the key I think needs to be exposure of what happens, who lobbies whom, what is, who is involved, what is the topic and what is said at that lobbying and not just that it's recorded somewhere but that it is publicly available. There is nothing like the light of public knowledge being shone into some of these dark corners to address not only the perception but the reality of the problems of lobbying. There are commercial in confidence issues but I have to say I'm in a parliament that has effectively subpoena powers and we walk our way through commercial in confidence continuously. We have the services of Sir Laurence Street who makes determinations on the balance between public interest and commercial in confidence and I don't think that as a parliament, I've been involved in a number of what are called standing order 52 or call for papers effectively subpoenaing documents out of the government, I don't think we've ever violated commercial in confidence in any way that's done any damage because we've got Sir Laurence Street there to protect us. I'd also say that that information, it's not just important that information is available publicly, it's also important that it's available in a way that it can be accessed and it can be indexed and accessed so as it can be indexed by decision topic, it can be accessed by who made, who was doing the lobbying, it can be accessed by on whose behalf the lobbying was being done and it can be accessed on the basis of who is being lobbied. That cross-referencing is very important from a community point of view where for example you're dealing with a specific issue, you want to know what other lobbying activities has that developer been involved in, what other activities has the person they've been lobbying been involved in and what has been said behind closed doors. Not in full detail but at least to have knowledge or have some indication of the type of transactions that have occurred behind closed doors. I want to finish by making a couple of remarks. I'm not comfortable with the current arrangement with the Director General or the Department of Premier and Cabinet being the gatekeeper on lobbying. I am very much persuaded by models that occur else, and there's a certain amount of fox in charge of the henhouse and I'm not making any adverse reflections on the, the incumbent but that person is the head of the public service and many of the lobbying activities involve the public service and there is at least a perceived conflict there. It will be better to have that, that regulation occurring outside of the public sector, outside the public service itself. I think the second, the second issue I want to make reference to is the issue of regulatory thicket, the idea that you create so much information that it's hard, it becomes a barrier to action and it becomes a barrier to access. The regulatory thicket has largely been thinned out by information technology. The capacity for people to have laptops in meetings and make meeting notes on their laptops, which just immediately goes off to a website that's indexed appropriately and becomes part of the government's information which is publicly available really trims out the regulatory thicket. It's not an onerous requirement to require people to make such records. The only other remark that I wanted to make,

actually, Commissioner, I might leave it out, I have spoken for too long, I might leave it at that.

THE COMMISSIONER: Dr Kaye, before Mr Gormly starts, there's just something I want to, I'm not quite clear about, when you say you do lobbying do you do lobbying outside parliament?---Let me detail what I do outside of parliament. I use the media extensively.

10 Do you actually speak directly to government ministers and other parliamentarians in an attempt to lobby them?---Definitely, I see that - - -

Outside parliament?---Definitely, as in outside of the Chamber of Parliament, definitely. Tomorrow I will be meeting with the Department of Education and Training Officials about unflued gas heaters to be informed by them and to put forward my position. On Friday I will be meeting with the Premier of New South Wales.

20 So that's your answer, I understand, so the answer's yes.---And I see that as an important for MPs to advocate for the things that they believe in and to advocate for the communities they support.

So any lobbying rules shouldn't apply to parliamentarians.---Not at all, I think that lobbying rules ought to apply to parliamentarians. I'm totally happy to submit to, I would be totally happy to submit notes on, on my meetings with both – both – both the Premier and Department of Education and Training. I don't think, I think it would be quite inappropriate for there to be one rule for MPs and another for everybody else.

30 MR GORMLY: I follow that Commissioner. I think I'll start with that topic Dr Kaye if I may. One reason why you might have a separate, a separate set of rules is because the circumstances of each are quite different. Can I just put a problem to you for your comment. I understand your views about the requirements of a good register and that they would include details of who meets who and what was said. I'm not putting that in issue. It does seem however to be an impractical view if you line it up with MPs or indeed any lobbyists, any person carrying out a lobbying activity meeting other than in specified venues. For example, if you were to meet the Minister for Education or any Ministry at a cocktail party and you want something to be done in the public interest and might speak to the minister about that, we are  
40 struck and constantly reminded of the practical problems of noting down that act. Before I ask you to comment on this because it is a real, you will appreciate that it does provide a real issue of practicality for recording, it has been suggested to us by chief's of staff that way around that problem may be to adopt the view that chief's of staff are usually there with ministers anyway and if there is something actively to be discussed that there will be a follow up meeting. So that leads me to ask you for your general comment about the problem of meeting outside of business venue, at a function or a railway station or wherever and secondly, to let us know

