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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 4 AUGUST 2010

AT 2.15PM

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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 Ms Annabelle Warren in court, in the hearing room to give evidence.

THE COMMISSIONER: Yes, Ms Warren. Ms Warren, would you like to give your evidence under oath or would you like to affirm the truth of the contents?

10 MS WARREN: I'll affirm it.

<ANNABELLE ROMANE WARREN, affirmed [2.15pm]

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Thank you, Commissioner. Ms Warren, can you tell us your full name?---My name is Annabelle Romane Warren.

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When we first interviewed you I think you were in the presidency were you of the organisation PRIA and you're not now. Is that right?---No. I'm the National Chairman of the Public Relations Institute of Australia Registered Consultancy Group. And that group, and I have been, and I was the President of the National Public Relations Institute from 2005 to 2007.

Right?---And I am currently on the New South Wales board of the Public Relations Institute.

30 Thank you. All right. Now you are also the founder and principal of a public relations organisation called Primary Communications. Is that so? ---That's right. It's just celebrated its 20th anniversary.

Ah hmm. Good. And you have in the past been the executive vice president of an international public affairs consultancy (not transcribable) Moulten South, I'm sorry, Asia Pacific from 2001 to 2003. That has generally been your field in the past. Is that right?---Yes. I started off in-house with IBM in Marketing and Media Relations and Public Affairs. And have worked with two of the multinational consultancies. And I have
40 worked as a full time academic at Charles Sturt University.

All right. Now I understand you've prepared a statement that you'd like to make at the outset. Is that right?---Yes.

Yes. Perhaps if we could hear that first?---O.K. Thank you. Thank you very much. Oh, I can't do this without my glasses. O.K. Thank you very much for inviting the Public Relations Institute of Australia to discuss these issues in an open forum and I want to say that I'm speaking on behalf of the

Public Relations Institute of Australia. The national board did review the issues paper and it was posted on our website and our submission was based on feedback and input from members and from other colleagues within the industry. We are the peak body representing public relations professionals. Public relations is a very broad cohort and we have very diverse interests. It is not just publicity or media relations by any stretch of the imagination. Public relations is about the sustained understanding and maintenance of that understanding with a whole range of different publics. So we do deal in government relations, we do employee communications, investor relations, media relations and a whole range of different publics. So we do have a range of different interests. About one third of our members are in-house within government or not for profit. One third in consultancy working for consultancies. And about a third are in the commercial sector. So we don't, not all of our members work in advocacy or government relations. And we don't wish to imply that we solely look after the affairs of, of lobbyists. However, a majority of our membership has got some contact with government representatives in some manner during their work and a proportion of the New South Wales registered consultancies, and there are about 90 or so, are on the register of lobbyists in this state and we have many others as well across Australia and within New South Wales that are on the federal register and other state or territory registers. We strongly believe that public advocacy is very important in a democratic system and we're concerned about the definition of lobbying. We do note that the OECD recommends that countries should define the terms lobbying and lobbyist when they actually develop rules and guidelines and lobbying. We urge the Commission not to define the concept in a circular motion or suggest that lobbying is defined as an activity conducted by lobbyists. We prefer to use the term public advocacy to describe the process by which anyone advocates for his or her position to be adopted as public policy. Focussing on the need of the process of information collection, research and decision making would define the need for transparent representation of various stakeholders and it could also ensure equity of access to all stakeholders. Advocacy is so central to a democracy that there should be as few restrictions placed on it as possible. Many of the examples given in the original paper were not actually lobbying, they could be either corruption or undue and improper influence. This activity was also one of the examples cited could be described as influence peddling which internationally in countries such as US, Canada, France, Spain, Portugal, Belgium, Brazil and Argentina is a defined crime. If the goal is to eliminate the behaviour like that cited in the original issues paper we would respectfully submit that further registration of lobbyists would not suffice. We're also aware that ICAC is reviewing the conduct of government procurement and many of the corruption examples given actually aren't in the area of pure lobbying but are more in the area of procurement. So we believe that it's a separate area and rightfully has its own review. The broad range of daily advocacy activities within New South Wales do not appear to have triggered the review and we also maintain that they are conducted without corruption. We urge the Commission to ensure that recommendations for change or

regulation do not unfairly diminish access to government and the process of decision making and such changes recognise the broad prospective in which lobbying occurs. Without a government representative making a decision to violate his or her employment agreement and/or code of conduct there is no risk of corruption thus programs within the public service and codes for parliamentary representatives are the crucial pillars to minimise malfeasance. Lobbyists perform a legal, legitimate and important role in our democracy and we're engaged in public advocacy on behalf of our clients, more properly referred to as government relations or public affairs practitioner we ensure a wide range of stakeholders have a quality say in policy making. The PRIA suggest that the key issues in any review of lobbying relate to transparency and openness of government decision making, stakeholder engagement and freedom of expression and the democratic right for every citizen to have a voice. The PRIA is strongly committed to both the transparency of representation and the transparency of process in relation to public advocacy. Tools such as the Lobbyist Register help ensure parties are aware of their representation identity however addressing the culture, processes and practices of government representatives and employees is a far more effective barrier to limiting potential for corrupt practices. We believe that our members who work as New South Wales government public government relations practitioners are transparent, accountable and fair. They abide by the PRIA Code of Ethics and act professionally in accordance with that code. If further disclosure and reporting is required PRIA believes that it should be imposed internally within government not through increased regulation of external parties. For example, we believe the onus of reporting interactions with stakeholders should be fully borne by government. PRIA would not want to see any review of lobbying leaked government resisting citizen access or freedom of speech, we are concerned about the implications of restricting indirect lobbying as it indicates that the expression of opinion using a wide range of forums is to be monitored or restricted. Grass roots communication is vital to the health of our democracy, mobilising grass roots support or expressing opinions from diverse publics at the coal face is a legitimising force. Driving grass roots groups and building citizens coalitions is not illegal and it is only inappropriate to misrepresent the amount of support or not to disclose the true nature of the organisation. Unfortunately, the initial document did appear to confuse grass roots communication with astroturfing. Astroturfing is a practice which the PRIA does not support and has previously made public statements again. We believe an artificial distinction is being made between third lobbyists and technical consultants. Both these groups have external people provide advice to the government and should be required to disclose their identity of the employer or client. Much government relations work is heavily based in providing technical advice and input to government and government departments at an early stage of the policy development process. Lawyers, tax accountants, management consultants, banking investment advisors and town planners often perform exactly the same activities as somebody called a lobbyist. Any external consultants engaged in the same activity should be subject to

the same reporting and regulatory requirements. A synthetic distinction will result in unregulated consultants carrying out advocacy activities without transparency or accountability and we believe this is the current situation in New South Wales. PRIA believes that disclosure would serve the public interest more effectively than any ban on lobbying as a profession post-politics, prohibiting former political staffers and politicians from working as lobbyists would represent an unreasonable restriction on career choice. We do advocate for a nationally consistent approach to this issue and we also encourage the Commission to look at the restraint of trade in light of the Trade Practices Act under which a period of between six to 18 months is often considered appropriate in clearly defined areas. PRIA would not support any move to place limits on one's professional activities on the basis of existing or past friendships. We strongly believe in freedom of association and would reject any moves to put a limit on this. Electioneering and political campaigning are a separate area of practice to public advocacy and the PRIA commences the Commission to ensure that it is targeting the correct practices, people and regulation in this particular review of lobbying. Clear, transparent and simple rules of engagement for external parties engaging with elected representatives, their staff and public servants are absolutely essential. PRIA recommends that all codes of conduct that govern public servants and elected representatives be made available for public scrutiny. This is essential for a transparent system of government decision making. This would require the public release of the South Wales Ministerial Code of Conduct and would bring New South Wales in line with many other jurisdictions. PRIA recommends building a single consistent code and, and registration regime across the country. We have been participating in the federal review and we believe that a single national register which incorporates the Commonwealth and state registered would help alleviate the need to register in multiple jurisdictions and simplify training requirements. This could also be extended to local government organisations. PRIA believes the reporting of contact and meetings must be the responsibility of the government representative or employee. It cannot be outsourced to an external party or only take place in some types of meetings and not others. The public sector itself is better structured and resourced to bear the administrative burden of increased reporting requirements for the following reasons. Public servants are employees and can be compelled through their employment agreements to report all interactions they have with external stakeholders. They can be compelled to undergo systems training and ensure full compliance with internal reporting requirements and codes of conduct. Government relations consultancies are often either small or micro-businesses, these organisations cannot afford to bear the additional regulatory or administrative burden. The additional costs of running a reporting system on behalf of the government could be too much and lead to them to forgo any opportunity to represent their case to government or to talk to government representatives or employees. A much worse scenario is that it could encourage the avoidance of reporting. Government also, as a third reason, has an interest in analysing the information and so would have an incentive to collect it.

