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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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AT SYDNEY

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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 Mr Bruce Hawker present in the witness box who would like to give evidence this morning.

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

MR HAWKER: I wish to affirm, Commissioner.

10

THE COMMISSIONER: Thank you.

**<ROSS BRUCE HAWKER, affirmed**

**[10.05am]**

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Thank you, Commissioner.

20

Mr Hawker, what I'd like to do is just to get some details from you first, give you an opportunity to make an opening statement which I understand you have and then to launch into some specific areas if we may. First of all, can you tell us your full name?---Ross Bruce Hawker.

I think you're now the chairman of Hawker Britton. Is that so?---That's correct.

30

A body founded in 1997 and I think you've had a long history both in staff positions as chief of staff with Mr Carr as premier and a number of other positions and you've been engaged full-time in lobbying and as the principal for Hawker Britton for now a long time?---Indeed, since 1997 although I am no longer on the register of lobbyists.

All right. Hawker Britton is?---It is.

40

Right. And I think you're on the, on the register not only of New South Wales but of other jurisdictions in Australia as well, all of them I think?---I have been but I've removed myself from all the registers in, since May of this year.

Do you mean your name?---Personally.

Personally, yes?---Yes, but not my corporate interest in it.

All right. And is that because you, withdrawing or have withdrawn from lobbying activity?---That's correct.

Right. Now, Mr Hawker, can you tell us or let us hear from you firstly by way of a preliminary, you wanted to make an opening statement?---If I could.

Yes?---Yes, this statement runs to a few minutes. As chairman of Hawker Britton I welcome ICAC's investigation into the current regulatory system governing the lobbying industry in New South Wales. I am no longer personally a lobbyist but have had extensive experience in government relations. I removed myself from the New South Wales Lobbyist Register on 17 May, 2010 followed by all other jurisdictions with a register. I am currently on leave from Hawker Britton and have been so since 19 May, 2010 and also, despite having been on the New South Wales register since its inception in January 2009, in May I have not been actively involved in lobbying for probably about two years in New South Wales. I want to start today by emphasising lobbying is a legitimate practice in modern democracy. It's prudent to be assisted by experts in all kinds of fields, for the law people employ lawyers, for business they employ experts in business strategy. I believe that government relations is no different. Lobbyists are important in a modern democracy because they enable a diverse set of views to be presented to government, to ministers and to public servants. It is reasonable that individuals and organisations want to influence decisions that may affect them, those around them and their environment provided it is done with propriety. The policy and decision making process should not and cannot be carried out in a vacuum, it needs to be properly informed by outside and diverse interests. In other western democracies, for example, the United States, lobbying is a right enshrined in the First Amendment to the US Constitution which states in part Congress shall make no law prohibiting the right of people to petition the government for a redress of grievances. I do not accept the proposition that there is a necessary correlation between lobbying and corruption in government. If corruption occurs New South Wales already has more than adequate regulatory systems to deal with it, from legislation and establishing the ICAC to the entire criminal law. There is quite a degree of public misconception about the work undertaken by lobbyists and this is something I'd like to address. ICAC's issues paper appears to assume that lobbyists are primarily engaged to make contact with people they already know in the government on behalf of clients. This is what we often refer to as the mate's approach to lobbying. From our experience this is an antiquated view of the industry. Individuals and organisations principally employ lobbyists to help them understand government processes and to be advised on the best way to make their case to government. This often involves third party representation into government, reviews that the lobbying industry have tended to inaccurately assume that lobbyists have no technical expertise and are engaged for the purpose of assessing or accessing a relationship network of influence and our experience does not necessarily support that assumption. In the main we're engaged by clients as specialist advisers on matters of government policy, regulation and commercial activity. It is the experience born out of years of working in ministerial

offices and the bureaucracy that equips our staff with the skill-set necessary to advise clients on the processes of government. We work closely with clients to help them understand government processes and engage with government in the most efficient and effective manner. As a means of informing and updating people about government policy we publish on our website two publications for all to see. They're called Occasional Papers and Nation Watch. The two publications give up to minute analysis of government policy. For the seven months to 31 July, 2010, we published 46 Occasional Papers covering everything from guides to state elections, analysis of budgets and government restructures. In 2009, we published 73 such papers. I do acknowledge there may be some public concern regarding the lobbying industry and I also acknowledge that like any professional lobbying comes with obligations. I think there are two relatively straight forward ways in which regulators can begin to address public concern. First, lobbyists have obligations to the boarder community. That's why I have proposed a system allowing charities and non-profit organisations free access to the professional services of companies on the New South Wales register of lobbyists. Such a move would formalise what is commonly, what is already common practice at Hawker Britton and a number of other government relations firms. Currently of 111 Hawker Britton clients on the New South Wales register, 11 are pro bono. This equates to about 10 per cent of Hawker Britton's current active client list in New South Wales. These clients include intellectual disability and mental health advocacy groups, arts organisations and community service organisations. Professionals notably the lawyers, have schemes in place to assist low income groups and non-profit organisations to gain the same professional services that others can afford. There is no reason why similar assistance could not be provided by lobbyists. I propose a clearing house approach which would involve applicants registering their details on the states lobbyist register before an alert was sent out to the registered lobbyists about the organisations needs. As I would anticipate a fair number of applications, there would need to be a system in place to examine applications for merit and other considerations, including prospects of success, the applicants circumstances and the amount of pro bono work already being performed by individuals and firms. Secondly, lobbyists have obligations to both good governments and good government. To help achieve this there should be a compulsory ethics course for all registered lobbyists and for those who they regularly deal with in government, ministers, political advisers and bureaucrats. This ethics course could be designed by one of our universities or regulatory authorities and would be compulsory for lobbyists trying to undertake before they become fully accredited. While existing lobbyists could do the course, while continuing to practice, annual refreshers should be undertaken. Ministers, ministerial staff and senior public servants would also be required to undertake refresher courses on the dos and don'ts of dealing with lobbyists. Compulsory professional and ethical refresher courses for everyone on the register, as well as those within government would give confidence to the public that the high standards apply. In the past 10 years the lobbying

industry has grown significantly. And while it is fair to acknowledge the industry has outgrown its regulatory environment, it is important that any reform does not go overboard. On this issue I make two broad statements. Firstly, the challenge for regulators I believe is to create something workable. Too many requirements may create too many impediments to a cooperative relationship between business and government. We don't want to create a situation where the non-government sector would stop talking to government because the regulatory environment was too onerous or because trade secrets and commercially sensitive information would have to be disclosed. Freedom of information laws are already in place to properly manage the processes of public access to government information. Regulators need to take a common sense approach to properly regulate government relations in a way that doesn't inhibit business from working with government. Any new regulation must be sensible, reasonable and applied broadly. Hawker Britton has always been in the forefront of good practices and supported good regulation. Since 2001 we have written to ICAC to confirm new staff, don't lobby in areas which they've worked in government for a period of one year. They have a code of ethics in place for a number of years. We've supported sensible regulation in every submission made to recent inquiries in New South Wales and Queensland. However, we have consistently maintained current regulation in New South Wales and other jurisdictions applies unevenly in its restrictions to third party lobbyists. In essence, current regulation only regulates certain business models, not the activity of lobbying. A great of lobbying therefore goes unregulated. This includes lobbyists working in any of the following manners, in-house, including being in-house for multiple firms, law and accounting companies doing lobbying. Member based organisations lobbying on behalf of members, industry organisations lobbying on behalf of industry participants. So, secondly, I want to emphasise that if there to be more regulation it should be applied equally to all types of lobbyists not just to one business model. This is essential if regulatory integrity is to be maintained.

THE COMMISSIONER: What do you mean by in-house multiple firms?  
---There are occasions, Commissioner, when someone can work part time for a number of companies so they can be employed by several companies and still be employees of those companies.

That's a novel proposition for a lawyer, for an ex-judge, put it that way?  
40 ---Well, I understand that happens from time to time.

They are in fulltime employment by a number of people?---Not fulltime, they can be part time employees by a number of companies.

So they are part time employees?---Yes.

That sounds like independent contractors?---Well, it would just be a question of the contract whether it was as an employee or for the provision of services.

This sounds like a lobbyist has got four clients?---Well, it could be, it could be.

10 Who's on a retainer from each?---Well, it may be but what I'm concerned about is the situation where they are actually employed under the contract of employment not for services.

And in doing that they avoid registration?---They would.

Is this a means of avoiding registration?---Well, I don't know if it's a means of avoiding it, I think it just could be the practical outcome of the system as it operates at the moment.

20 Why do so many lobbyists not want to be registered?---Well, I don't know the answer to that. I think people who are third party lobbyists who want to continue to be lobbyists accept that that's an appropriate thing to do. That's my view, I can't speak on behalf of everybody who's every lobbied.

30 But there is a resistance by some, at least some of the groups who you've mentioned who are not required to register against the notion that they should be required to register and what lies behind that do you think? ---Well, it may be that they just don't want to be under the same level of scrutiny as other people and I think if you are going to have a regime in place that actually tells the public and regulators and government and media who's lobbying and who's being lobbied when it should apply across the board.

MR GORMLY: Mr Hawker, you've been fairly vocal about the need to apply transparency to the lobbying industry to achieve some degree of professionalisation to formalise ethic structures and generally to equate lobbying with other professional groups in the community?---Indeed.

40 Right. Now, as I understand it in part you're aiming to or you're expressing those views because of your acknowledgement that there is some perception about not so much lobbyists as about lobbying of government by people who are in a professional capacity, that is, whether they're third party, in-house and any other category?---Yes.

Right. And the ways that you're suggesting that that be done is to in effect regularise the activities of lobbyists, submit to registration, allow public scrutiny and formalise an understanding of what lobbyists actually do day to day. Is that right?---That's right.

All right. I want to, I'm not trying to put you on the spot here but I would ask that you assist us with what you perceive to be the problems that the lobbying industry has which are creating adverse public perceptions. Can I tell you what we're starting with and that we've been working on and that you've spoken about are things like the closed doors, that is, it's an activity that seems to be from a public point of view covert or covered, not private, covered. Secondly, that it seems to involve people with prior relationships that you would call personal, that is, they're not related to the workplace so much, the current workplace, they come from elsewhere and they're being used now and that's particularly ex-politicians it would seem?---Yes.

Let's just start with those two as being the foundation. Am I right in assuming that you would agree that they are a cause of a public adverse perception of lobbying?---I would, I would.

Right. If we just take those as the starting point. Is there anything else that you would point to that are problems for lobbying?---I think they're the main perceptions that people would somehow get unequal access to government and I've tried to address that in some of the things that I've suggested in my statement to the ICAC. I think that is a reality of life generally that people sometimes get better service, better treatment, better representation wherever they are, in whatever field of endeavour they're in but there is a perception I think that in lobbying because it's not done publicly that there is something inappropriate about it sometimes. Now, I actually take issue with that because the problem that people have who are wanting to lobby government generally is that they have a commercial interest that they're advancing and I think they're, they would be very concerned if commercially confidential information became readily available to their competitors. That's, I think, the main concern that people would have about putting anything that you did by way of lobbying in the public domain, it would, I think, have an adverse affect, it would actually stop people from wanting to talk to government.

THE COMMISSIONER: I think Mr Gormly's really asking you, we will come to that because as I really, that's a really important issue that everybody would have to acknowledge that but really looking at the cause of the perception of the public that there's something wrong with lobbying and the problem with that is that that perception travels to government and the perception is that there is a problem with government?---I appreciate that and, Commissioner, I think the two areas are as identified by counsel assisting, one that it is carried on behind closed doors and two, I think there's an assumption on the part of people who adversely comment on it that some people are getting preferential treatment and access as a result.

