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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. Commissioner, we have Mr Wayne Burns present for, to give evidence. If Mr Burns could come forward.

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

MR BURNS: Affirm, Commissioner.

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<WAYNE MICHAEL LEONARD BURNS, affirmed [10.04am]

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Commissioner. Have a seat Mr Burns?---Thank you. Mr Burns, your full name is?---Wayne Michael Leonard Burns.

20 Right. I think that at the present time you're the director of the centre of for Corporate Public Affairs. Is that so?---That's correct.

But you're also a director of Allen Consulting Group?---That is correct.

And would you accept the title of being a lobbyist as well?---No.

30 Right. Well, can you tell us where you would fit in the lobbying world then?---I'm a, a researcher and a consultant on public policy advocacy. So that's advising corporations, particularly but also non for profit organisations on how to configure their corporate public affairs function in which their government relations or government liaison or regulatory affairs function sits in a corporation. So I, I advise corporations, I write on these type of issues, including corporate responsibility here in Australia and internationally and teach on the same internationally as well.

All right. But the distinction you draw then would be that you do not go and see public officers to persuade them of a clients position?---That is correct. Yeah.

40 All right. I think you've also been the media and political advisor to the Honourable John Dawkins, I think in more then one of his portfolios. Is that so?---That's correct.

And you've also been the, heavily involved in public campaigns like the Australian Republican Movement. I think you were the national communications director for the YES campaign in '91?---That is correct.

And you appear to have had a fairly varied academic background as well in Arts and Communications, but you've also done studies at Boston College?  
---That's correct.

The (not transcribable) School of Management. Now, Mr Burns, I understand that you've prepared some comments that you think you would like to deliver or that would assist?---That's correct.

10 Can we hear those?---Yeah. And I do draw attention to, I have been a lobbyist in the past, so I have actually worked as a lobbyist and a political journalist. So I've been gamekeeper and, and game as well, to a certain extent. So my short statement, Commissioner and Mr Gormly is that lobbying as we know it in liberal democratic societies is this, but one aspect of individuals for profit organisations, not for profit organisations, interest groups in the media and academic institutions seeking to influence the public policy environment. Ensuring the groups individuals in corporations are able to freely understand, interpolate, have access to and influence the public policy environment is in my view essential to good public policy outcomes and to good government. My main interest in this inquiry is to  
20 suggest that the process of lobbying rather than being seen as some sort of sinister activity, but ,to quote the Commission's discussion paper, public officials are susceptible to or subject to, is a legitimate and necessary avenue that provides access to public policy development and contributes to good government in New South Wales and across Australia. I also want to suggest to the Commission that lobbying at the Commission defines it, is but one component of public policy advocacy, the predominance of which is common in liberal democracies. And I draw attention especially to New Zealand, Canada, Australia and also the United Kingdom under the  
30 Westminster system. Also I'd suggest to the inquiry that how corporations and not for profit organisations approach public policy advocacy, including seeking to influence public policy processes in the public service, in government and the media and other areas in which public policy is discussed and developed is common. To offer a view also the contrary suggestions in the Commissions discussion paper, the number of registered lobbyists in New South Wales is not high or unusual in international terms. I also suggest that I may be able to contribute during the questioning to the Commission, add to the Commissions deliberations that internationally it has been the case for the more then 50 years that government relations practitioners in corporations, not for profits and commercial lobbying firms  
40 have previously worked as former MPs, parliamentary staffers, administerials, advisors, specialists in public policy, political and regulatory processes. It is not unusual nor should it be alarming. And my, lastly, my experience in liberal democratic government in New South Wales, nationally and internationally suggests that the predominance of former ministerial advisors and parliamentary staffers in the lobbying profession poses no systemic risk for corruption in the same way that judges being drawn from the ranks of the legal practitioners poses no corruption risk to the judiciary in Australia. Management consultants being drawn from the

executive ranks of corporations poses no risk to the corporate sector or senior managers from the ACCC or ASIC previously working as senior business executives poses no risk to the integrity of our regulators.

10 All right. Thank you, Mr Burns. Let me start with this proposition which I am going to suggest to you is not incorporated in your statement. I'm not intending to be adversarial here, but I want to narrow an issue down if we may. Can I suggest to you that it's not suggested in the issues paper or in the openings to the inquiry that lobbying should be dispensed with because it represents a corruption risk.