about the mechanics from your point of view of actually lobbying outside a business venue.---I have to say I haven't had a lot of planned meetings with ministers outside of the formal environment of their offices. I wasn't aware for a cross-bench member that would be a fairly unusual event. I mean I have run into ministers and other important decision makers at social events, that does happen. I don't usually engage in lobbying activity, I might in jest, rib them about some issue that I think they've got wrong. But formal, I don't think that relates to formal lobbying. I think you've got to make a distinction between I agree to meet with the treasurer in private a bar in the Eastern Suburbs, very unlikely event I might say but, distinguish between that an accidently running into him on Bondi beach when we're both going for a run. Those would be two very separate events. In the case of the former, I'm not a hundred per cent convinced that those events should be not, I might put that around in the positive. I think there's a good case for those sorts of events being minuted in some form. In the case of the latter, yes, there are always, you can always find with any regulatory regime you propose, you can always find the extremes of it that make it difficult. But the public good I think of making sure that those lobbying activities are in some way understood. Look, here may be, perhaps there's another argument here, perhaps the argument here is that MPs because they're so constantly involved in pushing their points of view are expected to be doing so and there's less public disbenefit in them doing so. I'm not convinced by that argument, I still there are issues with us and I'm, there are issues with MPs not being prepared to say what they're lobbying on when you're lobbying ministers.

As a matter of day to day practicality, if an issue comes up to you and you are asked to lobby the government as I assume you regularly are, to lobby the government on that particular issue, would that generally involve you endeavouring to see the relevant minister?---Oh fairly rarely. Usually it would be, the most usual way of lobbying for me would be to write a letter-  
- -

To a minister.- - ?---to a minister say raising an issue. And then from that letter in rare events I will seek a meeting. Largely because access to ministers for somebody like me is not particularly strong. I see ministers in parliament, you run into them in parliament on a regular basis. That being said I have recently sought a meeting with the Transport Minister and have been granted a meeting over a specific issue to do with remote area transport for children in remote areas. So I, yes I do occasionally seek meetings with them.

If that meeting occurs by arrangement in that way, I take it that will always occur in what you might call a business environment, an office.---Yes, almost always, yes.

Are they minuted generally speaking by the ministers side?---From recollection, no. I'm thinking back – they are rare – I'm thinking back to

the meetings I've had. They have been generally fairly rare, generally not minuted.

Right. Are they generally attended not only by the minister but a staff member as well?---Always by a staff member.

Right.---I've never, I've never had a formal meeting with a minister where there hasn't been a staff member present.

10 Have they generally included or not included the relevant, an officer from the relevant department?---Mixed. Sometimes there's an officer there, sometimes there's not.

Depends on the circumstances?---It depends on the circumstances, it depends – the inclusion of an officer in the department in my case – can I say I don't hold the planning portfolio for the Greens, so I don't generally lobby on planning issues. Generally the work, the advocacy I do is largely around issues with water, education and energy and those areas have different ingredients to them. But generally, I think it's a highly technical  
20 matter a departmental person will be there.

Can I just take you back to the social functions. The public impression is that of course, that parliamentarians are fairly constantly at social functions whether it's true or not it seems to be the case that social functions are used as an opportunity for people to talk to one another in general ways about policy issues and about business of the day. Is it your observation that serious business can be contracted in social situations like that or not?---Are you talking about serious business specifically between, between a government minister - - -

30 (not transcribable) decision maker?---Between a decision maker and somebody else?

Yes.---It's not been my personal experience but I would not be surprised if that did happen. I was at a farewell party for a, as a farewell party for the president for the P&C Federation, the outgoing president and the minister, the permanent head of the department and one of his deputy were at the meeting and certainly people were talking to each other the whole night. There were a large number of people seeking to talk to both Mr Coutts-Trotter and Miss Firth.  
40

Presumably about P&C issues?---Presumably about education issues, yes.