But can we just identify that because I think it's important to call a spade a spade as far as the public is concerned in this area. I mean there is a perception that what is happening is that in some instances, I'm not saying it's true, I keep using the word perception deliberately because there is no

real evidence that this is actually happening but there is a perception amongst the public that is damaging to government generally that some things that are improper are happening and the impropriety really goes to a number of areas. One, I mean one that's direct and is that some kind of benefit passes from the lobbyist or the lobbyist's client to the individual decision maker. The other is that, that's a direct benefit. The other is that some kind of threats are made which usually relates to the likelihood of a decision maker retaining his office or there are indirect benefits such as, well, apart from benefits to the particular party that the decision maker has allegiance to but also to other entities or institutions to which the decision maker has some kind of allegiance?---Well, just trying to take some of those one by one. As to the question about a direct benefit going to somebody who's being lobbied there have been reported instances of that happening. More often than not actually not by a lobbyist but by a business person directly approaching someone in council. In Queensland there was, there was a minister gaoled, Gordon Nuttall so, yes, there are isolated instances of those sorts of practices happening. There's illegality in every profession but that's one that's been out there and commented on publicly and that's why we have codes of ethics and, and agree that there should be more  
10  
20 transparency in the process. Secondly I think you mentioned the Western Australian style lobbying that was carried on by Messrs Burke and Grill and clearly there was evidence of them using their party political affiliations to advance their position on behalf, or the position of their clients on their behalf and, and I think that's absolutely reprehensible, that sort of conduct and behaviour and should never be condoned in any shape or form and I think the way in which it was dealt with in Western Australia was appropriate. You shine a light on those, those sorts of activities. I think they're the two principal ones.

30 THE COMMISSIONER: Well, there are others. I mean, we do, this agency from time to time receives complaints that donations are given at some point in time and a year later some decision is made that benefits the donor but without there being any evidential link between the donation and the decision?---Yeah. Well, once again, that I think goes to the question about the way in which political donations are managed in, in this jurisdiction and elsewhere and I've got views about that too.

The real need, would you agree that the real need for regulation is to make it, to have some kind of system that makes it more difficult for these kind of,  
40 this kind of impropriety to occur?---Of course, of course.

And the search is for that?---Indeed.

That has to be, as you say, reasonable and practicable and workable?  
---Indeed.

And not too expensive?---For example on the question that you just raised about political donations, I personally believe that we should have a system



in this state and nationally where all political donations are banned and the state bears a responsibility for paying for political campaigns. Now, there will be a political downside for governments that pursue that proposition and I think it would probably only happen if there was general bipartisan support supported by independent authority on that proposition but I think that would be a good move which would take a lot of pressure off a lot of people to, to have to put on dinners and to attend functions which frankly are there just to assist the re-election campaign that they, of a political party and to my, in my experience have never been done to achieve an outcome on behalf of the person making the donation.

But I think, I think that that, this exchange has been really helpful because, I mean, it looks as if we agree on the ground rules?--Indeed.

Yes.

MR GORMLY: All right. Mr Hawker, let me just take you to some individual topics then. At present there seems to be a pretty free flow of movement between the community in any form it wants to take or aggregate, whether with lobbyists or individually, and ministers. We'll just deal with ministers for the moment. There's a movement backwards and forwards that's more or less uncontrolled and, and there is a general view that it should be uncontrolled or unimpeded anyway. Would you accept as the start of a mechanism for at least making more transparent the lobbying process that there be established in effect a line between the community and ministers across which one steps only by declaring oneself first, that is by putting your name on a register or on a book somewhere and saying I am seeing this public official so that what you do is to largely terminate the secret or private or undeclared meeting with ministers? Do you see any downside in doing that?--I do. I think if it was published at the time then I think there would be an almost overwhelming political temptation on the part of oppositions to scour those, those lists and, and start asking questions of the government, what was that person talking about, what was that unionist talking about, what was that businessman talking to you about and I think that would create a, a disincentive on the part of government to have those conversation with people. What I do accept though is that, and I had this practice in place when I was working a Bob Carr's chief of staff, I do accept that anybody who is being, who is being lobbied should have proper note-taking occurring during any conversation with a lobbyist or a member of the community who's in there talking to them and, as I said, quite often, you know, the concern should be with just a person from the community coming into your office and starting to talk to you about issues and that could be held by an appropriate body such as the ICAC and for reference at an appropriate time or by premiers and cabinet or some, some body which is separate from the immediate political environment.

Right. Can I just stop you there, because there are two big topics there. Can I just take you back to the first one. The Commissioner has already heard

some evidence about the publication of ministers diaries and the publication of lists of appointments. And there has been some evidence consistent with yours from Professor Adam Graycar, who has been a head of premier cabinet in South Australia, that it would interfere with government business to in effect let everybody know who a minister was seeing on a day to day basis. I'm going to ask you to expand on that if you wouldn't mind. It's not immediate obvious, if they're in a public and elected position as well as an executive position, they're making decisions that relate to the public interest. So they're not a private interest. There's always a use of public funds in everything they do and ultimately their actions are always subject to the appropriate qualifications capable of being seen through FOI applications or from a call for the papers from the upper house or in other ways. It's not immediately obvious why exposure for example, of a list of their appointments on a day to day basis would appropriately interfere with government business as distinct from wanting to keep things quiet until a result is achieved?---Well, that assumes that everything in government should be transparent and I don't actually accept that. I think the process of government is actually necessarily quite often quite confidential and private. That's why we have cabinet confidentiality around deliberations, you have cabinet committees. If cabinet was going, if the government went through a process of complete transparency all the time on every, everything that was happening, I think you'd probably see the decision making would grind to a halt because there'd be so much commentary, so many attacks coming in from, from the opposition, from media, from other interested groups, that I think it would be very hard for government to make a decision. But, and an extension of that, I think it applies to, you know, to ministerial diaries, I don't think everybody has a right every time the, the minister meets somebody who's got a particular issue, for them to know about it. I mean there are, there are - - -

30 THE COMMISSIONER: I'm sorry to cut you short, I don't mean to be rude, but I only do so because I mean, I have some sympathy with the view that you're expressing, but because obviously I mean if you see the diary contains a list of, just for example, defence force personnel, I mean that would go to state security?---Of course it would.

40 So you wouldn't want that to be published. But what about lobbyists? In other words people who come to see the minister because they seek favours. Why shouldn't there be a list of that?---Well, for example, there might be circumstances where that's quite appropriate, but there'd also be circumstances where it's inappropriate. You know, for example, someone, a company may have a real interest in, in an acquisition which requires some government involvement in a regulatory environment or even a sale, privatisation. That is essentially commercially confidential information and I don't think it would be appropriate - - -

I just, I'm sorry, I'm not following it?---Sorry.

Can you just start again? I'm sorry, Mr Hawker, somebody's got an interest in, in some project?---Yeah, indeed. And, and they may see some benefit in, a commercial benefit in pursuing that project.

10 And wants to go to see the minister just to get a government decision to benefit the project?---Indeed. Or they may want to get an indication from the government whether there would be a, an acceptance in principal of going down a certain route. Now, for example, you might want to open up - - -

Yes?---you know, for example, the, the bridge walk, you know, that, that took years of planning. And those people actually have, have an intellectual property around that concept and, and they, they exploited it very successfully in Sydney. But that took years. That would've taken years of talking to government, and they wouldn't of been wanting to share that information with somebody else because - - -

20 But what information?---Their idea, their idea.

But no one's asking them to do that. They're only asking them to list the fact that they have an appointment with the minister?---Well, that in itself though then could raise questions in the parliament, what was X company going to see you about? You know, you have to answer questions in, you know, in question time on those issues. And it may not be appropriate at that point for the government to be disclosing the nature of those, of that information. I mean there is information which people take to government which is commercially sensitive.

30 But the is - - -?---And the very fact that they are actually going to the government can in itself - - -

40 There's a means of dealing with that. I accept that. Isn't there, we've been told that, for example in Queensland, there is a means of dealing with that. In other words you, or even in New South Wales there's a, parliament has a means of actually dealing with what commercial in confidence are not to be disclosed and that which is not. There is an independent arbiter. And it's just a matter of setting up a, the mechanism?---Well, there may be mechanisms that you can put in place. I'm not sure though that, that there's such a, an (not transcribable) of sin there that has to be dealt with, that requires that level of regulation.

Well, it's the minimum isn't it? Isn't it the minimum to let the public know, subject to commercial in confidence who is seeing the minister. Not, not what they're talking, not, leave out what they're talking about, that's a separate issue. But the very first step is to see, is to say who the, who, who's seeing who when?---I don't think that in itself is necessarily

inappropriate. But there might be circumstances that you indicated where it is inappropriate - - -

I accept that?---so, so you would want to have some filter on that.

Yes. Yes?---At the very least.

Yes. All right.

10 MR GORMLY: Would it assist, Mr Hawker, if you adopted the same principal as occurs with a cooling off period that if you postponed the publication of appointments for a period, say, a commercial cooling off period might only be a month, but it might be three months. So that there's a time lag between the, the meeting and the publication of the meeting. That would obviously not be ideal, but it would allow the public to at least see who's seeing the minister and it would also protect for a period negotiations or purposes of meetings from undue questioning?---Well, what I would say to that is the Freedom of Information legislation in New South Wales probably deals with that already, from my understanding of it.

20

THE COMMISSIONER: (not transcribable) the satisfaction of that?---Well then - - -

The delays and - - -

MR GORMLY: You have to know what to ask for.

30 THE COMMISSIONER: - - - (not transcribable) procedures?---Well, I'm just thinking about the, the actual provisions at the moment, Commissioner as against how it may be applied. But under Freedom of Information law, one of the things that people who are making determinations about Freedom of Information, and it should be conducted with real independence from political decision making, and I think it was when I was in the Premier's office, there are, the, the decision maker is actually under an obligation to consider whether that information is now available or should be available to the public because the decision's already been made, it's public and we've moved on.

40 MR GORMLY: Sure?---So I'd have no problem personally with a system that operated in that way, which either replicated Freedom of Information or was a medication of the existing Freedom of Information laws.

THE COMMISSIONER: Would it create a lot of practical problems where, I mean it all depends, how many of these decisions, what kind of percentage, are you able to say what kind of percentage of opinions would be affected by, by confidentiality, legitimate confidentiality concerns?---Look, I couldn't really offer a percentage. But I would think that in every day dealings between a minister and, and somebody from the public,

whether it be business, union or business representatives, that you know, you would expect that there'll be one conversation I would've thought. That they would want to treat confidentially at that time. At that time.

Yes. I mean one would have to be very careful about what, about the definition of confidentiality?---Well, not for publication.

10 Yes. But what sort of issues should not be disclosed?---Well, as I said from my perspective I think anything that dealt with security obviously plays into that position, information which is commercially confidential, trade secrets.

But we're only talking about a meetings?---Yes, but they may be discussing matters of sensitivity.

They may be but that's no reason not to say that they're meeting?---Well, I beg to differ.

20 Why?---I think there will be times when the very fact that somebody from a certain company is meeting with the minister would actually draw attention to what they might be wanting to do further down the line and I don't think that's necessarily appropriate, I think there are times when a company should be able to have a level of frankness in their discussions at a ministerial or a bureaucratic level before it goes to a more public forum.