PRIA believes that the stakeholder advocate should be required to disclose who they are working for or representing. We believe that the current system of registration in New South Wales collects and publishes an appropriate level of detail. Since 1949 the PRIA has promoted principals of ethical standards and these are clearly published in our code of ethics. All PRIA members have to make a personal written commitment to the code of ethics when they re-sign every year. And we have a thousand members in New South Wales. All 45 PRIA accredited university programmes across Australia, must incorporate ethics, professional practice, government relations and other topics as well as legal and policy areas into their curriculum and assessment tasks. PRIA registered consultancy members have an additional code of practice which covers client relations, fees and income and general employee relations and client relations. All registered consultancies must ensure that our employees adhere to the code of practice and the code of ethics, whether they are a member of PRIA or not, as membership of PRIA within our area of profession is voluntary. In summary, it is a key goal of the PRIA to enhance awareness of the important role of public relations and its contribution to open, honest and respectful communication. Advocacy is so central to the functioning of a healthy democracy that there should be as few restrictions placed on it as possible. If any programmes are put in place to ensure the probity of government decision making, those measures must be aligned to the real causes of any issues or potential issues. I'd be happy to take any questions at all about these or the other issues raised in this submission.

All right. Thank you. Ms Warren, firstly as to the use of the word advocacy and your preference for it, is the reason for that that you would accept that there are some adverse connotations about the word lobbying?---I think there's no doubt about the emotive responses that are brought about by the word lobbyist and lobbying.

All right?---And so rather than looking at an emotive word, we would encourage people to actually look at what are the systems and processes that are happening - - -

THE COMMISSIONER: What are the emotions that those, that the word arouses?---Well, the emotions that were expressed in the document prepared by ICAC.

I'm not talking about ICAC. I'm aware of what ICAC's, I'm asking you, I'm quite sure that the document prepared by ICAC didn't arouse those emotions in your organisation. Those emotions come elsewhere and that's what I'm asking you about?---When we deal with the, we deal with perceptions and opinions in different stakeholder groups all the time. And we don't have research that says lobbyists are not trusted. There is research that says journalists aren't trust. There is research that says nurses are trusted a lot. So - - -

I'm just asking what your perception is of the perception that causes you to prefer the term public advocacy to lobbyist?---What we want to do is make sure that we're focusing on the issues.

But you're not answering the question. The question is what are the emotions? I'm really trying to find out, I'm really asking you to acknowledge what the public perception is of lobbyists. Because my next question is what do you think causes it?---I, the, I think that the fact that people don't understand or can't see what lobbyists do.

10

What is the, what are, I mean do you agree that the perception of lobbyists is that some of them bring improper influence to bear on government leading to corrupt decisions? If you won't give the answer I will?---I think it is, it is often reported that way. And - - -

Yes. I'm not talking about fact I'm talking about perception?---Yeah. I think that in newspaper articles or novels that it may be reported that way. I think that people who are working - - -

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Well, what do you think causes it?---I think people are working within government relations everyday have, enjoy it, they have a lot of satisfaction from it and they do well.

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What do you think causes it?---I think that the lack of facts often causes people to fill in the blanks. For instance up until last year there was a lot of, about government contracting and there was certain speculation that certain firms were getting lots of business and now they've published that data about how much work is going to different firms. And a lot of the sting has gone away because the facts are presented. And I think that the transparency is something which should be there. People should know who is talking to ministers and who they're representing. And I think that transparency is very important.

But should they also be entitled to know how often?---I think that it's, the flip side of the question of the issue was explored very extensively this morning with Mr Hawker. And - - -

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Do you agree with what he says?---I, I do agree that there are quite often instances when it could be either cause people not to discuss issues with government if they thought they were going to be on the front page of the newspaper or that there were, there are commercial reasons. But I also agree that recording and an appropriate management of those meetings in entirely appropriate.

All right. Mr Gormly.

MR GORMLY: You said during the course of your preliminary statement that some of those examples that were given, I think by me in my opening,

of incidents in New South Wales were not really examples of lobbying, but rather they were examples of corrupt conduct like bribery. And I agree with you that a number of those incidents were about bribery. Would you accept that one of the problems with lobbying if it occurs between a private interest and a public interest but behind closed doors, one of the problems about it is that it can lead to events like bribery, it seems to?---Well, I, we, I don't have any experience of bribery. Neither does my Institute here in New South Wales. And we welcome and very happy about the registration process and putting it out there in public.

10

Yes. Ms Warren, I'm not trying to come down on, no lobbying as some intrinsically bad activity, but rather to try and find out what it is that gives it in some ways an adverse perception and see if they can be altered so that the good parts of lobbying which seem to be the vast bulk of it, can operate in a proper way. So I'm not endeavouring to malign your members or your organisation?---I think - - -

But, but doesn't corruption, doesn't bribery for example result from some forms of uncontrolled lobbying?---I haven't seen any evidence of that.

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All right. O.K. Now can we just focus for a second on, on PRIA itself? ---Yep.

As I understand it you have a thousand members in New South Wales? Is that right?---That's correct.

But it's a national body?---That's correct.

What's its membership nationally?---It's about 3,000.

30

All right. Would any of those be recognised more for government relations or lobbying than the other areas of public affairs?---We have people who only do lobbying in government relations. Some of those people are internal practitioners. And we did consult with them during, with some of them, during the construction of our submission.

Right?---Some of the external consultancies, one or two of them only do government relations.

40

Right?---But other firms, such as my own, have a broader practice where we do media relations, community consultation and some government relations.

Right. The whole array?---The whole array.

Do you have bodies in your membership that do no government relations whatever?---We would have a number of consultancies that probably do no core government relations work, but may have incidental contact.

Right?---There would be very few people who don't have incident contact with government employees or ministers running launches and everybody comes along, et cetera, et cetera. So there's a whole range.

Is that incidental contact limited to say information getting or information giving or might it fall into the category of lobbying?---It's - - -

10 What I'm trying to find out is there are a substantial chunk of your membership that really does not fall into the category of lobbying at all?
---We probably have about 25% of our consultancies in New South Wales who believe that they do some form of government advisory work. Some of them are on the federal register but not on the New South Wales register, some of them are on both and some of them aren't on the register, they may not have a current client or they may not be doing callout lobbying work but they offer ancillary services.

20 All right?---And then we have, and we have a substantial portion of people who work for corporations and for not for profit and they would have, some of them would be fulltime in government relations or they might be running a media event or announcing a response to the budget policy or something like that. So there's lots of ways that you might do very small amounts of government commentary or work.

All right. And I take it you're in fairly regular contact and have been in contact over the years with the membership of the PRIA?---Yes, I joined the Register Consultancy's Group in 1991 and have been active on the New South Wales board and consultancy - - -

30 But you are in touch with them, that is, you speak to the membership, you attend functions and so forth?---I attend the conference every year, last year it was in Queensland, there were three or four hundred members there, the year before in Victoria, usually three or four hundred members attend our national conference. We do a benchmarking survey of all consultancies every year so we collect data et cetera.