All right. Have you also in your what 13 years now is it, in parliament?  
---No, it feels like it, it's only three and a half.

I see, sorry. In your period, have you seen lobbyists talking to ministers at social functions?---I can't say as I have from recollection, I can say as I have.

Are you familiar with who lobbyists, who is who in the lobbyist community, that is, the professional lobbyist community?---By name but not so much by face so I can't be of, of huge amount of help to you. I should also say that I don't spend an enormous amount of time at the type of social functions which would be attended by ministers. The sort of social function I go to  
10 are probably more by and large community events.

All right. Is that because you're Greens or because you're Upper House or what - - -?---Probably because I'm Green - - -

THE COMMISSIONER: Or because you're in the opposition?---Greens are non-government, I think the combination of the two.

MR GORMLY: Yes. All right. Thank you. Now, can I just take you to some other matters? An issue that this Commission must consider is  
20 whether it is appropriate to continue or to make recommendations about the continuation of the ban on lobbyists holding government positions or sitting on boards or committees. At present somebody who is registered as a lobbyist and will therefore be a third party professional lobbyist whether or not they have extensive government background is required to elect between remaining on their government board or committee which may be an unpaid position and remaining on the lobbyist register. There are arguments as you'd appreciate both ways if there's no conflict one might wonder why they would be precluded and if there is a conflict then presumably normal conflict rules would apply so that's one way of looking at it. Another is that  
30 there is a perception that if somebody is on a board they're in touch with the government and they're touched by the government so to speak and it may well bring about a use of influence. Do you have a view about that?---Yeah. In the case of lobbyists who have now narrowed the definition down to people who are paid as lobbyists, who are, I think the expression used is professional lobbyists.

For the moment, for the moment those who are on the register as it stands?  
---Okay. So these are, these are not, for example, the case of a union official who might lobby.  
40

No?---In the case of a, I think that the rule and I'm not sure what the legal status of the rule is, it's certainly not legislated and I - - -

It's not?---It may be just, it may be just a code somewhere. In the case of a lobbyist that lobbyist by their, by their professional definition may be advocating for anybody. They may be an advocate for anybody across any industry therefore being on any, being on any government appointment may create a potential conflict of interest in the future. So if I, for example, if I,



if we appoint a lobbyist to the board of Energy Australia which may or may not be covered by this, to the board of Energy Australia that lobbyist may end up advocating for, for a wind farm or for a wind farm developer who may wish to be a client of Energy Australia and you've created a conflict of interest. So there is the potential by definition of a conflict of interest at some stage in the future.

You'd favour its continuation?---Strongly favour its continuation for that reason.

10

There are other representative type occupations such as accountants and lawyers who are in a similar position, that is, they could be acting for anyone and are regularly called upon to serve on government boards and committees often quite specialised ones where perhaps the conflict can be identified relatively early or excluded relatively early who seem to make useful members of committees but nevertheless call a conflict when it arises. Do you think there's a distinction between them on the one hand and the third party lobbyist on the other?---I think there are two distinctions between third party lobbyists and accountants and lawyers and the first  
20 distinction is that both accountants and lawyers operate under a professional code of ethics with a professional body that regulates them and by and large does an extremely good job of doing so. Lobbyists do not do so, they have a regulated code of ethics or a code of practice but there's no professional body that regulates them. The second issue is I would put it to you that it's very different for a lawyer to advocate for a client in a court of law and a lobbyist who advocate for a client behind - - -

THE COMMISSIONER: We're not talking about a lawyer advocating in a court of law we're talking about a lawyer advocating to a minister.

30

MR GORMLY: Commissioner, I think I understand that he's drawing a distinction between the lobbyist who operates behind closed doors therefore he can't tell who his client necessarily is and the lawyer who's out there in the public eye you can tell who his client is. Is that the distinction you're drawing?---That's the distinction I was making, yes.

So you're saying it's okay for a lawyer to serve on a board but not a lobbyist?

40

THE COMMISSIONER: Right.

THE WITNESS: Yeah. And likewise with an accountant it's a discreet function that's, but I do take the point there are, there are a range of, this is, this is, there is a continuum here, you can have an accountant who works very closely with one corporation that might then develop a conflict of interest.