30 MR GORMLY: I suppose if there are two manufacturers of an item that the government is obviously looking to buy and representatives of those two companies appear on the list then contenders for the contract become known by inference. Is that what you're concerned about?---It could be, it could be or it could be that they've got something which is unique that they want to remain confidential.

40 If we assume that to the minister's, the publication of the minister's list if delayed one or two months after the meetings occur you apply the government information public access provisions so that if it is commercial in confidence, if it is security et cetera, something that falls into any of the appropriate categories that those names would not be published but other names would be published, there couldn't really be too much interference with government business then could there?---Probably not, that's my immediate reaction to that proposition. But just getting back to the other one, I mean sometimes you'll see foreign companies that want to do business in Australia and the very fact that they are interested in engaging in an acquisition of shares which may require the regulator in the case of the Commonwealth government to be involved can affect their, the stock exchange so there are circumstances where that happens. There are also circumstances, Commissioner, where companies may have problems which they want to discuss with government, bailouts, that sort of thing which I think the publication of the names of that company and the very fact that they're talking to a minister and there might've been some publicity

associated with the fact that they've got financial problems could give rise to speculation which would be unwanted and - - -

THE COMMISSIONER: The time period might deal with that?---It might, it might but I think, I worry a little bit about arbitrary time periods, I don't think it's the worst way of dealing with matters but sometimes information, you know, is so confidential we put 30 year rules on it. So sometimes a period of two or three months doesn't, doesn't do the trick.

- 10 It may have to have a flexible power?---Indeed. And it may be that there should be an administrative relief available to people that want to challenge that.

MR GORMLY: Or even a power of the minister to decide to postpone the period if he gives a reason?---Yes, as under Freedom of Information legislation I think a minister can still issue a comprehensive certificate denying access to certain documents notwithstanding the fact that they might otherwise be covered by Freedom of Information legislation.

- 20 But a proposal like that would go some substantial distance would you agree towards overcoming the public view that too much happens behind closed doors that's completely undisclosed?---It would go some way, it would, I'm not sure that there wouldn't be a lot of other side-effects which we haven't really considered here including might I say as somebody who worked in opposition for seven years and scoured government publications for any hint of perfidy on the part of government that the opposition will look at these lists constantly and try to gain political capital out of it.

- 30 THE COMMISSIONER: Is that unhealthy?---I'm not saying it's unhealthy but it, it will create I think in some minds an impediment to actually meeting with people if they think that further down the line this is going to be the subject of great discourse and inquiry.

Is that unhealthy?---Well, it can, the fact that it impedes a decision to meet can be unhealthy.

I accept that but on the other hand - - -?---I don't, no, I don't - - -

- 40 - - - (not transcribable) it might be healthy to impede at some meetings?---I have no, indeed, that, if that has that effect, sure but I'd contend that if somebody's intent on doing something improper then no amount of legal regulations is going to stop them, they will go and meet in a car somewhere so you can only, all these rules, laws, procedures, practices have to I guess operate on the assumption that people will act in a fair minded way.

MR GORMLY: To some extent the question of misconduct by illegal action, that is, corrupt conduct, bribes and all of that sort of thing isn't it really the only thing that's being sought here, it's also that corrupting

perception if I can put it that way, corroding perception that what occurs behind closed doors leads to the perception that there's something going on or that something could go to. So we're really dealing with that part of it rather than the legality?---I understand what you're, what the concern is and in principle, you know, I, I accept the intention there, it's more the concern that this will actually have unintended consequences that is, is exercising my mind. Now, in politics by the way if people do the wrong thing quite often they get caught because people, you know, have got a conscience will take issue with it, people that want to score, you know, settle a score will take issue with it and I think, you know, the very fact that organisations like ICAC and others actually achieve outcomes is testimony to the fact that there are other ways in which you can catch inappropriate behaviour.

All right. Can we move to another topic, Mr Hawker? It's the role of former parliamentarians and particularly former ministers but also if I may say chiefs - - -

THE COMMISSIONER: Mr Gormly, just the register, are you finished with the register?

MR GORMLY: No, Commissioner, I'm sorry, I'll go to that first. Mr Hawker, I know you don't oppose a register?---No.

And I understand that your view is that anybody who lobbies, in effect, professionally whether in-house as a peak body or as a professional lobbyist should be registered. Is that so?---Yes.

That may involve simply list on the computer with also client's name? ---Yes.

All right.

THE COMMISSIONER: And it also means the clients, so I mean I assume you must, you would strongly agree that if a lobbyist is a firm of solicitors, sorry, if a client is a firm of solicitors you are in turn acting for other clients?---Yes.

The true client has to be listed?---That's right, that's right. And this is where you get real problems with say accounting firms, banks, law firms who go, they've got a, you know, they might have hundreds of clients.

You have to list the person for whose ultimate benefit the minister's being seen?---Indeed.

And what about the lobbyists to be registered. Take your firm, are you saying that it's enough for your firm to be registered and not the individual lobbyists in the firm or should the individual lobbyists in the firm be registered?---Individual lobbyists should be registered in my view.

And that would apply to any entity?---Yes.

So, including a large corporation or trade union employees who are actually doing, who lobby - - -?---That's right.

- - - from time to time should be registered?---That's right.

MR GORMLY: Mr Hawker, can I just test that with you for a moment.  
10 There is an obvious public benefit and transparency benefit in listing entities. If you list your company or you list a company that has a large in-house contingent of people who do lobbying, we know at least the responsible umbrella that is conducting the lobbying activity. We also know for whom they're doing it because the client is listed or in the case of an in-house obviously it's the, the entity itself, it's doing it in its own, for its own benefit. With the exception of ex-executive people, that is particularly ex-ministers say, what, what do you say is the public benefit in having on the register the names of the individuals involved in the lobbying activity  
20 and I put this to you for reasons of practicality, it's one of the things that in effect clutters a register with constant name-changes of people not like yourself or Mr Richardson or other people who are very well-known as lobbyists but perhaps people many rungs down from you who are not and never will be known because they do research work?---Well, I think people will, members of the media will come to me and say, you're representing X client and they'll want to ask me questions about what I'm doing on behalf of that client. I think it's appropriate if part of the exercise in having a register is to allow the media, who presumably are the safeguards of the public interest, to actually be able to talk to people on, on particular issues and that means if it's Fred Nirk who's representing the interests of X  
30 company or X union, then they should be able to pick up the phone and ask them questions.

Can I put to you then a possibility for a register that there would be the, the responsible entity, that is Hawker Britton or some corporation, that there would be the client and that you would have attached to the client's name the person responsible for that client within Hawker Britton?---You could do that although I think a, a simple call to one of the principals at Hawker Britton would establish who the consultant within Hawker Britton is who is dealing with that matter.

40 At the present time, Mr Hawker, under the present New South Wales register, the Director General of the Department of Premier and Cabinet is signing a piece of paper having to approve every change of personnel that occurs within a lobbying entity that's registered. It appears prima facie to be a complete waste of his time and not to serve any special public purpose. Would you agree that it would be desirable at least to have to reduce the number of personnel changes that occurs in a public register?---Perhaps. I really hadn't thought about it. It, it's an inconvenience for us too to have to



comply with those regulatory requirements because, you know, they are replicated right around the country now so we actually have to deal with those problems on a, on a regular basis and make sure that we are recording every - - -

Client in every jurisdiction?---In every jurisdiction I think except South Australia. Maybe in South Australia, the Northern Territory I think.

10 THE COMMISSIONER: There's a basic problem here and that concerns those people who have a particular relationship with politicians, former politicians or friends or brothers-in-law, cousins, even spouses?---Mmm.

If you can say, if you only have to put in the name of the corporation then the, it's not known that the person with particular influence is going to see the minister?---That's true and I would agree, as I think I did, that the name of the individual who operates within that company as the in-house lobbyist should be listed.

20 MR GORMLY: The in-house corporations, Mr Hawker, are saying to us, and particularly the big ones who have an active involvement with government, well, we might have one or two people that we designate as our government relations people but the reality is that every second member of our board is regularly in contact with executive officers, ministers, directors general and for us to list everybody that's involved with government would be somewhat artificial. Can you see a way around that?---I think I, I agree with that proposition by the way, I think you should for practical reasons list the person whose designated role is to deal with government. If, however, somebody wants to ask a company director what dealings that company's had or he's personally had, she's had with government then that should be  
30 the legitimate role of presumably the (not transcribable) to do that.

That person. All right, so you'd nominate a person within the in-house?---I would.

All right. Without necessarily prohibiting anybody else in the company from having contact with say a minister?---Absolutely not and can I just say this, I think that this is something which any regulatory regime should guard against, that if it becomes overly prescriptive then, you know, a very legitimate interaction between business, non-government sectors, unions,  
40 whoever and government could be impeded and there is certainly anecdotal evidence to suggest that in Western Australia under the Carpenter government after the, all the scandal surrounding Burke and Grill that there was a pulling down of the shutters by that government to all and sundry and that created problems for the, I think the good management and efficient running of that government.

All right.

THE COMMISSIONER: So how does it work in Canada then? I mean, if that's the case why doesn't the same apply to Canada?---Could you elaborate on that?

Well, Canada have very, very detailed regulations relating to the register and the identity of people who see and in fact even reporting of the topic of the discussion et cetera?---Commissioner, I'm not - - -

10 You don't, you don't - - -?--- - - - familiar with the Canadian system so I - -  
-

I see?--- - - - I'd hesitate to offer an opinion.

MR GORMLY: Can we move to the then next, I'm sorry, is there anything else you'd like to say about a register? Do you accept that a register is (not transcribable)?---Look, I accept that the register is appropriate, as I've said on numerous occasions, I always have operated from the premise that lobbying, whether it be by third parties, in-house or by the local football club is an entirely legitimate and appropriate thing to do because that's the  
20 role of governments to respond.

THE COMMISSIONER: What about - - -?---So - - -

Sorry, I beg your pardon, did you finish that answer?---Only to say that, that it's appropriate, I think mechanisms like this which go some way at least towards recognising the legitimacy and the legitimate activities of people who want to lobby government, is to be welcomed.

30 Is there any objection to paying to get on the register?  
30

MR GORMLY: A registration fee.

THE COMMISSIONER: A registration fee?---I personally wouldn't have an objection to that if there is a cost associated with it and some of the things that I've recommended today I think would have costs associated with them which should be borne by the people who stand to benefit from the contact with government. For example, if we were going to go down a path of, you know, proper training of lobbyists and those who are lobbied, that should be I think, I believe, paid for by the industry.  
40

And Mr Hawker, in some jurisdictions the lobbyists have to show that they're people of good character before they are registered. Is there any objection to that?---None whatsoever.

MR GORMLY: Mr Hawker, later today we'll be hearing from a witness, Ms Annabelle Warren who's the current president of the body PRIA and I think is also a principal of Primary Communications but in her capacity as the chairman, sorry, as the president of PRIA she will be giving evidence

about PRIA as a, we understand, a peak body. Do you, do you regard a body like PRIA as being a body which could be the sort of single professional body for lobbyists or would it require something else if you were to have one?---I think PRIA also represents public relation firms as well.

10 It does. It does?---And there really is a distinction between public relations and government relations. I think government relations tends to get caught up under that general (not transcribable) of public relations. But to the extent that, that they felt and people who are practitioners in government relations felt that PRIA would be an appropriate body with the skill sets to represent the industry. I would have no particular problem about that. My suspicion is that if we do actually end up having a, a representative association that ultimately the government relations people will hive off and set up their own body, as is often the case in these industry organisations. They tend to be initially represented by a body which sometimes has conflicts internally, which have to be resolved and can only really be resolved because of that tension by the establishment of another organisation. But personally, I, I don't know a lot about PRIA. They have  
20 sent me material from time to time. But I've got no reason to believe that they wouldn't be an appropriate body to represent organisations in government relations that wanted to be properly represented.