All right. So you would have some working familiarity at least on a sample basis with their views?---Yes.

40 All right. Have you heard much discussion as to whether people do or do not like being registered on the Lobbyist Register whether Commonwealth or State?---In New South Wales and in, for the Federal register we've had no negative feedback about the amount of time or the rigour, we've just been through another registration process where you have to renew the stat decs and that sort of thing at the end of financial year. I write a newsletter to all registered consultancies and for the past year or two every issue has, "Please make sure your registration is up to date", probably goes out quarterly and we urge people to make sure their registration is up to date with direct click-throughs to the Federal and/or State, Territory sites.

Now, I suppose most of your members in their entity form would have some employees and no doubt some with a number. Would that be right?---Yes, the largest PR consultancy in Australia will maybe have 120 to 150 members but generally I'd say on average about probably ten consultants would be an average number.

All right?---About 30% are sole practitioners as well.

10 Generally speaking would it be true to say that the organisation of your members is quite conventional, that is, in the sense that there might be a corporate umbrella and those who work for it are employees?---The structure of business has changed so much since the first books were written. We have probably, most people have a core of fulltime staff and yet say in the instance of my own company the longest serving members of my team and I regard them as, you know, complete members of the team have been with me for ten years that have had - - -

20 Well, look - - -?---Yeah. And that's not atypical. A lot of people have contractors and part time staff and sometimes they're short term (not transcribable) a lot of consultancies use contractors and part time staff on a very regular basis.

All right. Okay. Well, look, at present you have to, if you register on the New South Wales register you need to identify who the staff are. Is that correct?---That's correct.

And no doubt staff change over time?---That's right.

30 Would you say that your members in their employing or contacting condition would generally speaking accept responsibility in the ordinary way for the contractors and staff that they employ, that is, the work they do is generally under some form of supervision or direction and checked before it goes out?---I do really agree with that, yes.

40 This is a line of questions in your favour, Ms Warren. What I'm wanting to illicit from you is whether you think that there is any real utility in putting the names of individual staff members as distinct from the employing entity on the register?---I heard that conversation earlier in the day. We put on the list only people who are actively involved in government relations not all of our staff and I personally wasn't on the New South Wales register until recently. Obviously there is the principal of the company, the owner of the company because I personally didn't do any of the meetings or contact with government - - -

I think this is leading to you think that there is a utility in having the names on the register?---I think it's quite useful but I don't, the only reason that I wouldn't like it is a very practical reason and that is that head-hunters go

through such lists but other than that I personally find no reason not to publish the names and general details of people working in that area.

10 All right. I won't trouble you any further with that. Thank you, I just needed that answer. You're aware that the Queenslanders have introduced a new system for the registration of lobbyists which is perhaps a step above that of New South Wales in terms of requirements. Have you had any complaints from your members about registering under the Queensland system?---I know that they are very actively concerned about the level, or were about the level of administration and the burden required on, through that system but I don't know intimately where it is because I know there was some changes to the system. One of the key things that we would like to see nationally is a single consistent system because if I'm here in New South Wales, my client has a factory in Brisbane or in Darwin the Federal minister goes up there to announce it, maybe the Chief Minister or the Premier turns up, I'm registered here, I'm registered there, I don't have to be, I'm not actually doing any lobbying but I'm talking to the Chief Minister's office, it's confusing.

20 And you want to be safe?---Yes, I think our core issue, yeah, exactly because we're quite happy to put our name out there as can be seen by the fact we've got it on two or three registers, we're not concerned about it but I think that we don't want to be, you know, seen, have it seen as an issue.

Of course. In relation to Queensland you said that there was a concern about the administrative requirements, was that at the time that it was being considered and introduced because it hasn't been in that long?---Last year, during last year there was some - - -

30 January this year?---Yep. Yeah, that's right. There were people looking at different codes and things and certainly the PRIA Code of Ethics is - - -

All right. Well, since it's come in in January this year you haven't heard of any complaints specifically about - - -?---No, not specifically since then.

40 Do you think that if the registry were to be altered in some way perhaps to increase the categories of people who have to register so that it included for example lawyers and accountants who also do lobbying and perhaps other representative professions and maybe others as well would you think that your membership would have objections to a registration fee if it were a moderate fee?---This is - - -

You can say yes or no to that, Ms Warren?---(not transcribable) to discuss these things.

All right?---Well, I don't know, because we have to talk about definitions but I think the issue is, one issue about belonging to different bodies and registrations is that you can suddenly need to register and it puts the cost up

for small businesses. You might have very small businesses or up to ten people, you know, it might only be \$300 and then it's \$400 there and suddenly you get a couple of thousand dollars et cetera with multiple jurisdictions so it might be modest so sometimes it's just the cost of doing business.

10 Well, that would be a legitimate concern if you had to pay the same registration fee five or six times over when effectively you're doing the same thing?---And it might be for, as in, you know, just a safeguard when you're not doing - - -

All right?--- - - -a lot of work.

All right. So if a moderate fee were to come in and it were once only it would more or less imply a national, a national arrangement?---We would certainly, we are very, very vocal about wanting a very coherent simple system to be used nationally.

20 And what is your view about lawyers, accountants and other representative professions who lobby being required to register?---We believe that people who do exactly the same piece of work should be subject to exactly the same regulatory requirements and reporting requirements.

30 Does that include in-house as well?---At the moment the register is for transparency of representation and therefore there's no need for in-house people or for associations, such as Jon Bisset, our chief executive of Public Relations Institute, he clearly represents the Public Relations Institute. We believe at the moment the register is for transparency purposes and that it should apply to people who are acting as third parties.

All right. Well, you would say then that the registrant, the categories of registrant would depend on the purpose of the registry?---That's right.

Right, all right. Now can I discuss with you the criticism in the paper of a comment in your paper that there is a confusion in the difference between astroturfing and - - -?---Grass roots lobbying.

40 - - - grass roots lobbying. Do you have a copy of the Commission's paper with you. It's actually in your binder, page 126 to 127 of the binder in front of you?---Thank you.

I was surprised by your comment, Ms Warren, because it seemed to me that the, that the issues paper was really focussed only on one point and that was the difference between grass roots lobbying which is obviously a legitimate activity of the type that - - -?---Yeah.

- - - that you say is entitled to protection and astroturfing which is artificially generated lobbying made to look like grass roots lobbying when in fact it's manipulated?---I think - - -

Can, can - - -?---Sorry.

10 I am happy to hear all of your comments about this but first of all, that does seem to be the distinction being drawn in the issues paper but secondly I was wondering if you had seen anything in New South Wales or in Australia that suggested that astroturfing was an issue because we substantially haven't seen evidence of it ourselves, haven't seen substantial evidence of that ourselves?---We, I have seen one or two incidents in the past 10 to 15 years, I can't give you a specific example just off the cuff. People were very concerned that with the advent of the social media and Internet sites that perhaps, and this is why in 2006 we put out a clear statement defining what astroturfing is, that anybody could set up a website and they could say they're the industry association for barristers without yellow ties and the fact that they have a website, a telephone number and a post office box which these days is very, very cheap to do and they go around saying they
20 represent this enormous cohort of barristers who don't wear yellow ties, that's a really bad example, I do apologise, Commissioner, the, and when really they just represent themselves and to other friends of theirs, they're not represent, they're falsely saying that they represent all people within that category.

30 Yes?---So we, especially within social media and blogs, people say blogs and they take them to be huge and then you find out they have a readership of eight to 32 people. They do not represent public perception (not transcribable).

Right. And that's been a serious problem in the US, hasn't it?---Yes, yeah.

I think that's where astroturfing was first recognised and labelled?---That's correct.

40 I think, would you agree that the attempts to Astroturf in Australia were largely snuffed out and permanently ended by the activities of the media because the media very quickly in Australia found out who they were and what happened and disclosed it?---That's right. It's false and misleading representation and that's what falls under our Code of Ethics. If you say you represent a group and you don't, it is false and misleading. However, grass roots campaigning, you might be just three people in the pub and you might have an issue about a council building a levee bank on a flood plain, you might get commercial support and you might end up being a coalition that stops that levee bank but having that (not transcribable) needs to be very clear that there's two or you or 10 of you and who you represent, that grass roots campaigning is not mischievous of itself.