THE COMMISSIONER: The nature of people, the main nature of government board and people who are appointed to them is such that the people who are appointed to them will usually take up the appointment as a part time job so the possibility of a conflict is always there because they'll have other jobs?---Yes, I accept that argument but again I, I - - -

10 It's a matter of degree is it?---It's a matter of degree and I think the, this is, I ran out of time but I was going to talk extensively about risk and zones of risk and they're all matters, they're all matters to do with, with, with adverse  
behaviour and corruption there are issues of risk associated with it and the  
20 sort of conflicts of interest not always but in general that one sees occurring on government boards are relatively low risk and are relatively amenable to exclusion and public perception, public, public knowledge of those, of those activities. In the case of lobbyists without direct public information about the lobbying that's occurring it's much more difficult, it's a much higher zone of risk and particularly when we're talking about lobbying, about development decisions then it's a very high zone of risk and I, I think that that, the risk associated with those lobbying activities because they occur behind closed door and because in many cases they are high consequence,  
high dollar consequence and high social impact consequence it's therefore  
necessary to apply a higher standard.

MR GORMLY: Can I suggest to you just putting this in, Dr Kaye, by the time somebody has served a few years in Parliament and have emerged there seems to be a post-parliamentary career issue but just putting that aside for the moment they are also people whatever other skills they've lost in the process are also people who have accumulated the kind of knowledge and experience of the way government operates and the way the community  
30 operates at a public level which is very useful or is potentially very useful on public boards and committees. Would you accept that as a general proposition?---On public boards and committees I don't think there are issues associated on public boards and committees, I'm not, that's not, I don't see that as a problem. Has that been raised as an issue?

Sorry, that's what I thought I was raising with you?---I'm happy, the issues we have is, is where, where they are advocating for private interest. But you're asking me the question if I'm, if I'm correct here in saying taking an MP who has been there for a number of years who then retires or loses their seat and appointing them as a, as an inquirer or appointing them to the board  
40 of Country Energy or appointing them to the - - -

Exactly, that's exactly what I'm talking about?---Yeah. I don't, I'm not aware that there's a problem with that, on the contrary I think that's probably useful.

At the moment there is no problem unless they become a lobbyist as well?

---That's a separate issue. That, that I, I, I, think and the problem there is twofold, one is being on a board and being a lobbyist and the other is being an ex-MP and becoming a lobbyist and those I think are different.

And you think by becoming a lobbyist and going on the register that, that alters the position and justifies the exclusion of those people from the boards?---For the reasons I have answered before, yeah.

10 Yes. I understand. Thank you. Now, can I take you then to the practicalities of a register. I take it that you, from the comments you've made that you do support the existence of a register for lobbyists?---As a necessary but far from sufficient step in regulating lobbying activities.

You would like to see it go much further?---Indeed.

20 Now, can I just explore with you the categories of a person that you would like to see on a register other than the, what we're calling the third party professional lobbyist. Do you, for example, consider that peak bodies which exist largely for the purposes of lobbying or almost entirely for the purposes of lobbying should be on a register?---Yes, and I don't think they should be concerned about being on a register but I think it's appropriate that, that, that, that the community knows that they are on a register and that they are engaged in lobbying activities. There's nothing adverse about being on a register it's just a matter of public knowledge.

Sure. They become one of those people who declare themselves publicly to be people who will go and see the government about an issue?---Yes.

30 Can I take you to another group, we'll say the non-profit group consisting of, we'll say, charities and churches, there are others of course but the non-profit group but their purpose is to approach the government for money or to have them change legislation or to carry out actions that will serve the interests of the churches or charities?---And you would include the environment movement, the groups like NCOSS, the New South Wales Council of Social Services, you would include those groups in those. Again, I don't see any grave difficulty with those people being, declaring that that's part of their function is to advocate for their causes. Many of them I would imagine would be quite pleased to do so.

40 What about the group that is frequently referred to as the in-house lobbyist, that is corporations or entities and sometimes even government departments that have personnel who will carry out lobbying on their behalf? When I say government departments, I'm thinking really of state-owned corporations?---Or even, are you even including a case of, for example, a trade union that might have one organiser whose primary job is being an organiser but who turns out to be quite good at lobbying, at lobbying activities, at (not transcribable).