All right. Would you accept that as with other professional groups in the community that where you start to have compulsory anything or standards of education or codes of conduct, you're almost inevitably going to end up with some form of professional peer body that is itself the subject of regulation?---Yes.

30 Right. All right.

THE COMMISSIONER: Everything you've said about the register, does that also apply to local councils?---Yes, with knobs on. I think, I think local government has the potential to be, as we've seen from previous inquiries and investigations, to be very vulnerable to inappropriate and corrupt behaviour. And I think if you're lobbying in that area you should also be under the same restrictions and constraints.

40 MR GORMLY: Mr Hawker, before we leave the register and move on to parliamentarians, I understand that you have seen some evidence that clients who wish to use lobbyists are, will sometimes actually seek a way of having a lobbying carried out without having to use a registered lobbyist. That is that they, they might prefer to use say a lawyer or an accountant or someone else who can legitimately go to a minister on their behalf and lobby because they don't want to be involved in a lobbying process or a public lobbying process?---I think there have been examples of that. I can't point to an individual company. And I don't think we lost many clients at all as a result of a requirement that the, that there be a register. But, I've got little doubt

that there would be some organisations that would not want to have their names placed on a register. Now why is another question. Sometimes, it could just be because, you know, they feel that there's something inappropriate about having to be registered in some way. You know, that's no one's business theirs. I don't know. I haven't pursued that. You can draw your conclusions from it, but in general, I don't think it's been an impediment to our business.

10 Right. Right. Now, let me take you to the subject of, of former parliamentarians working as lobbyists. They seem to have, let me introduce it in this way. They seem to have two features. One is that they will have accumulated specialist knowledge about not only politics but about how government works. Especially those who've had ministerial experience?  
---Yes.

20 And they will understand how policies are formulated and all of those other features of knowledge that can come with spending years in a ministry. They also have however, as a second feature, a bundle of relationships and connections, both within government, through party, perhaps ongoing party interests and with senior members of the public service and of course with staffers and other people involved in the government process. They're two separate things. One of course is a, the first, is a valuable tool, well to be used and ashamed to be wasted. The other, however, the relationship side of things seems to offer almost nothing to a level playing field to the selection of project by merit and access to ministers on merit. That is, it seems almost to interfere with good government, yet at all times accepting that relationships inevitably form when people work together and perhaps that's a good thing and a healthy thing. Would you agree, Mr Hawker, that, that it is the ex-parliamentarian as a lobbyist that seems to be the principal  
30 cause of the view that lobbying produces a form of favouritism or preference or a tilt in the playing field or unfair access?---I think that's probably a fair comment, to the extent that people do think about that issue. And I suspect that you would look to former politicians and examples of inappropriate behaviour well publicised to reinforce that perception.

Would you extend that to ex-staffers, and I bear in mind that you're a former Chief of Staff yourself, would you extend that also to former staff members?---To a lesser degree. To a lesser degree.

40 THE COMMISSIONER: But to, to a degree sufficient to have some sort of regulation that deals with former staffers?---Yes. And this is dealt with in the Commonwealth and I think in Queensland reasonably well. They do put arbitrary time, times on the period when they cannot lobby after they've left a particular area. I think the rules vary from jurisdiction to jurisdiction. And I think the more central the role of the advisor or the minister, the more restrictive they are. So they are trying to address that concern that you've alluded to. But time I think is the main way of, of dealing with that perception. I mean it'd be, you know, Bob Carr, for example, would have

no knowledge, independent knowledge of what was happening on a day to day basis in the upper echelons of government now because he's been out of politics for so long. You know, the political process actually is ever changing. That's something that, you know, we know, from our experience both in government and as lobbyists. It's moving all the time, so personalities change, prime ministers change, ministers change, premiers change, chiefs of staff change.

10 MR GORMLY: It's been suggested fairly consistently to this Commission in interviews with people and in evidence that the knowledge held by a minister or a premier after separation from parliament stales or ceases to be current much more quickly than the current preclusion period which extend between 12 months here, two years in Queensland, five years in Canada, that currency is shorter than that. Do you have a view about that?---I think that's probably right, but with all these things, I don't think it's necessarily wrong to say we will fix an arbitrary date, otherwise so much subjectivity has to be brought into the considerations. Then it becomes a very complex exercise.

20 It seems equally to be true that no matter what the preclusion period, whether it's 12 months or even five years, the relationships, that is the troubling part, the part that causes the perception of preference lasts much longer than those periods. Do you accept that that's true too?---That's true and in some part that's because of their ongoing involvement in political parties as evidenced by former Premier Burke in Western Australia.

30 Backbenchers do not seem to be absorbed into the ranks of professional lobbyists to the same degree as ex-ministerial officers. Is that a reflection of the level of knowledge they have of government or other factors?---Possibly other factors.

All right. So the backbencher is not really a cause for concern when we're considering the unfair playing field and unfair access issues?---I don't think it's anywhere near the level of concern that should be applied to people who have been closely involved in political decision making and administrative decision making. Backbench tend not to be privy to day to day decision making until it reaches the Caucus room.

40 So that would narrow down the number of ex-politicians entering the ranks of lobbyists to a relatively small number it seems?---That's right.

Yet they are the cause of a fairly substantial perception problem for lobbying and for preference and access. We're talking about a small number of people. Do you think that the value of losing that relatively small number of people from lobbying for private interest justifies their continuing involvement in post-parliamentary lobbying, that is, is there a case for prohibiting - - -?---They should be allowed to remain involved in

post-parliamentary lobbying after an appropriate exclusion period. I do think - - -

THE COMMISSIONER: What's the point of the exclusion period?---I think the concern would be that you would trade off the information that you were privy to like the minister.

10 So it's confidential information?---Indeed. I believe that that's the concern that's trying to be addressed by putting a 12 month, 18 month, five year non-lobbying role.

So you would, it wouldn't matter to you that the relationship has continued, you would only be concerned with confidential information that might be used?---I think so, yeah. If - - -

20 (not transcribable)?---As a general proposition that, I think that is right. I think if, Commissioner, though somebody used their position in the way in which we now know has been done say in Western Australia to threaten a pre-selection or to bolster the position of somebody in return for their support for a proposition then that obviously would be entirely inappropriate behaviour.

Yes. But the public perception problem is the relationship problem more than the confidential information problem isn't it?---Well, I always felt that it was the, the problem about having access to confidential information that was trying to be guarded against.

30 I accept that but I'm talking about perception. I mean I accept that in fact, I mean in fact there would have to be confidential information that for a while would be sensitive and that should not be used but there is the different problem and that is that say a former premier who becomes a lobbyist is regarded as having some kind of influence simply by virtue of his personality and knowledge over - - -?---That may be a perception but I don't think we should regulate on the basis of perception, that's my view.

Perception of corruption putting it crudely is a very damaging thing to good government?---Of course if, and if there's, but the perception should be backed by evidence and, and - - -

40 It isn't, we know it isn't?---Well, then I think it's inappropriate to say that just because you're a former premier there's a perception that you would engage somehow in corrupt conduct.

No, no, not corrupt, it's not necessarily corrupt it's the level playing fields notion that because you're Mr X who was premier for eight years you are going to get access to the minister much more easily than somebody else.

Well, as somebody who has heard former premiers and ministers complain that they can't see, you know, current ministers and premiers possibly because of their previous role I think I would beg to differ.

That might be (not transcribable)?---The system actually does have ways of creating a, a water level in these things.

I understand that?---I think people - - -

10 Are you saying the reality is different?---Indeed, in my - - -

But I don't think the public think that?---They may not, they may not but I'm talking from the perspective of somebody who's seen it from the inside and observed it at close rank, spoken to people who feel that they probably are getting less access as a result of their former positions rather than more.

MR GORMLY: Right. You would, would you say that the public perception then is wrong or would you say that it is one of those, the public perception that there is some kind of closed door unhealthy aspect to  
20 lobbying is just wrong or would you say that it's one of those sceptical things that public policymakers should attend to and try to change if they can because if you remove the perception then you remove also the loss of trust the public might have in public institutions?---I think we should, I think regulators should try to remove the perception as much as possible by practical action to make it clear to the public and to the media that people that go down, try to go down this path, you know, will be caught.

All right. But the practical result of that is that you think that the value of  
30 having ex-ministers and ex-premiers in the ranks of lobbyists is greater to the public interest than excluding them and avoiding the perception that they create of unfair access?---I do, I do.

Right?---I don't think they should be excluded forever from, from, from engaging in a legitimate business undertaking.

I know there's been a change in public attitude, Mr Hawker, but can I just put this to you for your comment that in the past two categories of public person were deliberately given financial arrangements at the outset to stop  
40 them from going back into the community and engaging in day to day activity, one category was the judge and while judges are able to return to other forms of life after judicial appointment and now are doing it more than they used to particularly in the private sector the other was members of parliament and particularly those who had served in a ministerial role. One of the benefits of giving them pension arrangements was to in effect enable them to continue on without being forced out to make a living. Now there seem to have been some benefits in those arrangements, there are also some real detriments, one of them was loss of talent but the other is to, for example, in the case of ministers to stop them going in and lobbying their

friends, has to be put that way, for private interest. Now, if you're going to stop people from going into the ranks of lobbyists then obviously they need to be protected in some way financially but if you're going to allow them in you end up with a detriment. How do you weigh, how would you personally weigh those two problems?---If I understand you, Mr Gormly, correctly you're saying that we no longer have a generous pension system for former ministers and members of parliament as a result of changes which have taken place in recent years.

- 10 There's almost none now under the new arrangement?---That's right. Although some of the, some of the former ministers and premiers who are active lobbyists also are enjoying the old superannuation scheme.

That's a different matter?---But I, for various reasons I've always been of the view that former politicians should be properly remunerated through a generous pension scheme of the sort that we used to have in place. I think the new scheme is an active inhibitor to the most talented people available entering politics because there is no guarantee that they will be able to re-enter life and make a decent living for themselves wherever they go after  
20 they've been out of their chosen career for a number of years whilst pursuing a career in politics so I've always been concerned about the knee-jerk way in which the more generous pension schemes have been removed for politicians.

Well, from the point of this inquiry about lobbying, it is also, at least in line with the evidence, a reason why people are saying that ex-politicians should be allowed to lobby because after all they have to make a living. That seems to be a fairly consistent theme?---Indeed.

- 30 It's unfair to the politician to preclude them from or exclude them from lobbying?---Well, if government were to make a decision to exclude politicians, former politicians from lobbying, something which I don't think they should do, then I believe that we should certainly have a, a pension scheme that recognises the fact that they are being precluded for all time from engaging in a legitimate business activity.

All right. Thank you. I'm going to take you to two quick topics because we need to come to an end but it would be helpful if we could have your views on it. The first is as to whether you consider that lobbying at local  
40 government level is something that can be dealt with in the same registration system as, say, state government level or whether you consider that the situation is so different that it calls for a different form of registration or a different form of regulation of lobbyists, that's the first question. Can I ask you to deal with that?---I think the system of registration of lobbyists at a local level should be rigorous and I think that there are, there have been some attempts by government to manage that and I think that, I suspect that they've been reasonably successful in doing that



but I believe that local government is an area of vulnerability for corruption prevention and it should be given a higher level of attention.