I couldn't agree more, Ms Warren, but you'd agree I take it that that kind of campaigning, that kind of activity, genuine grass roots activity, couldn't possibly fall within the definition of lobbyist in this paper because it requires lobbying in return for a payment of money or as part of employment?---Yes.

Yeah, all right, all right. So we're not at odds there?---Mmm.

10 All right. Now, on the definition of lobbyist and lobbying, it's in fact a topic I don't really wish to raise with you in any detail unless there is some issue that you wish to draw our attention to in the definitions used in the issues paper. Is there some disagreement with the description of lobbying because if there is you'll be one of the few people who have suggested that there's something wrong with the definitions?---As long as it's not defined as lobbying is something conducted by lobbyists and lobbyists do lobbying.

Yes. Well, we don't do that?---Sorry, I haven't seen the definitions.

20 There are two different definitions. One of lobbying and one of lobbyist and they're not - - -?---Circular.

Yes?---Right.

30 All right. Now, I just want to go to the question of a peak body for lobbyists. If one were to start regulating, and you'll have heard this discussion this morning with Mr Hawker, if one starts to regulate a group of people in the course of their work and employment, and particularly if you do it by legislation, inevitably you need a peak body from which there can both be a response from the profession but from which there can also be the dissemination of disciplinary code procedures and information and so forth so that there can be what would amount to a central body. Do you first of all accept that that, that's an inevitable or an almost inevitable consequence? ---I think it's very necessary.

It might happen over time, do you agree with that?---Which particular peak body?

40 Well, any peak body that would come to represent the group or class of occupation that is being regulated, so lobbyists in this case?---It would probably occur so that they actually have a voice within the process and, and input into the policy.

Can I just be clear as to whether you would see your body, the Public Relations Institute of Australia, as possibly being a body that might fill that role or not?---Well, we are the peak body for public relation and communication professionals, that does cover some, you know, many of our members are government relations people. As a peak body we do things like earlier this year we were the professional body that made representation

to Fair Work Australia when a union was proposing a modern award that would be called Modern Public Relations Industry Award and it was specified that it would cover public relations, publicity, government relations and lobbyists as well as advertising people and others and we were the only professional association in the room for that discussion with Fair Work Australia and fortunately Fair Work Australia decided not to make a modern award. But we were the ones representing the interests of the group.

10 I'm not asking these questions, Ms Warren, because there could be a recommendation about who the, who the body might be, it's simply a question, because that would be a matter for the profession, one would presume, but I asked to see whether you think that an existing body is one that could do it even if it has non-lobbyists as part of its membership or whether you think that a new body would have to emerge?---There were some responsibilities of the, you know, we haven't discussed that at all, but certainly as a practitioner I would prefer to have a single body rather than, it's bad enough at the moment, I have to belong to the AICD and the PRIA and the Equestrian Federation and that's probably enough.

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All right. Now has your body considered the following issues in any way, and I'm not being critical if you haven't. It's just a question. Has it considered the role of former public officers and whether or not there should be cooling off periods post parliament and before entering the lobbying ranks?---That was a specific discussion now. Well, generally cooling off periods within communication and public relation is very well recognised. It's part of employee contracts. And we certainly discussed it with the federal government in March, which was when one of their specific areas of inquiry. And it is our members view (not transcribable) view that in line with Trade Practices Act requirements for restraint of trade et cetera that we don't want people not to be able to work, but in certain defined areas where there may be an area of competitive interest or unfair advantage then say six to eighteen months would be appropriate.

30

All right?---And that's very clearly, we have said that at national, we'd support that. But we would urge it to be consistent across all states, territories, federal and local government, so it is easy for us as employers to adhere and support that requirement.

40

Would, your body would not support for example a blanket exclusion of former public officers from engaging and lobbying work permanently?---I think that it's a very small pool of professionals. There's a skill shortage out there. And they, they are, you know they help us help clients. They help clients with in not for profit, commercial, it doesn't, and the, to not be able to work with government in very quick and careful and knowledgeable manner would be restricting access to your advocacy in government relations.

All right. So your position would be that as long as you've got an appropriate cooling off period or separation period that it is preferable to use the knowledge and experience and talent that's produced previously by public sector?---Absolutely.

All right?---But we would expect that the public sector in government clearly define that. And that they train their employees or the elected representatives in the appropriate conduct as well.

10 Yes. Of course. All right. Now what about the question of, look, I think we've covered that. Actually, I think I've probably covered what I want to cover with you, Ms Warren. Unless you have anything, Commissioner.

THE COMMISSIONER: Ms Warren, there's only one issue that I would like to canvass and that is the increase in information in the register.

MR GORMLY: Yes. Ah, yes. Right. Ms Warren, you'll appreciate that there are a number of options being considered. May we have your views on the following matters. Firstly, do you consider that one could or that a register could increase greater, could contain greater information than it currently has without intruding into the business of government, in particular would you support, for example, information being placed on the register about which person in government was being lobbied by which lobbyist?---It's, government, as I said in the opening statement, should be responsible for the recording of meetings and for the taking of notes and for the storage of that material.

THE COMMISSIONER: We're talking about the publication issue?---The publication of such information? And I think that under the Freedom of Information and those sorts of things they should be easy to use and rather than duplicating it with other systems.

(not transcribable)?---Well, that's, why develop something else which is going to be complicated and another layer rather than fix something that - - -

MR GORMLY: Because it overcomes the delays and problems of the Freedom of Information systems.

THE COMMISSIONER: Just require it to be public?---I think that generally (not transcribable) meetings that we have with government not only could be public but are fairly public, we know who's meeting different people.

To answer you wouldn't have any objection?---There are occasions when it would be inappropriate - - -

Operate as the commercial - - -?---Commercial in confidence or security issues.

Other than that?---Or when it may inhibit members of the public coming forward to actually raise issues or explore concerns.

I'm not sure how that, how could that ever arrive?---Well, there are many instances when people decide not to take legal action because the process of taking legal action is so public and brings out so many more difficulties than staying away.

- 10 We're talking about publishing who met with whom and when?---Well, I certainly think that should be recorded consistently for every single, you know, person and it doesn't matter if it's a lobbyist or an in-house person or a company director or a managing director or a not for profit they should be and there should be a very clear way that that information is managed and published as appropriate.

MR GORMLY: But not on the register?---Not on the register, no. The register is for transparency of representation.

- 20 THE COMMISSIONER: But why couldn't it be for this as well?---Because the register is to clearly identify who you're representing and you're representing third parties.

(not transcribable)?---The, but otherwise it's actually becoming a repository of meetings and then you've got all of the other meetings and that process of recording the meetings that they occurred and what happened in there is the responsibility and the burden of it, the cost of it is the responsibility of government.

- 30 I understand that's your position, I'm really trying to find out whether you have, would have any objection to all that material being published say on the internet?---Well, it, once it has been filtered according to the agreed confidentiality requirements no objection.

Thank you.

MR GORMLY: So as long as it's the government doing it and as long as it meets appropriate requirements for confidentiality you're okay with it?
---Sure.

40

All right. I notice, I'm sorry.

THE COMMISSIONER: Another question. You would've heard that there is, there is a body of opinion that suggests that government officials should only be met in specified venues like their offices, like onsite and not on social occasions and they can be met but they can't discuss lobbying issues. What is your position on that?---I think that most of the, in the sense that, you know, discussions do happen in formal meetings and that - - -

Sorry, informal?---Yeah, during formal meetings so in, space, formal.

Yes?---In formal meetings and that's entirely appropriate and I think if we had a Code of Conduct, ministerial Code of Conduct that was clearly published and that members of the parliament, sorry.