Certainly I was going to treat unions and employer groups separately?  
---Separately, okay, which I think is a wise thing to do.

So if we could just deal with the in-house corporations first?---Yes, yes, indeed. There should be some registration and, and accountability for, for those people. The difficulty of course will be that that person within that organisation may change from time to time.

10 THE COMMISSIONER: You just have to add them?---You just have to add them in but it might change, I guess we have to have easy access to the register because - - -

There is the Internet?---Pardon?

The Internet?---The Internet, no, but you have to be able to easily register yourself because it may well be - - -

Yes, there'd have to be - - -

20 MR GORMLY: Self-registration?---Self-registration, yes, yes.

THE COMMISSIONER: Or a special body to do it very quickly?---Very quickly in the sense of an issue comes up and this often happens, an issue will come up rapidly, you want to go and see your member of parliament or this organisation which is to address a member of parliament or address, and somebody's on holiday or so on and so on.

30 MR GORMLY: Would you consider this to be a suitable option, that if the third party, if the in-house lobbyist corporation complaint is half or staff and all of our directors are in contact with government regularly because we're large and significant, it's not practical for us to be continually putting the names on, would you consider as a way of dealing with that problem registering the corporation on the view that they're responsible for any act of their employee's anyway but requiring them by legislative injunction to keep copies or keep details of any contact that their staff might have so that it's available for inspection should that be required?---Yes, I would because I think the, if I may I think that the register itself is actually less significant than the other things that we want. I think the register itself is less  
40 significant than the public recording and public availability, the fact that a meeting occurred, who was there and what was discussed.

So at least the register will show in whose interest somebody is lobbying, if you were to just have the name of the corporation you'd know what interest was being pursued?---Yeah. You would know who was, who was attaining regular access but you don't know what specific issue they're attaining access for and that's why I think that the register is, I said at the beginning, the register is necessary but far from sufficient in resolving the issues around lobbying.

I think you were present during part of Dr Solomon's evidence, he being the Integrity Commissioner from Queensland. There's two options emerge from his evidence, the first was that you put the meetings and the subject matter of the meetings on the register and he was against that for various reasons. But secondly that you require the relevant department to retain a record of those details, that is, the when, where and what?---Mmm.

10 Do you have a view about which of those options would satisfactorily meet the needs of transparency?---I have grave concerns about the second. The second requires somebody seeking to ascertain what happened in the lead-up to a decision would need to know, would need to know where to go after the information using, is it called GIPA now, the FOI legislation?

20 Yes?---Would need to actually know where they were, they would need to point the, the GIPA instruments in the right direction. I think we have a far healthier society where we have a presumption that information will be in the public domain. It may be necessary for commercial in confidence reasons to redact some of the information but to, to require a citizen activist or a community group to actually know that that meeting might have happened in the first place and go after the government records is I think unfair and won't achieve the public policy outcome that we want.

What if the departments were to keep those registers as public records, will that then overcome that problem?---If they're on, public records as in they're on the Net and they're appropriately accessible on the Net, I mean it really, I'm sorry, to throw you back a question, it should be - - -

30 Not at all?---But let me, let me say this. It is about being able to understand what the interactions were that led to decisions or are leading towards decisions. It is about a fairness on the information playing field that allows those who are, who are working against a decision to be able to access what's gone on before them and understand what they're up against. It's also about when people, when lobbyists go into a meeting with a decision maker knowing full well that there's a fair chance of what's happening there may well get in the public domain. That's a, that a restraining force on adverse behaviour. So I haven't really answered your question and I apologise for that.

40 No, no, not at all, I understand?---What I think is important here is the outcome and the outcome is access to that information in a reasonable fashion. That it's reasonably easy to access that information.

Can I suggest to you that an outcome for the purposes of transparency and for the public to know that business is being conducted in an appropriate fashion on merit is not so much access to the information but having a system that discloses what it is that's occurring, I'm sorry, that discloses that action is occurring rather than the substance of what is occurring, it

avoids the behind closed doors but it still allows governments a degree of confidentiality?---I think there are shades in this and the shades will be determined by a trade-off between the common good, the public interest on the one hand and commercial in confidence on the other and there, and I, you know, I can't really tell you how that gets resolved but I know I've seen it being resolved in parliament where we've done this with standing order 52s, call for papers. There seems to me mechanisms available in the law that does find that and I think finding that trade-off point is very important. I do respect there is such a thing as commercial in confidence but I also  
10 identify that it has been used on too many occasions to hide decisions that really weren't commercial in confident.