All right. Now, can I put, so you would actually see it as a local registration, you'd have registration carried out not on the same register but perhaps at each council, is that what you're suggesting?---Well, it should be done with application to every council, I'm not sure that I would leave it up to individual councils to do it.

10 All right. Can I take you then to another matter, that's the success and contingency fee issue. You'll appreciate it's been outlawed in Queensland and Canada. I understand that your views are that it doesn't make any real difference, though it's not widely charged anyway, is that right?---That's right.

You see no mischief in itself in charging success fees?---No, I don't. In fact I think contingency fees, success fees can actually help smaller companies which wouldn't otherwise be able to afford to, to pay for lobbying activities to be built in on a success basis and it happens in other professions.

20

All right, it does. Can we just separate out the two things we're talking about here is that no win no fee is one way of doing it so that the lobbyist in effect postpones a charge unless and until there is a successful outcome for whatever it is that the party wants but the other fee, the one that caused trouble in Queensland, was the, the loaded fee, that is you get paid but if the project is successful then there is some substantial bonus. So I really, I think I'm asking about the bonus arrangement. There appears to be a mischief in that in the sense that it looks as though if a lobbyist is successful they are in effect buying the result and they're getting paid for it, it's a perception issue perhaps. Do you accept that that in itself is a problem?---I accept that the perception's a problem. I don't accept that it is a reality, in my experience anyway, but it's not an issue that I feel particularly strongly about. I think any business that tries to build its whole success around contingency fees or success fees won't be very successful. You do need an ongoing income to pay for staff and overheads. It probably favours smaller operators who don't actually have too many overheads and contingencies, other contingencies, that they have to deal with but I do accept that in the case of Queensland it created an odium, a perception that, that I think the government rightly dealt with.

40

If one looks at the marketing field, the application of bonuses seems capable of producing extreme behaviour to get a successful result. I'm not talking about your field, I'm talking about marketing generally as in the application of bonuses and end of year bonuses?---Yeah. My, my experience by the way is that bonuses seem to be part and parcel of just about every business that I've had any dealings with and it's accepted as part of the remuneration largely for people.

All right. And one last matter, Mr Hawker, as I understand your case for professional lobbyists, it is that put aside any question of relationship, what it's about is the gathering and marshalling of a client's case and in effect matching it or shaping it to meet government need and government policy, that it, to some extent - - -?---That is - - -

- - - they become - - -?---That's what we would try to do.

10 And as, as I understand it you will put together facts and figures, written documents, arguments, you will deal with technical points, do whatever it is that is needed to persuade departmental officers of the strength of your client's case?---That's right.

Advocacy based on - - -?---Information.

- - - information and reasoning. At the present time, Mr Hawker, can I suggest to you that one of the perceptions that arises from lobbying is that things occur in the oral contact, that is in the meeting, in the use of the person to person, if you go and meet with Mr Carr when he was premier,  
20 that there is a whole dynamic and a component going on in that meeting that is independent of whatever reasoning is in your client's case. I'm suggesting that that's the perception. Do you consider that there may be a case for increasing the oral, I'm sorry, increasing the written component of lobbying and formalising or restricting the oral case?---As I said I think at the outset, the, I think the way in which you should manage the, the oral interaction is through note-takers and I think that should be part and parcel of the practice of any political or bureaucratic officer who receives representations from a lobbyist or from a member of the community. There should be a proper record taken of those, of those conversations and they  
30 can be stored in an appropriate independent place if that's what is, the view of government as to, to, in order to protect the efficacy of that interaction. I do think that there's a case for more written submissions, yes, and quite often we do, you know, provide quite extensive written propositions, proposals, submissions to government in support of a client. So both can work hand in hand, it's just a way of I guess ensuring that in those interactions between a minister and a lobbyist that the, that there is an accurate record taken of that meeting.

40 The reason, one of the reasons I put this to you, Mr Hawker, is because there has been a body of evidence that in effect lobbyists are everywhere. If you go down to Parliament House or in government offices that they're at every function, that you meet them on the stairwells and in the lifts and that a large amount of lobbying occurs in informal circumstances, I don't know to what extent that's true, Mr Hawker, but it does rather suggest that lobbying has an oral component to it that is not easily controlled. We have, however, heard chiefs of staff say to us as well that while a topic may be introduced socially it's never dealt with seriously socially, it will always be

followed up with a meeting. Would you say - - -?---That's right. Sorry, go on.

Do you think that there is any case, first of all, for tabbing or noting social contact if it is about a proposal that a lobbyist has current with the minister?---I think if a, a staffer or a minister felt that that conversation actually was in the nature of, of lobbying which they needed to be conscious of, then I think it would be prudent for them to do that.

- 10 Should they be required to?---I don't know that I would put a requirement on them. I think that would be overly onerous. I mean a lot of the people who are mixing, you know, at that level are friends, as the Commissioner pointed out.

THE COMMISSIONER: They don't want to talk about it?---Sorry?

They don't - - -?---Well, as a general proposition they don't, would be my experience.

- 20 I mean you see, judges and lawyers have known for probably hundreds of years that while they're friends they're not, they're not allowed to talk about the case?---Indeed.

- And I mean that works. I've never known that to be breached really. Why, why couldn't, why could one not say have a rule that as between lobbyist and the person being lobbied, that the only time that they can talk about the issues involving the lobbying is official, on official, in the ministers office, on site?---I don't think there would be any practical reasons why that couldn't be the rule. And I think you would find that there'd be plenty  
30 politicians who would welcome that, because I think it can be inconvenient and sometimes inappropriate to, to be talking to a politician about matters to do with business when they're at a social event. Now, having said that, quite often the people who will do the direct contact with the politician is the owner of the business or the CEO or someone like that. And I'm not quite sure how you regulate that activity other than just say, well, it's our practice and government not to deal with those sorts of issues in this environment.

- 40 Make an appointment and come and see me?---There are occasions though when politicians want to talk about a change in policy or, you know a proposal that they've got, you know, effectively trying to garner support or interest on the part of the business community. So I don't think it should happen in a way that stops that sort of interaction.

It has to relate to a particular specific project?---Yes.

Yes.

MR GORMLY: That's, I have nothing further, Commissioner.

THE COMMISSIONER: Mr Hawker, I just one other topic I want to ask. I want to come back to the register. We've heard evidence from a number of people who urged that, and I know that, I think you're against this, who have urged the proposition that either on the record, well let's say, sorry, that on the register there should be a notation of the topic of the conversation and even some have urged a summary of what was discussed. I'd really like your comments on that and the, you've really, I mean  
10 everything you've said against listing the actual fact of the meeting applies to this because this just extends that to a further degree. So I'm not asking you to repeat that because that, that's well understood. But is there anything else you'd like to say about the harm or the advantages of that on the one hand and also the practicalities on the other?---I don't support it. I think it would inhibit a proper interaction between people that want to speak to a minister or a senior bureaucrat, like for entirely properly motives. And for the reasons I outlined before, I don't think that that is a good thing. I think we shouldn't be putting up so many barriers to people from outside  
20 government talking to government, that government effectively cocoons itself against talking to people outside government. My experience is that government doesn't need too much encouragement not to talk to people outside of government. And that's one of the problems about the good relationship between the non-government sector and the government sector. So I would think that anything that allows people whose motives may be pure in going to the register and start asking questions about what was asked, but whose motives often are archly political would be an inhibitor to government actually having meetings with people from the non-government sector.

30 But you have no objection to a record being kept and retained and being capable of being produced under, under some kind of particular circumstances?---Under compulsion.

Under compulsion?---By a resolution of the parliament, which happens quite regularly these days.

Or by some independent body?---Or, or by the Administrative Decisions Tribunal making a determination under Freedom of Information that that information should be revealed.  
40

Yes. Thank you. Mr Gormly, is there anything else?

MR GORMLY: No, no, Commissioner. I suppose I should just, just adding to that, I suppose there is too that risk that if government does feel exposed or vulnerable because too much is being published and it's causing it trouble, that lobbying starts to become an underground activity?---That's correct. And I think that is not to be encouraged.

Yes, thank you, Commissioner. I have nothing further.

THE COMMISSIONER: Mr Hawker, we are grateful for the time you've spent in preparing for your evidence and in giving us the evidence. Thank you?---Thank you.

**THE WITNESS EXCUSED**

**[11.37am]**

10

MR GORMLY: Commissioner, I, Mr John Richardson is present in court. I'd ask that he come forward.

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

MR RICHARDSON: I'll affirm.

MR GORMLY: Mr Richardson, can you tell us your full name?---John Leonard Richardson.

Right. And I think that you have been in lobbying for a very long time. Is that right?---That's correct. About 12 years.

10 Right. You have originally had a law degree from Sydney University in 1986 and I think from 1985 to 1990 you were an advisor to the Deputy Prime Minister and the Attorney General, Mr Lionel Bowen, the Honourable Lionel Bowen?---That's correct. Yes.

And including three years as his senior private secretary?---Yep.

And from '91 to '95 I think you were a senior advisor to Senator Nick Balkis in his various ministries?---That's correct.

20 You've, from '95 to September, '98 I think you were the chief of staff to the Honourable Carl Scully in his various ministries including roads, transport, ports development and public works and an (not transcribable) energy portfolios at various times?---That's correct.

Now, in September 1998, you were with P&O as a Group General Manager, Corporate Affairs, which I think was a government relations role. Is that correct?---In part, yes, that's correct.

30 Right. And you went into private consulting with one firm, but ultimately joined up with Mr Steven Cootes and you have since then become a government relations lobbying firm?---That's correct.

Under the name Richardson & Cootes?---Correct.

And that's the role you're in now?---That's correct.

I think you also serve on, as a member of the treatment, rehabilitation of torture and trauma victims and also of Bicycle New South Wales. Is that right?---(not transcribable). Yes, that's correct.

40

Are either of those government bodies?---No, they're not.

They're not. All right. If they were I take it your business is a registered business for lobbying purposes?---That's correct, yes.

Right. Are you aware of the ban on - - -?---Yes, yes, I am, yes.

I want to ask you about that as to whether you think that that's a good ban or not a good ban but we'll come to that as we may?---Yeah, good.

Now, so that's the only reason I'm asking, I wasn't suggesting that you shouldn't be on those bodies. Mr Richardson, I understand that you have some preliminary comments that you would like to make?---Yes, I do.