Have another sip?---Sorry, I had the flu last week.

10 You approve of, you've got no objection to that I gather?---No, no. And it's entirely appropriate that matters be referred in such a way.

MR GORMLY: All right. So that even if it's raised informally the process would be to convert them or move them to a formal venue?---That's right. A minister or a chief of staff or somebody would say, please come to a formal meeting.

Right. Now, Ms Warren, I want to change direction if I may. I think you've given some consideration to MPs, backbenchers operating as
20 lobbyists. And that, I think you've acknowledged that MPs to some extent have a role as lobbyists, perhaps for their constituents or for people who have approached them for one reason or another. Do you have a view about whether or not that kind of lobbying should be tracked or recorded or formalised in some way?---I, you are talking about them not being paid as an external lobbyist?

Oh, yes?---You're really talking about the fact that they're taking views expressed in their electorate or daily lives.

30 Yes?---And taking that and expressing that view on (not transcribable).

That's a good distinction to draw. I take it that you would disapprove of MPs receiving some other fee in their parliamentary salary for the purpose of lobbying?---Absolutely.

That goes without saying?---I think that would be absolutely. I think that would fall under my view of corruption.

Right. Now put it though in their legitimate role as paid parliamentarians
40 lobbying, do you consider that that lobbying should be in some way tracked or recorded? That is their attempts on behalf of a private interest to approach a minister, a minister's staff or a departmental head or officer for the purposes of pursuing that or encouraging or advocating that interest?---I haven't really had this specific conversation with you or considered it in depth as an issue. The, because the role of the members parliament is certainly to understand issues and ideas and concepts in the electorate and take them forward. You know the process of tracking that and recording

those meetings and discussions is also a matter for government management.

Have you ever struck, I suppose this is closer to the question, have you as a, in your role as a lobbyist ever struck situations that have suggested that an MP has gone before you, so to speak, and that there has been some lobbying occurred, the details of which you acting for perhaps the same or more likely an opposing interest could not discover? That is that you felt that you may be blocked in your lobbying because someone had been before you?---

10 Well, I think that what happens in lobbying is that there's a diversity of views and it's quite often you might have six or seven very diverse and very strong points of view and there will be the one that reigns at the end of the day and it's the decision sometimes in saying, I think that you recognise that there are many different points of view and it's valid that they all be expressed.

All right. In a court, in curial proceedings or where rules of natural justice apply for a public decision maker all of those contending view are brought to the surface so generally speaking, people know what they are and have an opportunity to respond. In ministerial circles, that's not necessarily the case

20 – do you agree – that there can be a number of people lobbying a minister for contending interests and they don't necessarily know who one another are, they are not necessarily told what the other party is contending for or what they're saying even about them. Does that strike you as just part of the executive process or is that actually problem in lobbying?---I think a key concern that we have expressed that we've discussed before is equity of access and that if you're a lobbyist acting on behalf of a third party who may not be able to represent themselves and you're clearly acting for that person then if you have to go in and have a recorded meeting and have two

30 senior bureaucrats there and you have to be the head of the department et cetera – then whether it's in-house, somebody in-house doesn't have to those same protocols or whether it's an MP who's going, doesn't have to have those same protocols and then you get inequitable access. So what we would really encourage is that wherever the information and representations come from, they are subject to the same reporting and review process.

At the moment, there doesn't appear in any lobbyist code of conduct whether internal or public to be enjoined on a lobbyist an obligation not to, for example, I'll use a colloquial express bad mouth another interest, an

40 opposing interest unless it falls within the category of a falsehood, misleading or exaggeration. So it is at the moment possible for one lobbyist to bad mouth another interest, an opposing interest and that opposing interest never knows, never gets the opportunity to answer it. Do you think that there is an obligation if that kind of thing arises for the other interest to be told that that's being said?---Under the PRIA Code of Ethics that sort of behaviour is against the code and you would also expect that the person taking the meeting would – you know if it was senior minister or somebody

or executive – that they would have certain responses to that sort of behaviour as well.

But if it, it's truly believed the point is – if it's truly believed it's not exaggeration, it's not lying and it's not mislead – the question is whether that kind of statement could or should be brought to the attention of the other party or alternatively, that lobbyists should not make them.---Well, within the public relations industry we believe you should not make those sort of comments about others.

10

I did read your, I did read your code of conduct and I must say, I didn't see anything but I thought it was a good code of conduct I didn't see anything in it that would have prohibited using as advocacy a statement adverse to another party.---I think there's something, it will come to me in a minute.

Well, you say there is, do you?---I think so.

All right.---More so, you know the St James Ethic Centre is currently reviewing our code and we have it reviewed it every couple of years - - -

20

I'm not criticising your code.---I'll certainly look at it but I'm well aware that we, I'd have to a look at the actual solution.

Commissioner, I have nothing further from Mrs Warren.

THE COMMISSIONER: Ms Warren, don't worry about that, you can let us know later if you like.---Hang on a minute – you shall deal fairly and honestly with employers, clients and prospective clients, flow workers, public officials, the communication media shall avoid conduct or practices likely to bring discredit upon themselves, the institute, their employers or clients and not knowingly discriminate false or misleading information about (not transcribable) - - -

30

MR GORMLY: I did that item (not transcribable)- - -?---and take care so not to do so inadvertently. And I think that would very closely cover that issue.

Cover most situations. All right. Okay, thank you Miss Warren.

40

THE COMMISSIONER: I have one topic I want to ask you about. Some of your members represent charities and similar - - -?---Many of our members.

They do. And sometimes, does it happen that sometimes they are advocating positions for charities which are contrary to interests that other members, other of your members are representing.---Um, I think that other members are representing – I think we have a very diverse group of political views within our membership.

You do get – I envisage that sometimes charitable organisation will have a particular interest in, in your hand or in something else which runs contrary to the interests of some commercial organisation. That's - - -?---Yes.

That's just part of life.---Yes.

10 And your members could represent the charitable organisation and some of your other members might represent the commercial organisation?--Correct.

And so that they're advocating contrary (not transcribable)---Absolutely.

And I assume then that the ones who are representing the commercial interests would want to have what everybody calls a level playing field? ---Well, whether you're commercial or not, I mean, we do represent a, a, a charity organisation that has some issues around land use and sales of land et cetera, so it's an interesting example that you have cited.

20 So they would like to have the same, what I'm asking is for you to confirm what seems to me to be commonsense but you might tell me it's not the case, that the members representing the commercial interest would like the lobbyists representing the charity to be registered and subject to the same obligations of disclosure as they are?---Yes. The lobbyists, yes, yes. I think- - -

30 So you're saying that there is really no, you would like to see lobbyists for charities and similar organisations be subject to the same rules as anyone else?---So some of the, on our listing, on my personal company's listing, on the Website we have a couple of not-for-profit organisations where we have done some work in government relations. There's no difference in that. If you're a third party representing not-for-profit, a third party representing commercial, same rules.

O.K.

MR GORMLY: Thank you, Ms Warren.

40 THE COMMISSIONER: Yes, thank you very much for coming in?---
Okay.

Thank you for your time. Thank you for being prepared to come in to talk to us.---My pleasure. Very interesting.

THE WITNESS EXCUSED

[3.22pm]

MR GORMLY: Commissioner, we have now Dr Betty Con Walker. Thank you very much. Dr Walker, if you could just stand there for a moment.

THE COMMISSIONER: Would you like to give your evidence under oath or to affirm or do you- - -

DR WALKER: Under oath, Commissioner.

THE COMMISSIONER: Under oath.

10

MR GORMLY: Dr Walker, could you tell us your full name?---Betty Con Walker.

I think that you are or you've had a varied career, but I think that at the moment you're engaged in effect in some lobbying activity in a business. Is that so?---I am a consultant with minimal lobbying activity.

10

Right. And am I correct in thinking that you operate more or less as a sole trader?---Yes.

Right. But I think you also have an academic background. Is that so? ---I have a doctorate. I'm not an academic but I have worked in both the public and private sectors.