THE COMMISSIONER: Do you stand for a record being made of every communication between a decision maker and a person seeking to influence the decision maker?---Yes, yes, I do, yeah. I think that is important. I think  
- - -

There are lots of cries of impracticality and onerous tasks and increased expense when one raises that, specially with large organisations and I  
20 suppose that's just a balancing exercise again, is it?---It's partly a balancing exercise. It's also a lot of information is now electronic all ready, a lot of emails or a lot of business is transacted by emails. It's not that hard to have a laptop in a meeting and make a minute of the meeting and where we're talking about decision making, serious decision making, and again I go back to my zones of risk argument before. If we're talking about relatively low risk, low impact then perhaps the requirement should be less onerous but the higher we move up the risk chain and the higher we move up the impact chain, then the more onerous the requirements should be.

30 That kind of recording as I think you mentioned very early on is only really helpful if people who are looking for it can find it. Now, it is, your answer I think is incomplete then because while it might be really easy to make the, to do a quick email about it if it's going to be recoverable it will have to contain certain specific elements that may not be so quick to set out?--- There are four key elements are there not? The first one is what it's about. This is, this is indexing elements. The first is what it's about. Is it about number 14, number 14 Smith Street, Parramatta.

40 There's so many ways of describing what it's about?---That's true.

Not infinite?---They are infinite but we do, we do manage on these things, I mean the internet does - - -

Not if you've got someone who wants to disguise it?---That's true and perhaps we should, perhaps there needs to be, I'm not sure how one would do this but perhaps there needs to be regulation to make the description of a topic more clear.

Right. And (not transcribable) what it's about?---What it's about, who the government officials involved, the private officials involved and what was, what, the nature of what was transacted.

That's hard if you've got an hours meeting and ten things discussed, some are important, some less important. How are you going to, Dr Kaye, I think for our recommendations to carry weight we've got to make sure that they're practical and I don't mean in any way to cast aspersions on what you're saying - - -?---No.

10

- - - it's just that what you say I'm inclined to agree with if it was, if it could be practically done but there are real problems in ensuring that it's practical and not just practical but that it's done in a way that carries meaning because if you've got an hours meeting and you've got someone who wants to conceal what's there it's not difficult to set out 20 things that were discussed and leave out the most important. And so one naturally can come to a point where it's best to leave that alone and leave, and just leave, leave the information as to topic, who was there, topic and who was there and who was being represented and let those who want to investigate further use it as their base?---But how do they then investigate, what, what information, I know you should be asking the questions but how do, what, what, what your statement leaves me wondering is how do they then investigate so we know that the developer at - - -

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It always has to be done ex post facto, you have the meeting, you were there, look at the result. It's not very satisfactory, do you accept that?---I still - - -

30

I think I could, I take your point?---I think we're giving up too easily if we say it's not possible to at least get some heads of understanding of what happened at a meeting. I'm not calling for a complete set of minutes of the meeting, I agree with you it would be unlikely to get that but the nature of the discussion at the meeting perhaps could be categorised, perhaps there could be a number of categories in which that, that discussion was, could be, could fall. There could be a number of were, were decisions made, were recommendations made, what, were documents transacted, there could be a number of, if you like, tick the box or multiple choice outcomes which, I'm not sure if this is practical, I think we should not give up on that because if there is an important issue here to know what happens at those meetings, just have some understanding of what happens at those meetings.

40

MR GORMLY: Commissioner, I have one question. Because it's a parliamentarian I think we should take advantage of this opportunity. Dr Kaye, in the course of the investigation one of the surprising matters that emerged perhaps unexpected at least to me was the suggestion that there was a, tied up with the question of lobbying was a post-parliamentary separation issue, set of issues that quite often particularly senior parliamentarians came out with few employment options and were to some

extent moved towards lobbying because there wasn't a lot else that they could easily do as ex-parliamentarians. Many have spoken to us of being deskilled by the experience of parliament from prior specialist occupations and that in any event there was a financial issue to be confronted because perhaps the public perception problem of wealth by all parliamentarians wasn't necessarily correct. Do you, is there anything you can say to assist this Commission about the problem of creating a cooling off period which would overcome a problem for a retiring parliamentarian who wants to go into lobbying and anything that you could say about, for example, a blanket prohibition on parliamentarians lobbying because it would seem that it is the relationship that comes from ex-parliamentarians, perhaps some senior public servants that causes much of the odium that relates to lobbying?---I have difficulty with the statement that says that the only skills that somebody leaves parliament with is the capacity to lobby. I find that hard to accept.