Thank you?---As a lobbyist of some 12 years standing I welcome the opportunity to participate in the Commission's inquiry. In saying 12 years I include the three years I spent in-house at P&O Australia as Group General Manager, Corporate Affairs. Part of that role was certainly lobbying on behalf of my company. I do not however consider that the current lobbyist code should be broadened unnecessarily to include in-house lobbyists for the simple reason that the code is in my view designed at present to ensure that government officials are aware of the identity of a lobbyist's clients when they are contacted by a lobbyist along with the purpose of that contact. In the case of in-house lobbyists there will be no need for this to occur. Mr Richardson from P&O presumably represents P&O. Also I believe that it would be unnecessary for the same reason for lobbyists from representative bodies such as the Transport and Tourism Forum for the Housing Industry Association, for example, to be registered. Lobbyists go under a variety of business titles, corporate affairs, government relations, public affairs and even PR. I have long used the title lobbyist when asked what I do, I even put it on my immigration forms as it sometimes provokes some interesting questions. A Canadian immigration officer asked me rather snidely for whom I lobbied, not wishing to disappoint her I answered, Anyone with a barrow to push. She still let me into the country although I'm not sure she understood the vernacular. My answer wasn't correct, I don't lobby for anyone, unlike barristers and cab drivers there is no next on the rank rule for lobbyists. Most lobbyists in my experience are careful about who they represent, they are also careful about what they offer and actually do for clients. They act ethically, professionally and legally. If a prospective client proposes a course of engagement with government that does not accord with these approaches I will not take them on as a client. Lobbying has grown over the last quarter of a century, this is a period in which I have been involved in government and in government relations originally as a ministerial advisor and subsequently as an advisor to business, businesses who do business with or affected by government. The experience and knowledge of the system of government, policy and subject matters I have worked on over that time are my fundamental selling points. I apply these skills to my client's engagement with government. I advise clients on how to navigate their way through government just as a lawyer might advise on a legal matter or a banker might structure a financial arrangement with or for government. Most of what I do is unremarkable but it is a specialist service that cannot be provided by those without a detailed knowledge of how governments and politics work. The growth of the specialist lobbyists coincides with a period in which government and political processes have become more complicated. This is coincided with a

rise of the 24 hour news cycle and an all-pervasive media. Many of the lobbyists working today are formerly political advisors. My definition to successfully perform such a role requires a knowledge of and commitment to politics and the political process. This is true of both myself and my partner who worked previously in the Greiner government. In New South Wales the Independent Commission Against Corruption has been in existence for more than 20 years. Almost all of our collective experience, that is, my partner and I, my collective experience in government and in government relations has occurred during this time both as advisors, chiefs of staff and/or later as lobbyists. Those working with or within the New South Wales government during this time have done so in an environment in which probity and ethical conduct are the norm. This forms part of the experience we now offer our clients. Perhaps this in part explains the way some lobbyists in other jurisdictions who have not benefited from working in such an environment have not upheld the same high standards of probity, ethics and decency. I support the current regulatory system in operation in New South Wales, I believe it strikes a balance between providing information to those being lobbied and the broader community about who you are lobbying on behalf of. The requirements in the lobbying code to identify this and what you are lobbying about ensures the kind of ethical dealing that officials should be able to expect from any professional advisor. In the official's case forearmed is forewarned. The New South Wales Lobbyist Code of Conduct strikes a sensible balance in not over-prescribing the recording of needless or useless information. It does not require commercially sensitive or commercially confidential information such as the remuneration received which frankly I fail to see the justification for publication. If there is an alternative policy, public policy reason for collection of this information on equity grounds it should apply to all lobbyists as broadly defined and not just so-called third party lobbyists. I believe the public disclosure of all official meetings would bring decision making in government to a grinding halt. Decision making in government today is already very complicated, ministers and officials regularly deal with sensitive commercial matters as well as proposals which while superficially publicly unpopular may in the long term benefit the public interest. The time scale of this sensitivity can be sometimes measured in years. Decision makers need to be able to weight up the competing interests of particular policy options above the hurly-burly of public debate which would only be exacerbated by disclosure of meetings in some circumstances. Decisions are usually made following extensive consultation and consideration of all sides of the argument and in my experience are never made on the basis of a single meeting whether formal or informal. The process involves much iteration and goes through a chain of officials and advisors before reaching conclusion with a ministerial or cabinet decision. The volume of meetings, submissions, letters, phone calls and emails can be overwhelming. Disclosure of a single meeting in this context will be virtually meaningless. Recording of all communications is the best way to ensure a complete decision making chain exists however concern that such disclosure may provide commercial competitors and/or, and other opponents of a particular



proposal with ammunition to campaign against it could lead to attempts to avoid formal contact or to a decision to simply avoid New South Wales and go to other jurisdictions where such disclosure requirements don't exist. I'd like to say something about fundraising and campaigning which was raised in the interview process and which has been referred to by Mr Gormly in his opening address. It's a fact of modern democracy in the electronic age that it's costly, it's a costly exercise to run campaigns. I spent almost two years as an advisor in Canberra working on strengthening disclosure laws and on a short-lived ban on broadcast political advertising. The High Court struck the advertising ban down in 1992 and every election since has got more and more expensive. Fundraising is a part of the political campaigning process and until something is done to radically increase public funding or to voluntarily limit campaign expenditure or both it's here to stay. Finally, I believe that the, as the lobbying industry grows as more people seek assistance in navigating their way through government and more people with experience in that field join the ranks of lobbyists there is a certain, certainly scope for the development of an industry representative body as has occurred in other professions. Such a body could undertake professional development and training and other representative functions. I'm familiar with the Queensland Government Relations Professional Association Incorporated, for example, and believe that such a body would be of benefit in New South Wales.

MR GORMLY: Thank you, Mr Richardson. Mr Richardson, can I just start with one point that you are alone, I must say, among the ranks of those professional lobbyists that we have spoken to who does not call for the registration of the other sectors of professional lobbying to be registered. Almost everybody in your position has said that in-house and peak body and others who are out there lobbying should be on the register and that it is unfair to single out the professional third party lobbyist to require them to be the only registered group. There seems to be a good argument in what they are saying in the sense that at least what it does is to expose for public view all of those people who professionally find themselves at the doors of government asking them for things. Now, can I ask you just to enlarge on why you would exclude from registration peak bodies, charities, churches and in-house lobbyists?---Sure.

THE COMMISSIONER: And corporations.

MR GORMLY: And corporations?---Yes. I think I mentioned in the opening statement that if you're talking about the purpose of the current code, the current as, on my reading is about ensuring the transparency, in particular for officials who come into contact - - -

THE COMMISSIONER: Well, I wanted to ask you about that statement? ---Yes, yeah.

I mean surely if a person, if a lobbyist comes to see a decision maker, the decision maker will know on whose behalf the person is acting?---The code actually requires any contact, initial contact to include that particular questions, who are you representing.

But even without a code wouldn't the decision maker want to know on whose behalf the person is there?---Yes, indeed, and I think that the code actually simply states what should be the case in any, in any case.

- 10 Yes?---And both from the official's point of view and from a lobbyist point of view. But I do understand that in part the code specifies that requirement to avoid a situation where an official might agree to a meeting and then find that there is actually another purpose for that meeting so in the initial contact with the official, whoever it may be, the official should be entitled to know exactly what it is you want to actually (not transcribable).

- 20 But the register's not going to help that?---The register at least will, no the register doesn't, the code does, your Honour. It actually, the register, first of all, the register actually requires that you have all of the current clients who you may wish to lobby in New South Wales.

Yes?---And indeed it works and it worked recently for me in an instance where I did have to make a number of appointments with ministerial staff or with officers and the first question asked by the first ministerial officer I spoke to was, or ministerial adviser, was are you on the register? Now, as it turned out we had, we were in that period between lodging and appearing so technically, yes, we were on the register but when he looked at the website and when I looked at the website we weren't.

- 30 Yes?---We concluded the conversation at that point so it does actually work. The, the second side, the second point I was making though is that I don't believe that, if, if one of the purposes is and the main purpose as I understand that the code is to ensure that you conduct meetings in a open and transparent way for the purposes of ensuring that if the official were to agree to the meeting they come forearmed or forewarned of what the nature of that, purpose of the meeting is. Then if someone says they're coming from P&O, as in my example, it's pretty obvious that you're going to be discussing issues related to P&O.

- 40 Yes, but let's just distinguish between the code and the register?---Yes, sir.

You said that the purpose of the register was to let the decision maker know who the lobbyist is acting for and I want to suggest to you that the register is, is more than, it's an attempt actually to make the whole process more open, ineffective as it may be in, in the hope that it will achieve this?---And in, on that argument there would be a reasonable proposition to include other broader lobbyists.

Everyone?---I wonder about everyone because there are, would, for instance, someone from Alzheimer's Australia be required to be registered?

Well, it all depends - - -?---I would query that, your Honour, that's all.

Well, it all depends, I suppose, on whether the register is going to go further than it presently stands. I mean, if the register is going to require some record of meetings subject to confidentiality then there would be no reason to exclude anyone would there?---The, one of the reasons I would suggest  
10 though is that you will be able to identify a particular company by the fact the company is represented. Usually if you were keeping a record in a ministerial office it wouldn't, it'd be Mr Smith from that particular company now. My only point is simply that for the purpose of disclosure it's pretty obvious that it's going to be about a matter related to that company or I'd go further and say that if you were to require registration and that registration increased administrative burden on those being registered, on the lobbyist, I wonder whether that ought to apply to all charities.

It all depends on what the purpose of the register is - - -?---Absolutely.

20

- - - isn't it?---That's correct.

And if the register is to be expanded in the way that I suggested then there would be every reason to include all persons lobbying it, wouldn't it? I mean, that is to make, to allow the public to know, subject to confidentiality issues, who was seeing the minister?---Yes, and, and I don't necessarily have an argument with that other than to say that I think that if the administrative burden was going to be placed upon a charity which ran on rather short resources I'm not sure that that's necessary.

30

What administrative burden?---Administration burden of, of registration of lobbying, of your lobbying activities.

Is that, would that be big?---It's, it's something that we accept is not onerous for ourselves but we're professional lobbyists.

Yes.

40 MR GORMLY: All right. Now, Mr Richardson, you said in your opening, I have about eight topics to raise with you, Mr Richardson. You said in your topic, in your opening that over the last 10 years lobbying had grown as an industry. From your perception over longer than the 13 years you've been involved in it and including in-house and third party, to what causes do you attribute the growth of the professional lobbyist?---I think the government itself has become more complicated. Decision making is, is a very complicated process and there are far more outside influences and there's greater scrutiny of decision making than there every was and particularly I mentioned the 24 hour media cycle which is a year-round

thing, it doesn't, it never rests. So there's a lot more scrutiny on decision making. As a consequence, as the government has become more complicated decision making has become more complicated and processes, indeed, processes related to probity have become more complicated. There, there's a greater need for assistance to navigate through those processes. I see that as the, the principal reason why there's been a growth in lobbying, specialist advice is now required by businesses to engage further and to deal with government either directly as a customer or a supplier or just in simple terms in respect of the regulation of their business practices.

10

So what, if you had to pick the characteristics what is a company that goes to a minister without a lobbyist missing?---They can quite often be missing without any specialist skill an understanding in particular of the processes that the decision they wish to have implemented will be required to go through.

20

So what might they be doing or not doing which would alter if they had a lobbyist? What are examples?---Well, if I could put it this way, the way, the clients that come to us generally speaking understand they have a deficiency in not really understanding the processes of government, not necessarily understanding the policy in a particular area other than specifically as it might relate to their issue but in, in the broader context as well. They won't necessarily understand the politics of the issue that, that they're concerned with other than directly again in terms of their direct involvement with the regulator or - - -

So you're saying their lobbying would be ineffective?---Largely - - -

30

Less effective?---Largely it's, it's, it's something along the line, one of the, one of the anecdotal ways we describe what we do is we're an interpretation and, we're assisting interpreting and navigating if you like. The, my strong belief from even back in the days when I was in government as an advisor is that government and, and non-government entities don't necessarily understand each other very well. They have a different language, they have different methods and they have different objectives. And what we attempt to do is provide an interpretation service for both sides because we understand government and we also have a better and growing understanding of business as well. So, yes, I do believe that you would be advised if you have a complicated government matter or matter with government to seek professional advice and, and expert advice. And that's why I, I would suggest that you need to use a lobbyist.

40

Right. Now look, can I take you to another matter. There is at present in New South Wales a ban on lobbyists holding government positions boards or committees?---Yes.