Right. And I think you've worked with the Department of Treasury in the past?---That's correct. And- - -

20

And your doctorate is in economics?---That's correct.

Right. You've also been the author of a book on casinos, clubs and pubs, particularly I think in New South Wales, but focused on clubs, and in the course of that you have looked closely at lobbying as carried out in those two industries?---Mainly, the title of the book is Casino Clubs New South Wales, so the book actually, the study focused on the activities of clubs as a lobby group.

30

Right. Now, can I ask, as you a registered lobbyist?---Yes, I am.

Right. Do you as a sole trader have any difficulty with the registration of you as a lobbyist on the New South Wales register?---I have no problem with the requirements as such but I'm really not, I would never say that I, I would never represent myself as a lobbyist as such.

40

Right. All right. Thank you. Now, look, I was wondering if we could have this opportunity to hear from you an opening statement which I understand you've prepared?---Yes. I have a short opening statement if I may. And I think nobody here would be surprised if I said that lobbying is by no means a new activity. In fact, the term lobbying was apparently used in 1820 and that the post-Civil War president, Ulysses S Grant, used the term to describe the political wheelers and dealers who frequented his regular hotel's lobby to excess and to promote various projects.

THE COMMISSIONER: There were a lot of lobbyists in the running senate?---As well, yes, Commissioner.

That's a little bit before 1820?---But this is when the actual term was used. And as noted in ICAC's Issues Paper, in recent years, lobbying has increased in scale, complexity and sophistication. And of course these changes have given rise to the need for effective standards and procedures to ensure transparency and accountability in decision-making. And as was noted by the OECD in its report last year. The fact of course is that not all lobbying is the same, just as not all lobbyists are the same. The challenge is to achieve the appropriate level of regulation for different types of lobbying, while at the same time, not impeding access to government. And of course

10 regulation has three element, namely rule-making, monitoring and enforcement or sanctions. And I think there's, we're tending to use regulation in a much more superficial way. So while the New South Wales system is a start in providing some rules, it really provides little monitoring and certainly no sanctions, moreover, even these rules have weaknesses, so the investigation is really welcomed. What I'd like to do briefly is outline some of my views and some specific issues. Firstly, and I heard some discussion about definitions of lobbyists and so on, it seems to me from my operation that there is a need for a clear differentiation between lobbyists

20 and technical experts who may advocate a policy position to government in the public interest, and I can expand on that later. Second, there is a need for a clear differentiation between lobbyists and technical experts who may be acting as consultants to a third party, that is providing technical report to another party who then presents it to government to support that party's position. And third, there is a need for a differentiation between lobbyists and those who provide advice to third parties on the processes of government and how to access it. That's, they're the areas that I think need some clarification in terms of definitions. But fourth, lobbying of local government elected officials and staff really does need to be captured under the state system. While there has been a concentration of attention on

30 lobbying in relation to New South Wales planning, another area with the potential for corrupt conduct arises from the reliance of a state department, government department, in this case, Communities New South Wales, on determinations of local councils. While such reliance has been long-standing, what is new are problems arising from changes in legislation which have led to the elimination of decision-making bodies, namely the Licensing Court of New South Wales and the Liquor Administration Board, so that matters of major economic significance are determined by public servants or officials who are not subject to public accountability. As a result, similar issues are likely to arise as those from the interface between

40 property developers in New South Wales Planning. Fifth, and again I can expand on that issue more specifically later. Fifth, there is a need for greater attention to members of parliament, councillors and political head officers engaging in lobbying. And this is where my, my book details the way one interest group lobbied MPs and others in an attempt to overturn a government decision aimed at reducing concessional tax treatment for the club industry. Sixth, organisations of lobbyists with high-sounding or misleading names such as taskforce, institute, council, should be required to disclose the source of their funding, just as there is a requirement for

disclosure of donations to political parties. After all, these organisations are really engaging in lobbying for financial gain. And finally, it would be in the public interest in my view for former politicians, their staff and public servants not to be allowed to engage in lobbying activity for a minimum of two years but preferably for one electoral cycle after leaving their posts.

MR GORMLY: Right. Thank you, Dr Walker?--- I'd be happy to take questions, thanks.

10 Now, can I just take you back firstly to the question of the distinction between technical experts on the one hand and what I think you would regard as political lobbyists on the other. Is that right?---Yes, and perhaps the other differentiation is perhaps payment on the one hand not on the other.

All right. Can we put the payment issue aside for the moment and assume that we're only talking about people who are paid. So in that category do you see a useful distinction between the expert who goes to government, say a planner who goes to a council to persuade on behalf of a client and a
20 political expert who goes to a planner and tries to persuade?---No, not, not in that instance.

Okay. How would you see the distinction being a useful one?---Well, the distinction is, for example, there may be an issue of public policy, let's take privatisation of electricity in New South Wales, that is a policy, a government policy which has been on the books now for quite some time. If I as an economist and, and say my husband who's a Professor of Accounting prepare a document and circulate that document to members of parliament. Now, that document is based on fact, it is, it analyses the
30 proposal, the public policy and actually argues the issues on the basis of the budget papers and various other documents on the public record and even reports prepared by government. Now, that document is then circulated to members of parliament obviously to influence their views on that issue but it's done not as something which would gain us any personal benefit in that sense but it's done in order to inform a better debate on that issue within the political process, for example, within Caucus or within the Liberal coalition and so in that sense I don't believe that is a lobbying activity in the sense that we should be registered for that particular purpose, we may do other things - - -

40 THE COMMISSIONER: It's a very difficult, there's a difficult line to draw there because you could get a particular political party who would, or leave out the political party, a commercial organisation who stands to lose money if there is privatisation and so this corporation just floods the government with information which may not be inaccurate but is perhaps slanted on a particular direction and they're doing it free and their benefits are indirect. Now, what do you say about them, are they lobbyists or not?---Well, if they

are going to lose something then they are actually lobbying because they are trying to avoid a loss.

But you're also, you're also going, in the example you gave the people who are supposed to be acting through altruism are also going to lose something, they are going to lose what they believe is right?---But it's not a personal loss, it's not a personal financial loss in that case whereas your example, Commissioner, is one where they would be losing, they will have a financial loss.

10

It's very difficult sometimes - - -?---Yeah, I agree, I agree.

- - - to trek through the financial loss and to find the financial loss.

MR GORMLY: For the purposes of registration can I persuade you that it wouldn't be a distinction that could be drawn that while you may be right in intention, that is, that the different people who are lobbying are lobbying for different, with different intentions that it would be safer to require people who are urging any view on government to register and then at least you know who is urging a view?---Sure. I admit that it's not a very easy distinction and - - -

20

THE COMMISSIONER: (not transcribable) much harm done, what difference does it make if those people, if everyone has to, if a person in the position in the hypothetical example you gave, the altruistic personal lobbying or trying to persuade the government to a particular point of view, what harm does it do?---Only in the sense of, and you touched on this previously, the perception of someone who's called the lobbyist, it really only comes down to that. I'm registered because I, as you say I have no problem in registering if that's what the government requires in order to make it safe and in order to be able to talk to a minister, there's no problem but it really is a, yeah.

30

Okay.

MR GORMLY: Now, Dr Walker, you rightly if I may say drew attention to local government as an area that requires some focus. In the views that you gave I wasn't clear as to whether you thought that people who lobby at the local government level on behalf of some client or some interest should submit to a form of registration. Do you think that that is the case?---I believe that the local government sector should be made part of the system of registration for the state, the state level, yes, I do.

40

I see. All right. So you wouldn't support, for example, a registration system that operated from each council?---Well, you could but I think that would be cumbersome and more difficult. There is a system set up and after all the state government still does have oversight of local government, they can dismiss a local council, they can impose an administrator so there is that

relationship so if there is a register already in place it may be a subset perhaps of that register.

You would see no difficulty with having a subset?---I can't see any difficulty with that.