THE COMMISSIONER: You may have lost your professional skills?  
---You may well have lost your professional - - -

20 If you're a medical practitioner, for example, it's just about impossible to keep it up. If you're a lawyer you've lost touch with the law, I assume it's the same with engineering?---Yeah. I certainly couldn't go back to teaching engineering after, presumably I'll serve out at least my full eight year term, I doubt whether I could go back to teaching engineering at a university, I think I would be too far out of the, out of the mainstream of engineering and technology.

What if you got to practice as an engineer?---I think it would be almost impossible to practice as an engineer.

30 Well, there you are?---But, but - - -

MR GORMLY: (not transcribable) as a classic example?---But if I may, let's have a look at some of the, let's have a look at what some politicians have done. Geoff Gallop the former Premier of Western Australia is now a Professor of Public Policy I think it is or Government at, at the University of Sydney and a very fine public commentator.

40 THE COMMISSIONER: There are exceptions?---I'm not convinced all of these are exceptions. There are, there are a number of politicians who have gone, I mentioned Watkins and Della Bosca both of whom would not be caught by, even though they're involved in activities that are advocating would not be caught by a blanket ban on, on, on lobbyists.

They might be if we make recommendations to expand the definition of lobbyist?---Well, I have no difficulty with expanding the definition of lobbyist but I think again we need to allow politicians to do things like Alzheimer's and disabilities and - - -



That's just because you agree with them?---As I said before there is an element of subjectivity in assessing the, the public interest.

Very difficult?---It is difficult.

10 If you take Alzheimer's you might find, for example, and I mean this is, it certainly doesn't reflect my views in any way but you might want to set up an institution where people suffering from Alzheimer's can reside in peace and quiet and the neighbourhood doesn't like it. Why would you, they would be very unhappy to know that while they have to employ a lobbyist who has to make full disclosure the Alzheimer's people don't?---Don't you think there's a, I shouldn't say that but I believe there's a difference, there's a substantial difference between, between a gun for hire lobbyists to use the most pejorative term, a lobbyist who is out there who is just purely pedalling influence to be honest. Why I would employ you, sorry?

I understand that?---And somebody who - - -

20 (not transcribable) You just have to take a Christian church and there's an Islamic mosque and then say, then neither then is entitled to, each one is entitled then to employ someone as a lobbyist who's not registered. Each one could go to extraordinary measures to say find land to build the religious institution they are looking for. And you may say well, it's all a very, each one depending on your personal point of view may be for the common good?---I still think there are two issues here. One is the zone's of risk, the level of risk that a person is, a person's lobbying activity, a person's advocacy activity is involves. And the second is even though there's a huge element of subjectivity I think there's, there is a clear  
30 distinction between lobbying for a profit organisation like a, like a developer or for a cause working for a cause.

A union?---Union's a more complex and I suspect that in the, in the pursuit of abundant and caution you would put, although I wouldn't personally ideologically do this, in the abundant caution you would put unions in with, even though they're not for profit organisations you would put them in with, with corporations as in house lobbyists. It's a, I agree with you, as I said from the outset, there are difficult issues here but they're important issues.

40 THE COMMISSIONER: That's correct.---I will also say for example it's possible for a politician to set themselves up and sell their expertise which they've gained through parliament, it's not a very good politician who doesn't come out of parliament, a parliamentary career without some degree of policy expertise and sells their policy expertise as a consultant, not as a lobbyist. Not as going and seeing people and peddling your influence. There is an example, sorry.

Forgive me for cutting you short but I think what you're saying is that there are avenues which are available for politicians is not as if the politician is doomed to unemployment on leaving parliament.---Absolutely, I think there are avenues which use the expertise, the knowledge gained through a parliamentary career that lead to gainful employment that do not involve lobbying. They may not even involve physical contact with politicians or decision makers.