It doesn't seem to matter whether they're paid or unpaid, it's just a complete prohibition, in effect a prohibition. Do you see merit in that ban or would

you think that ordinary rules of conflict of interest could apply to resolve problems or do you think that there is a risk of conflicts arising because of who you might next be acting for?---I don't support the ban on lobbyists holding any board position. I think it's a matter of common sense when boards are appointed that if a conflict of interest is going to be so significant that the minister or the, and it's usually the minister who makes a recommendation for an appointment, would take that into account and not make an appointment which was going to ask a person who would have a regular or a significant conflict of interest to take the position. Likewise, I  
10 don't think that it would be wise for such a person to do so. In the instances where a minor conflict or a irregular conflict might arise, the provisions of conflict of interest rules that apply to directors of any board more than adequately deal with those. I think that the problem in particular in excluding lobbyists per se from board positions is that the, you're losing a talent pool that not only has knowledge of but presumably because they're involved in, in public affairs and public life and working with public service, an interest in that, in public life. And that's regrettable in my view, because I have no problem at all with the notion that people that have obvious conflicts of interest should, should not be appointed to a board. For  
20 example, you would not consider it appropriate to even, to appoint say a, a lobbyist who's regularly advising property developers in, to a board of something like the, to SHFA, to the Foreshores Authority, which has a regular role of looking at property development and those sort of issues. But, but I don't see that a blanket ban should apply. I think it's not sensible for the health of, of - - -

All right?---boards. And I don't, can I give a personal example? You mentioned I'm on the board of the, of STARTTS, which is the Service Treatment And Rehabilitation of Survivors of Torture and Trauma. That  
30 used to be an entity, in fact I was appointed as a government representative on that board about five years ago. And throughout that process, throughout that time there was much consideration as to the ongoing nature of that organisation and how it ought to be regulated and how it ought to be, the corporate governance that will apply and we sought and received permission to remove ourselves as a, an organisation which was actually part of the area health service in a particular, in south west Sydney, because we thought that that was the best way to go forward and we're now an affiliated health organisation, but we're a company, a limited company now. I would not be able to continue as a member of that board had that change not occurred  
40 prior to the changes in the rules or the introduction of that particular rule. And I can't - - -

I take it no conflict has ever arisen?---Never. And is unlikely to, given the nature of that particular service.

All right?---And as you say, many of them are voluntary boards.

Sure. I take it from your views that you would support, from your views about the register and your understanding of the current purpose of the register that its benefit is to disclose for whom the lobbyist is acting?---Yes.

10 On that basis, you would support, I take it, a view that every representative profession that lobbies should be included on the register, that is lawyers, accountants, perhaps planners should also be included because they too can have undisclosed clients?---Where they are lobbying, I believe that's the case. One of the glaring omissions in the current code in my view is the way in which, and this goes also to the, to the departmental premiers department - - -

20 Department advice, oh, sorry?---No. The, the departmental advice to officials which you can do the instructional internet course on in a matter of 20 minutes, I believe that the reference there, in those particular, in that particular guideline to incidental lobbying if you like, which effectively is a lawyer engaged by a company to represent that company on a legal matter which involves the government is not required to be registered. However, if they are to, if they do involve themselves in lobbying which is incidental to that function, then they still no longer need to be registered. I find in my own professional life a fair bit of incidental lobbying goes on and I query that. I think that - - -

But (not transcribable) incidental as a loophole?---Absolutely. I think that there are a number of professional service providers who, who are doing pretty much the same job I'm doing.

All right. But aren't required to be registered?---No.

30 Now Mr Richardson, I want to take you to a completely different area and back to your period as an in-house lobbyist for P&O. I'm not specifically asking you about P&O, but that experience. Apart from the fact that you were dealing there with one client, would it be correct for us to assume that the nature of your lobbying work as an in-house lobbyist didn't essentially differ from your work now as a publicly available lobbyist?---Yes.

You're doing much the same thing?---That's correct.

40 All right. Do you think from your knowledge of the industry that that's probably generally true of in-house lobbyists?---Yes. In, in the extent that, that they are just lobbying. A lot of people in corporate affairs do a lot of other things as well.

Sure. In your work as a lobbyist now, as a publicly available private lobbyist, third party, can you give to us some indication of the amount of contact that you might have with departmental and, and ministers in the course of your work on behalf of a client? Can I just - - -

THE COMMISSIONER: Department heads.

MR GORMLY: Departmental heads, yes. What I'm after here, Mr Richardson, is to deal with the impression that one can form from reading material about lobbying that lobbyists are regularly in touch with ministers or regularly in touch with department heads without actually knowing what regularly means from client to client and I'm not asking about your personal affairs but if you could give us some indication of the amount of contact that a lobbyist has with these decision makers, that would  
10 be of assistance?--In my own experience, one of the services that we provide is to map out for a client the full process. All of the levels of government that are going to interact upon them and that's something that the actual client might not understand. You will quite often have a client who is new to, a new client who will say we have to see the minister. That's invariably not the case, not always but quite often the decision making process does not need to commence with a minister and indeed it ought to either conclude with the minister or not involve the minister at all. In answer to your question in terms of quantity, I would say that the, in exercising that mapping exercise or carrying it out for a client, it's, I  
20 wouldn't say rare that you meet with a minister but it's rarer than meeting with other officials. It's rarer to meet with a departmental head than it would be with officers, be they staff members of the minister or officials further down the, the pecking order if you like.

THE COMMISSIONER: In say an ordinary week, leaving out ministers, can you give some indication as to how many meetings you would have with departmental staff, on various matters? I'm not talking about one matter?--Yeah, sure.

30 Just generally in the working week?--It will vary from week to week and, and it won't necessarily just be meetings, I mean, there's an awful lot of engagement that comes from telephone calls and emails assisting in the preparation of correspondence and communications for the actual client because in many respects what you're doing is actually advising the client whose having that meeting what they ought to be trying to get across at that meeting.

40 Yes?--So it, it would be difficult to say, in any particular week we would speak to a government official on a daily basis or it will very much vary from client to client, your Honour.

But you would, you wouldn't, I mean there would be a number of days where you would be doing work on behalf of a number of clients not just one?--Correct.

And you would spend, I think what we're really trying to get a feel for is how much time does a lobbyist generally spend in, well, firstly in meetings with departmental staff and then secondly in communications with

departmental staff, only from the point of view, as far as I am concerned, of trying to work out the practicalities of any kind of recording of what is going on?---Yeah, yeah. It will vary from client to client and there will be some clients that you will not actually be required to have a lot of meetings others, it just depends - - -

MR GORMLY: Can I just (not transcribable)?---Sorry.

10 In a year might you see a minister, let's just start with ministers, never?  
---No.

Right. You would see a minister?---You would see ministers, I, seriously, would have difficulty in quantifying it on a monthly or weekly basis but you will see a minister.

All right. So - - -?---You will see ministers, you will more often see ministerial staff and deal with the staff.

20 Let me stop you. I just infer from that answer that you probably might not see a minister every month?---I would suggest that - - -

Say 10 to 12 times a year?--- - - - in a year you will more likely have seen a minister, a minister as in of all those available - - -

Ah hmm, sure?--- - - - monthly.

Monthly, right?---Yeah.

30 So perhaps one meeting a month?---Perhaps.

Right. And that might vary, you might have three in one month and none in the next month?---Correct.

All right. Is that just you or does that account for, might the same be for every member of your staff?---Well, my, we're a small partnership.

Right. Well, you and your partner then?---Me and my partner, from a minister's point of view I think that'd be the same.

40 Right?---Part of the, part of the skill is not bothering ministers if you don't have to bother them.

Right, all right. If, if you were to go departmental heads, would you see them more frequently or about the same or less?---I think we would probably see departmental heads more frequently.

Right. Much more?---And can I say that would be across the different jurisdictions that we work in.



Of course?---And not just in New South Wales.

And I think you have a fairly broad spread judging from your client list?  
---Correct.

Right. So you've had a broad spread of ministries you'd be dealing with?  
---That's right.

10 Would you be seeing a departmental head then say more than 20 times a year?---Yes.

Would it be closer to 50 then?---Quite - - -

Just roughly?---Closer to 50 than 20 but, you know.

All right. And what about other departmental officers, might you be seeing, we're talking about meetings here?---That's correct, more regularly than, than that across the spectrum of our business.

20

So might that be daily or some, on average?---I wouldn't think daily but more closer to the 50 you mentioned.

All right. So - - -?---So the 50 times a year, it'd be more close to that I would think.

All right. So perhaps between once a week and two or three times a fortnight, something like that?---Yes.

30 All right. So grouped at times and sometimes you don't see them?---Yeah, we will, it's the nature of the geography. If we're going to Canberra you'll tend to see more in one, in one burst because you're travelling down there.

Sure. I see, so this seeing of ministers and seeing of departmental heads, you're talking about both state and federal?---Correct, yes.

Right. So - - -?---And it will depend entirely, Mr Gormly, upon the mix of clients you have at that particular time and the mix of their interests at that particular time.

40

Right. Your, your firm is about average size, is it, within the ranks of professional third party lobbyists?---I'd say we're probably on the smaller side. We're very specialist, we're a, we, we have no employed, we're a principal only firm. We do have some employed staff but we don't have employed lobbyists.

Right. But there would be a large rank of firms similar to yours - - -?---Yes.

- - - in specialisation?---There would be but predominantly I suppose there's a, there are bigger firms now as well.

All right, thank you. What about ministerial staff, that is chiefs of staff and other staffers? I left them out but they're obviously an important group. Are there times where you would see them for purposes that are effective for your client and that don't necessarily lead to a ministerial meeting?  
---Yes, regularly.

10 Right. How often would that be?---I'd say it would be more in the realm of somewhere between departmental and, and say a departmental head, so in the area of 30 to 50 times a year.

Right. So less often than seeing a departmental head but more often than - - -  
-?---Correct, but it could also obviously be more frequently when you are dealing with a specific issue that may be coming to a head.

Now I'm going to ask you a general question here, Mr Richardson and I appreciate that there's not going to be anything scientific about this but it  
20 helps with an impression. So far as your knowledge of the lobbying industry is concerned, is your contact with ministers, ministerial staff and department heads and departmental staff probably typical or atypical?---I would think I'm on an individual lobbyist basis, on the basis of like for like it would be pretty typical.

All right. Do you have difficulty getting contact with any of the people that you want to see?---At times you will, yes.

30 Are there some, is that idiosyncratic, that is, it depends on the minister or does it depend on the ministry?

THE COMMISSIONER: Or does it depend on the client?---It can depend on all of those.

MR GORMLY: All right. Now, I want to take you to the donations, the matter of donations. I understand your views insofar as you put them in your opening. Can I put this to you for your comment, that there is a problem of perception and conflict when a lobbyist, whether he wishes to or not, becomes involved in donations being given by a client and in making  
40 representations on behalf of a client?---I can see a problem with perception, yes.

Well, it would be, even if there were to be no ill act, wrongful act it's one of those situations where it's impossible to say whether it is or it isn't. Do you agree?---Is or isn't what, I'm sorry?

Is or isn't an inducement for assistance to a minister?---It might be impossible to say whether it is or it isn't but I, I think that that ignores two

things one of which is the actual disclosure of the donation in the first place and in my knowledge, to my knowledge all donations are required to be disclosed above certain limits and essentially a donation, and can I make a distinction between two types of fundraising? There's straight donations which are less likely to occur nowadays than they might've been in the past as companies change their rules as to whether they will donate or not. And then there's attendances at fundraising events to which there is always a donation amount involved. My personal view is that the limits on those ought to be reduced because at the moment they're too high and they're even, from memory they're even actually lower now, sorry, higher now than they were when we made the changes in 1992.