Right. I take it you would see some benefits in having it as a subset because you otherwise end up with a very large number of names without knowing what they're all there for?---Yes, yes.

10

Yes?---Yes.

All right. So people who lobby at local government level could usefully be distinguished from others?---I believe so.

Is there different problems there?---Absolutely.

20 All right. Would you distinguish at local government level for registration purposes between say planners on the one hand and a registered third party lobbyist on the other, political lobbyist?---Well, there are several parts to that I think. I think there are, firstly there are lobbyists mainly for planning purposes, I mean anybody who lobbies a local council really the main issue is one of planning but there's also the other issue of actual councillors lobbying their own council so it's a twostep process so which part we - - -

30 Well, I suppose you're right to draw the distinction, I was really thinking of not the councillor part, I was thinking more of experts coming in and talking to councillors or talking more particularly perhaps to council staff to persuade them or urge a view on behalf of their client. There doesn't seem to be any useful distinction to draw there between political lobbyists and technical lobbyists for the purposes of registration, they should all be thrown to the surface so that people can see. Would you agree?---Yes, there's a third part to that as well which is the actual party who is trying to gain some benefit through planning decision so it's not only experts or parties on behalf of that person, that person who is going to gain directly may also be the one who's doing the lobbying through personal knowledge of the councillors or the staff.

40 Well, I take it that you'd agree perhaps the only way that that could be dealt with is not by registration but by proper recording and proper consultation procedures on the part of the council?---Yes.

Yes. What about the matter you raised, that is, the lobbying of councillors, is there anything that you would say about registration or other appropriate controls on that kind of lobbying?---Well, it, it really covers both that that also members of parliament so it's, and I heard the discussion just earlier, it's a very difficult thing to do but it depends on to what extent that occurs and there are examples which I can go to shortly if we move, once we move

from the local area, the local council area where in one instance this sort of lobbying by a parliamentarian of his own government was to such a degree that it, it became apparent that he was really fudging the role of legislator versus the role of lobbyist in behalf of that interest group. So it's, it's a matter of perhaps degree and how obvious it is that that person or that councillor or member of parliament is undertaking that task, with what fever, with what fervour and what repetitiveness it's occurring.

10 All right. Now, can we just stop there for a second. I don't know if you have a copy of your book there on the table?---Yes, I do.

Can I trouble you to turn to page 157 where I think there is an extract from an interview that you had with Mr Carr- -?---Yes.

20 - - -and that you have repeated there. Now, Dr Walker, I'm going to ask you to be careful not to mention names other than Mr Carr's because you've published his name, the names of others involved, so that we don't end up with any unnecessary complications. Could you please read that few lines that Mr Carr said to you in the course of that interview because it highlights that difference you were discussing?---Well, just as background, in undertaking this study I interviewed about thirty-four participants in this decision-making process of where the- - -

Don't tell us, don't tell us what the subject matter was, if you wouldn't mind?---Okay. Right.

I know you were interviewing people about a clubs-related matter?---Yes.

30 All right?---Yes.

40 Could you just tell us what Mr Carr said there?---According to Mr Carr, who did go on the record by the way, "One member of the Labor Caucus was in and out of the headquarters of Clubs New South Wales so often that in my view it wasn't inconceivable that he may have warranted an ICAC inquiry. I believe the muddying his role as a legislator with his role as a lobbyist for the club movement." Sorry, I misread that. Can I just, I'll just do that again, sorry. "One member of the Labor Caucus was in and out of the headquarters of Clubs New South Wales so often that in my view it wasn't inconceivable that he may have warranted an ICAC inquiry, I believe, in muddying his role as a legislator with his role as a lobbyist for the club movement. I believe a threshold may have been crossed there."

Okay. So it's that last part that I'm interested in, Dr Walker, that is the distinction between an MP carrying out a lobbying role and an MP in effect become a lobbyist for the, for that role. Have you ever seen other examples of backbenchers involved in lobbying where you have thought that that line was overstepped? Without referring to any names?---Of course. And some of them are public and regard their role in this process as one that they

would do today. I mean, it's not a secret that they were great supporters of the club industry. And in this process there were several others who again acted in a way which was to try to influence the leader of the day to change their position. And that happened with a number of other MPs in this process. For example, when Mr Carr resigned in 2005, there was a process by which a new leader had to be found and it is understood that, and a number of MPs told me that they were promised by a candidate- - -

10 I'll stop you if you wouldn't mind. I'm going to stop you. I understand I think what you're going to say but it's not something that I can use for, that we could usefully use. But I think we understand the point you're making? ---Ah hmm.

Can I ask you this. Do you think that there is any useful line that can be drawn in the role of an MP between being an MP on the one hand and being a lobbyist on the other?---Well, MPs, as part of their role is to advocate for their local community. That is a natural and understood role. It really is at the point where they become obsessed or obsessive with one particular interest group and where they try to influence their colleagues to change their minds on a certain issue that you, one has to somehow draw the line. And I think that will depend, it's really for the ministers who are being lobbied to then think through the process and think whether they're being lobbied in excessive ways. And it's at that point, as discussed here by Mr Carr who observed that. So is that- - -

Yes, yes. No, that's helpful. Can I just take it a step further. You seem perhaps to be suggesting that there is a point at which an MP is captured by the, by the interest that he or she is endeavouring to press. Is that right? ---That's, that's correct. And yet it's a particular area, in this case you've got the so-called non-for-profit organisations, being the club industry, who have traditionally had a very close association with their local members. They allow them to use their rooms for meetings, they allow them, they hold functions for them and so on. So there's a very close connection there.

Right.---And so they establish over time an association and certain loyalty. They go to their football matches if they are a football club. And so there's an establishment and a tradition of an association in that case where it carried on into advocating for them when an issue arises which may hurt them in some financial way. This is what's happened in this case.

40 All right. Now, I was just, perhaps that the point that I'm about to explore with you. Do you think that the difference between what we might call a captured MP for lobbying purposes and someone who is simply an impassioned and highly focussed MP or an MP highly focused on an issue that he or she wishes to press, that the only dividing line really is one of personal interest?---Or intensity of personal interest perhaps.

Well, if the MP is going to derive some benefit out of pressing the interest, the one is close to finding that there is something wrong with what that MP is doing. Would you agree?---Yes.

Not necessarily, but it may be.---It's a possibility.

Yes. But if the MP does not benefit in any way from the lobbying, no matter how impassioned or how focused, it may be that they are simply doing their job though in perhaps a way that some may find unattractive.
10 Would that, would that be a fair distinction?---That, yes, yes. That, that is the difficulty, the difficulty of distinguishing between an MP who's actually doing their traditional job and someone who's actually taken upon themselves a role which may go beyond their role as an MP.

THE COMMISSIONER: It's really another very difficult situation?
---Mmm.

Because if you, you can take an MP who recognises that within his constituency there is an association of some kind to which the large, to
20 which the majority of the members of his constituency belong. So it's in his, to get re-elected, he has got to win the favour of this association and he then ardently pursues the interests of this association to get the votes of its members. Now, what' wrong with that?---Well, again, Commissioner, we need to go back to this issue you raised earlier of perceptions. And whilst that perception existed some time ago that you need to have that relationship with your local club in order to convince your constituency to vote for you, a few years ago there was a candidate for election from the club industry, they actually had a group of people who nominated to be elected to the
30 Legislative Council. And they received something like twenty-odd thousand votes out of their claimed two point five million members. So that that showed was they really had, there's no translation between the membership of the club and their political association. So that perception may have existed some decade or more ago, but it can no longer be held to be the case.

All right. Well, I think we can leave the clubs, all right, because I mean you've made your point. And it's something that we'll have to think carefully about.

40 MR GORMLY? Commissioner, can I raise a different issue then?

THE COMMISSIONER: Yes.