10 I would like to be quick, I know we're going later but it's been really interesting talking to you and helpful because you are the first parliamentarian who has given evidence here but Mr Gormly hasn't asked you about access to ministers and I would like to know.

MR GORMLY: We'll deal with that now.

THE COMMISSIONER: Yes.

20 MR GORMLY: Dr Kaye, a very important issue that's arisen is whether or not lobbyists create unfair opportunities by getting access where others could not get it to ministers, ministers in particular. The suggestion is that lobbyists by reason of their relationships perhaps a party connection or perhaps because they're former parliamentarians are able to achieve that access. That seems innately to suggest that whoever it is that gets to see the minister is getting to see them not on merit of the proposal but because somebody has been mates with somebody in the past or has a party loyalty or whatever. Can I ask firstly for your comment about that but I'm going to specifically ask whether you have seen examples, I won't ask you for any names, or whether you've seen examples that would suggest to you that a lobbyist has had an advantage by reason of relationship in getting access for  
30 a client - - -

THE COMMISSIONER: Or by reason of representing an important donor or group of donors or person who can swing a lot of votes.---I have reasonable evidence to believe that the answer to your second question and to both your question as it was put and to the Commissioner's modification to is, yes in both cases. To your first question, just remind me again what your first - - -

40 MR GORMLY: It was generally about whether or not you had seen lobbyists achieve access by reason - - -?---Oh definitely. I prefaced my response by saying that access is a terribly complex thing because ministers are very busy people and it's just not going to be some sympathy for the lives they live, they are not going to see every single person who's aggrieved or potentially aggrieved by a decision that they might be making or they might make in the future. It's not going to happen. Ministers will inevitably want to aggregate those decisions, those information that lobbying into specific individuals so as they can aggregate it and deal with it in a reasonably timely fashion. That's a reasonable outcome. What is not

reasonable is where a minister will see, will see a, will see the lobbyist of a, for a particular cause because that lobbyist is in the same political party or shared the leather benches with that minister or has, or even worse, has influenced the Julian Grill, Brian Burke case cited in your document and of great public interest, has, has influence over or alleged influence over the future of that minister's political career. That's where it gets really bad and that's where we really do need to, to look very carefully at how we stop that happening.

10 THE COMMISSIONER: And how do we stop that happening?---I think part of it is by, part of it is by shining a light on it as I said before and I'm sorry to go back to it, I think a big part of this - - -

Yes, I understand that?---If people had seen what, of people had known what Julian Grill was doing - - -

I think we understand that clearly?---Yeah, yeah.

Yes.

20

MR GORMLY: Is there anything else you can point to that would, would overcome that problem of access, that is making access based on merit or need rather than on relationship?---In the end that is always going to be political and a healthy democracy will punish ministers who behave in that fashion. That's why, sorry to come back to access again, but people knowing what, you know, when you can look at, that's why I said before, you need to be able to access this register in each of its dimensions so we can look at who did planning minister X in his career, his or her career as planning minister, who did they see, who were they, who were they lobbied by and you get that, that of itself is valuable and important information for putting pressure onto all planning ministers and all other ministers to, to maintain their access. We can't legislate who a minister sees and doesn't see. That's, well, we can say who they don't see, it's hard to legislate who they see. I see that as being a problematic public policy direction. That has to be in the end the power of the ballot box and the threat of the power of the ballot box that regulates ministerial behaviour.

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40 So that if the public see they can decide whether or not governing is occurring on a merit basis or some other basis?---Well, it would be open to an opposition party to say look, this minister, look at, look at who they saw, look at who they're making decisions for and it's also open for any group to then draw the dots between who they saw and the decisions they made and that level of exposure I think will be quite transformative for Australian politics.

All right. Thank you, doctor.

THE COMMISSIONER: Thank you, Dr Kaye?---Thank you very much.

It was very interesting. Thank you for your time?---Thank you, thank you for hearing me.

Very much appreciated?---Thank you.

**THE WITNESS EXCUSED**

**[4.17pm]**

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THE COMMISSIONER: We will adjourn until 10.00am tomorrow morning.

**AT 4.17pm THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.17pm]**