Without going into the disclosure of donations or quantity of donations issue I want to really bring this back to the lobbying issue?---My second point would be that, so I would say that first up if I'm going to actually, hypothetically if you were going to attempt to buy influence you wouldn't do so in a public way so the donation is disclosed in the first place.

Sure?---The second point I would make is something along similar lines to the point I was making about decision making in terms of the process of decision making in government. It is a very complicated process, it is supported by no end of levels of scrutiny and checks and balances (not transcribable).

I understand your point. You're saying that even if a donation is given and it is known by the minister the process of decision making is such that the donation is unlikely to influence the decision making process?---That's, that's certainly my (not transcribable).

But I'm putting to you a different situation really. If a person in the community or a corporation wishes to make a donation and given that we don't have a system of blind donations they can do so without having to involve their lobbyist. Do you agree?---Yes, they can, yes, certainly.

And indeed to involve their lobbyist when the lobbyist is also trying to make representations for them inevitably leads to an inference or a speculation or a perception that the two things are linked?---Yes, I'm not quite sure the point about involving the lobbyist though.

Yes. But if it does involve the lobbyist do you agree that that's, that's the kind of problem that could arise?---Yes.

Would you have any objection at a professional level to a prohibition on lobbyists becoming involved in client donations?---In client donations I wouldn't have any problem at all with that.

Right?---At a professional level or personal level.

Now, fundraising of course is a different thing. Lobbyists have all sorts of skills and contacts which make them useful fundraisers or some of them useful fundraisers. Do you agree?---Yes.

And parties will impose on lobbyists who are party members to assist with fundraising?---That certainly could be the case. In my own experience I would say I have never been imposed upon by the party.

10 Can I rephrase that? Can be the subject of a request?---Yes, but it would generally come from a candidate or from myself to the candidate.

In the form of an offer?---Exactly.

To help?---Yes.

20 All right. Would you accept that inevitably if a party for whom fundraising was conducted comes into government or is in government that the involvement of a lobbyist in that fundraising has the potential to create at least a perception of payback, the good payback or debt making by reason of a connection between the fundraising on the one hand and your client's interests on the other?---I would say that, yes, there is the possibility of a perception, I would return to my earlier point about, which I think applies equally to this scenario which is that the donations are fully disclosed, the participation of a lobbyist is fully disclosed because if the lobbyist has conducted the fundraiser and not contributed other than in kind well that's still going to be disclosed and I don't think, even though I can understand the perception I don't think the realities of government decision making would bear out the perception become reality.

30 One of the most persistent accusations that's made in relation to donations and lobbying is that they are linked. Do you agree?---Yes, in terms of allegations, correct, yes.

And it is a foundation for public scepticism?---(NO AUDIBLE REPLY)

Yes?---Mmm.

40 Can you see any good professional reason for requiring lobbyists to distance themselves from fundraising activities?---Not within the current disclosure regime. I think that that personally - - -

THE COMMISSIONER: Is the current disclosure regime in the code, the Lobbyist Code?---No, no, no, your Honour, I'm talking about the current political donations disclosure regime. I'm not saying that that should not be strengthened, my personal view is it should be and I wouldn't have any difficulty with it being a contemporaneous disclosure because that's what happens in the United States for instance but as it stands at the moment the one criticism I think that can be levelled against the disclosure regime in

both, well, in the states and at the commonwealth level is that it's a, a later reporting period 15 weeks later I think but only recorded every, annually or after every election.

And what disclosure has to be made by a fundraiser, by a lobbyist who's a fundraiser? I mean the lobbyist just helps (not transcribable)?---Any contribution towards the campaign would need to be - - -

10 Financial contribution or - - -?---Financial contribution, your Honour.

So the fundraiser can by the force of his efforts but without paying any money really contribute greatly to the fundraising?---Could do, yes.

And no disclosure need be made?---That would be correct in those circumstances, yes. It's not something that I do or I'm familiar with but, yes, I understand (not transcribable).

20 MR GORMLY: I'm not suggesting it is, Mr Richardson, I ask these questions, I'm relying on your expertise and knowledge as a lobbyist?  
---Yes, yes, certainly.

The fact is that a lobbyist could carry out fundraising and it doesn't really appear on any register that he's done so but - - -?---Yes.

Yes. I understand that?---All right.

I would wonder how in the absence of disclosure of that you were going to actually identify that in any case?---Well, the, the minister will know.

30 THE COMMISSIONER: The party will know.

MR GORMLY: Can we step back one, if it's in the case of a minister, yes, they would, the circumstances I was talking about were candidates?---Right, yes.

Whether it's for a candidate - - -?---Who may not even be elected.

40 If you're a good fundraiser, whether you're a lobbyist or not if you're a good fundraiser that will quickly cause you to develop a reputé for that within any party structure. Do you agree?---Yes, that will be the case, yes.

And it gets around. It's a good and valuable skill?---I imagine it is.

All right. Mr Richardson, can you just assist us as to the process that a lobbyist would undertake for a client when they come in with a problem. I know this is going to vary enormously from one client to the next and from problem to the next but what is a process that might be undertaken by a lobbyist on a day to day process to see a project through? What I'm after

here, Mr Richardson, is the nature of the work that's done to prepare the case, what the result is that's presented to try and solve the problem and what the time span is for that work. I won't be asking any financial details, I'm not interested in that?---Sure. Yep.

10 But it's really the work of the lobbyist?---Yep. Initially upon being retained and I should say as I mentioned in my opening address, prior to being retained, at least it's our practice to find out quite a bit about the client in the first place. Find out what the client's problem is but also what they're  
10 expectation is and how they would, in the absence of our assistance prosecute that themselves. That's our pre-vetting exercise if you like because some clients may have views about how, what's appropriate that isn't necessarily, aren't shared by ourselves. So our initial post engagement activity will be to understand all there is to understand about the clients  
20 problem, the situation they're in, how they got into that situation. It may not be a problem, it may be a project that they wish to, to, or a proposition they wish to put to government. We'll try to understand all the subject matter.

20 So that's done through meetings and conferences and - - -?---Correct. Yeah, correct. With, with the client and, and sometimes with professional advisors.

Right. And does that take time?---It does, yes.

Like what? Days or - - -?---it'll vary entirely upon the, the substance of the issue.

30 But it could take days or it could take months?---It could take days or weeks. Correct, yes.

40 All right?---Part of that process is also trying to get a thorough understanding of where they've been with government up to that point and what the client thinks is the governments attitude towards them, may not necessarily be the attitude that the government holds. Part of that process will also involve a pretty thorough understanding or gaining of thorough understanding of what it is that the actual policy area and the politics and the policy area of that particular issue from the governments point of view. It may not be something we're familiar with. It may well be something we're familiar with. That's a very important part of the role we play.

40 How will you go about that?---It will vary, depending upon whether or not we're involved in the area already. Part of what we offer is expertise in particular areas and a pretty good understanding of that. But how you would go about it directly would be to conduct meetings with, if it were - - -

With government officers?---With government officers. If it was something that was new to us we'd obviously have to conduct a bit more research into that. But it might involve meetings with government, government officers

involved or seeking advice of other experts we know in the area who may be involved with government in the specific (not transcribable)  
So you're going out fact finding?---Correct. That's correct. Yes. Then we would go about a process of mapping out, as I made the point earlier. A process and, and work out the best possible way to advance the clients case in the most thorough way possible. And where I suppose we would be able to bring experience that others might not be able to bring is in the identification of all of the steps that could occur or need to occur or the potential pitfalls that might come up. By way of example, you may require ultimately a change in the law that might be done by way of regulation as opposed to, as opposed to legislation. You want to ensure in those instances that not only is the government on side but anybody else in the upper house who might be able to disallow that regulation on side, so, that's the sort of thing we might bring to the table as opposed to the client himself saying lets go and talk to the minister and get this sorted out.

10

All right. And then having put that proposal together I take it you have to run it through, run the client through it?---Oh, certainly, I'm sorry. That was, I was, that will done usually quite closely with the client.

20

With the client?---That's correct. Yeah.

And do you get resistance at that stage?---Sometimes, sometimes not. Sometimes you need to use your skill to be able to persuade the client that that's the best possible way to go forward.

We've heard a lot of evidence that there are high levels of ignorance about government processes outside government, it doesn't matter what level of the community you're talking about?---Absolutely.

30

That people do not understand government processes. Is that your experience?---Absolutely and I think I tried to make the point earlier and I may not have made it very well but it's not just ignorance of government in the non-government sector, it's quite considerable ignorance of the non-government sector inside government.

All right. So both sides don't - - -?---Correct.

- - - understand one another and aren't talking the same language?

40

---Correct.

Right. So you're a bridge in effect?---A conduit perhaps, yes.

Right. What about training the client to do it themselves, does that occur as well?---It will, there are some clients and not necessarily clients, there are just some people in the community who will never get it. There are others who, and that's because they have a particular mindset and it might be, they may be outstanding business people but it doesn't necessarily mean they're

ever going to understand government. Others will get it and we have acted for both.

But those who do get it sometimes go on and do their own stuff without - - -?---Yes, certainly, yes, they can do or alternatively they'll find other, they'll expand the brief to look at other opportunities.

10 Have you found in the course of your work that the amount of activity you do will be dependent on budget or do clients tend to come in and get the job done as you advise?---It varies entirely from client to client, Mr Gormly.

All right, thank you. Do you do work at the local government level?---We actually act for, on occasion and we were on the lobbyist register having a client in Woollahra Municipal Council so rather than at the local government level we act the other way. If the question is related to do, we actually do work specifically with lobbying councils rarely would be the answer to that. We have done some in the past or I have done some in the past but it's some time ago.

20 Have you ever had to deal with the Department of Planning under its new procedure?---I haven't, not under the new procedures, no.

Right. You know about it?---Yes, I do.

Do you think lobbyists generally know about it?---I think they do, particularly everybody in the planning sector I think does.

30 So far as you know, is it something about which people complain?---It's, I think it's accepted by most in the planning sector. I don't know that many people in the planning sector, it's not an area we do much work in or have done much work and it's been ancillary to other roles that we've done in the past for other clients, for, for clients.

It sounds like it's not the subject of complaint?---No.

All right?---Not to my knowledge.

40 All right. Now, Mr Richardson, you were present for the evidence of Mr Hawker?---Yes.

This is just a short way of finding out whether there are areas of disagreement. Was there anything that he said that you can recall now, I don't hold you to this, apart from categories to be registered with which you significantly disagreed, about which you'd hold another view?---Not really, no.

All right. You'd substantially agree with his evidence - - -?---Yes.



- - - on most topics?

THE COMMISSIONER: Although I think you'd disagree with the register, he wants to - - -?---Yeah, well, that was the point - - -

MR GORMLY: I built that in?

THE COMMISSIONER: Yes, sorry?---No, that's fine.

10 MR GORMLY: All right. So apart from the register - - -?---And I, I would make the point about my, my point about the register is qualified to the extent that it, as, as the register is currently designed.

Right, all right, I understand that. Well, thank you very much, Mr Richardson.

THE COMMISSIONER: Yes. Thank you, Mr Richardson, again very helpful and we are grateful to you coming here, thank you?---Thank you, your Honour.

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**THE WITNESS EXCUSED**

**[12.39pm]**

THE COMMISSIONER: And we adjourn to 2.15.

MR GORMLY: Yes.

THE COMMISSIONER: Yes.

30

MR GORMLY: Commissioner, can I, I have, can I just have three minutes with evidence, could I just have one moment? Commissioner, if we could adjourn now that would be good.

THE COMMISSIONER: Yes, very well.

**LUNCHEON ADJOURNMENT**

**[12.39pm]**