MR GORMLY: Dr Walker, in your opening you said that greater attention needed to be given to not just MPs but political party head offices. Can you tell us what you had in mind about that, the political party head offices?
---I think at different times, at different periods, head offices parties had had different strengths and different powers over politicians. And although

really the powers of the head office over politicians has depended on the strength of the party leader, political party leader. So whilst under a very strong party leader, they have very little influence in terms of policy-making and they're used simply as an electoral tool, in other words, running the election campaigns and gathering donations and so on. They have very little influence-making. But when that leader is not so strong and is not so established, the head office tends to have more power in terms of influencing policy.

10 THE COMMISSIONER: But this is again a function of the political system isn't it?---And that's where the influence of a lobbyist comes in if I can just continue, Commissioner.

Yes?---That's where a lobbyist will go to the head office and perhaps with the influence of some donations or perhaps some, holding some functions which will lead to some financial gains for a member of the party or many members of the party and in that case that, the perception is that, the lobbyist perception is that they have influence on that head office in terms of influence policy and sometimes they do and sometimes the general
20 secretary or someone in the head office is able to get a word in to the political arm on that particular issue that the lobbyist is interested in and that has occurred in the past.

If a party secretary were to do that and I think I'm agreeing with you here, Dr Walker, if a party secretary were to do that it might be motivated by on the one hand donations, on another it might be because there is a component of threat involved perhaps as to pre-selection or something of the sort, unlikely with a minister but perhaps possible. It may be because there is an alignment that is a genuine policy alignment between what that particular
30 lobbyist wants to achieve and what the party wants to achieve?---All of those are possibilities.

Right. It's the third one that would make the conduct of lobbyists lobbying parties very difficult. Would you agree?---Yes.

Because it would be so difficult to distinguish between motivations?---Yes.

But if there were no alignment between the lobbyist's intention and party, a party goal it, you're not too far from drawing some other inference?---And
40 that's where, that's, that's why I drew that example in because it has occurred.

THE COMMISSIONER: Is this a matter of regulation or monitoring?---It's certainly a matter of oversight in some way.

That's right. That's really, I mean, the first two examples may fall under the rubric of corruption?---Yes.

That's a matter for this Commission in its other function?---Yes.

But historically that's always been very difficult to prove?---Yes.

And so what is to be done about it?---Well, there's the intermediate one which is attempting to influence policy not necessarily because, in a corrupt way but because there's some kind of interaction between the lobbyist and the head office personnel.

10 And why is that not legitimate?---It's, well, I'm not saying - - -

Because you're actually, the attempt is to influence the policy of the party not the member of parliament. The party will, the party may influence?
---But the role of the head office is not a policy making, it's not a policy making body so they're being lobbied in order to lobby the policy making people who are the parliamentarians and particularly the leader of the, the political leader of the party because the interaction between the head office and the political party really occurs through the leader rather than through the multiple of parliamentarians and the leader is the one who needs the
20 policy making and in this case it was the leader who made the policy and it was the leader who didn't want to change the policy and didn't till the end so it's that sort of interaction.

Is it improper for the office of a political party to suggest a particular policy?---It's not improper but it's not its role.

So what?---Well, there are processes, political processes where decision, where policy is made and there are roles - - -

30 Yes, I know but it's not laid down in statute?---No, it's not but you're, the inquiry is investigating where does lobbying occur and who do lobbyists lobby.

But lobbyists lobby journalists for example?---Of course.

I mean we've heard evidence that that's a very useful way of influencing policy is to lobby journalists?---Yes.

40 And the general consensus of opinion I think is that really there's nothing that one can do about that, that's a matter for a journalist to police themselves, this is just the essence of the sprawling incoherent system that we call western democracy?---Sure.

And the party room, the power of the party room falls into the same category doesn't it?---Except that the party head office is part of the political process, it's not - - -

Not formally?---Not formally, not formally but more formally, more related than a journalist or a newspaper, it's a lot closer to the political process.

It is, it is?---Especially if they do try to influence policy directly with the premier whereas the journalist may not have that access, the head of the, the headquarters of a party does have that access.

10 What is your suggestion?---I'm simply bringing it up as an issue which I understand from the paper that was produced by ICAC that they had little information on who is actually lobbied.

Right?---So I put it up as an issue which says they are lobbied.

It's an issue to which you have no solution?---Well, if I did I'd be sitting there.

All right.

20 MR GORMLY: Commissioner, I have nothing further of Dr Walker. I'm grateful to her.

30 THE COMMISSIONER: Dr Walker, you said that there were things that you might expand on if you have the opportunity. Are there any, perhaps you could just quickly look through your opening statement and see whether there is anything else that you would like to say in expansion of what you said before which you haven't yet said?---I'd like to explain a little bit about the local government issue which took a certain direction in the questioning but it didn't really quite get to the essence of the issue that I was trying to, the point that I was trying to make which is that if, we're talking about the licensing of clubs or hotels in this case, right, which involves two levels of government, local government and state government. So the applicant for say a transfer of a licence to a particular venue firstly has to go to a local council to get approval, it's a development application to get approval for a venue to be used as a hotel or a club. If that particular process is flawed and if it is corrupt there is no way in which the next level of government which receives an application for that transfer of that licence to that venue which has now been approved by a local council to know that it has occurred.

40 I hope you're not going to be offended but I don't think that that's part of this inquiry. I mean, I'm not disagreeing with anything you're saying but what has that got to do with lobbying?---Well, because the decision made by the local council may be a result of lobbying which may be - - -

So may any decision by a local council, any decision by a local council may be - - -?---I agree, that's what I'm saying, there may be - - -

We understand that?---Ah hmm.

And I really do think, we understand that because that's our bread and butter?---Ah hmm.

We receive many complaints of that kind over a week?---Sure.

So we are very aware of it?---But where do you get the interaction, do you have other instances where there's an interaction of the state government then having to make a decision based on that flawed decision?

10 That has nothing to do with lobbying?---Well, yes, it does because the first decision is the result of that lobbying.

I know that.---That's why I'm saying that the local government should be brought into the system, that was the - - -

I'm not disagreeing.---Okay.

I - - -?---But you can't, Commissioner I suppose you don't see a connection
20 between a flawed or corrupt decision made by council and then the state government official receives that decision and has no way of knowing whether it's corrupt - - -

That decision be extremely (not transcribable) but I just don't, the decision by the state government is not directly the result of lobbying. The decision by the - the flawed decision by the local council might be and the way that this, the way this Commission is investigating at the moment lobbying. So the way that that would have to be attacked is by making recommendations concerning the local council and how the lobbying affects local council.---I have one more try. The matter would not be conceded by the state
30 department unless the local government had made its decision first.

That's the system.---Right.

And so?---Well, the subject of that decision, if it was flawed, it makes the state government's decision flawed.

Well, that's true. And therefore?---It should be looked at.

40 What should be looked at?---Local government, local government should be involved in this process of - - -

It is. We are looking at local government.

MR GORMLY: We are looking at local government as well.---Right.

Sorry, that was why we raised the.

THE COMMISSIONER: We are very much looking at local government.

---Right.

MR GORMLY: I limited my questions to you Dr Walker because we are getting evidence from a number of different areas it's not as though we're not interested in local government.

THE COMMISSIONER: There will be people coming to give evidence.---
Oh good.

10 There will be specialist in local government.---Good.

We are, so that's why I – do you understand that there's a problem – we all understand that there is a real problem with local council's and people have told us that.---Sure. Well, I, I gave you the example because I've had direct experience with it, so that, I thought you needed particular examples.

We have our own. All right. I have nothing that I would like to ask Dr Walker.

20 MR GORMLY: Nor I.

THE COMMISSIONER: Mr Gormly, do you have anything further?

MR GORMLY: I don't, I don't.

THE COMMISSIONER: Thank you Dr Walker.---Thank you.

Thank you for coming.---Thank you Commissioner.

30 Thank you for that interesting discussion and your help.---Thank you.

The Commission will now adjourn until 10.00am tomorrow.

AT 4.03pm THE MATTER WAS ADJOURNED ACCORDINGLY
[4.03pm]