20 Can I suggest to you that rather the problem that the Commission is grappling with, and that is a problem being grappled with in many other places in the world, is that there is a perception that aspects of lobbying can either because of the way they currently operate can create a perception of unfair access, preferential treatment, the opportunity for things to be done behind closed doors where they cannot be seen by the public but possibly should be at some stage, and that the ranks of lobbyists contain those persons at times, I'm referring specifically to former politicians and public servants, who have private or confidential government information in their kitbag and they have an array of relationships that will continue on no doubt for the whole of their lives and which can be used to secure preferential treatment for their clients. That is not, none of that is to suggest that lobbying is itself a bad thing. In the opening, and this is, I'll finish my, my pitch so to speak for what the problem is, in the opening it was suggested that there was a bit of a dilemma that you have on the one hand this fundamental right to approach government and you have on the other a public perception that lobbying represents something of a problem to the proper administration of government. Now, here's the question, Mr Burns, 30 would you as a starting point at least accept that there does seem to be a perception that aspects of lobbying are a problem for good government?--- There's definitely a perception and there's no doubt about that and if I might just add to, add to my observation on that, the tension we have at the, at the moment especially in liberal/democratic society is the growth of the corporation especially. At the same time there's a growth of the non-profit corporations, most of the super brands that we see in the marketplace today aren't necessarily Coca-Cola or Kodak, they're Oxfam, they're Red Cross, they're United Nations so the growth of the corporate body has a, is very, very big. In socio-political terms I think a lot of, a lot of citizens, a lot of voters out there are concerned about where, if their influence at the ballot 40 box is being, if you like, countered in some way by very large organisations that are continually growing and this is, this is the reality we live in. In socio-political terms the media is suspicious of that as well. Whether that is creating less transparency in the system, that's, that's, is what is at issue.

What do you think about that?--- I think if there is appropriate transparency which a regulatory system, any regulatory system, and I would argue a light-handed regulatory system, would need to, to establish a framework for,

I think that's adequate. I think in the past influence and I guess the, the use of influence has been far less transparent. Probably 30 years ago the, the prime minister would have had a hotline to the, the, the Catholic Archbishop of Australia and the Anglican Archbishop of Australia. Calls to the prime minister or to the minister or to the premier at those times, and these were very powerful groups back then, same with the ACTU and the same with the Farmers Federation, were never revealed on any register. These days even, even the Catholic church, church have lobbyists or people working for them that handle their government relations and I think in a way that's far more transparent than closed door conversations and probably closed door power influence that we might have had in Australia and New South Wales 20 to 30 years ago.

THE COMMISSIONER: So do you accept that there's been a growth in the perception that lobbyists exercise undue influence?---Yes, there, there has been.

But why?---Again I think it's, Commissioner, I think it's the growth of the corporation, loss of trust in government overall and that's a (not transcribable) that's actually affected loss of liberal or democratic societies, it's a loss of trust in governments. Australians have the highest distrust of corporations than any other folk in 26 countries. GlobeScan does a, which is a bigger organisation, a big Canadian based polling organisation does a trust, a tracking survey every three years. 61 per cent of Australians have no or little trust in corporations. Over half of Australians have, have little or no trust in governments. When you've got that environment it's little wonder that I think a lot of people are scratching their head and asking well, okay, where do lobbyists fit into all of this.

I'm not sure whether that answers the question as to why the mistrust has occurred?---I think this mistrust has occurred because of the perceived influence or power of institutions, large institutions, especially corporations in the, in the democratic process and, and, and the size of the corporation also, apropos the individual voter who, who, who's got as much access to the system as, as the corporation has but probably worries that the, the size and the profitability of the corporation places them at an unfair advantage.

And just to understand the background to your evidence, did you accept that it is desirable to have regulations at least in place to attempt to reduce this lack of trust?---I think there needs to be at least transparency. Heavy-handed regulation I don't think works. I've seen it hasn't worked in places like the US, that if you read the statute law- - -

All right. I think we all accept that US is not a model to follow?---And then you've got the, Commissioner, then you've got I guess the ah, on the other side you've got the UK which virtually has no regulation and- - -

They don't seem to have a very good record either?---Well, probably the, the- - -

Not a lot of trust there, in fact on the contrary?---Yeah. But the reputation of lobbyists in the, in the, in the UK is, is probably not the issue that it is in the US.

No. What about Canada? What do you say, are you familiar with the Canadian regulations?---Yes, yes.

10

What do you say about them?---They're probably ah, they're probably in the middle and in terms of working, they work far better than the legislative framework in the US because that doesn't work.

Do you regard them as heavy-handed?---Ah, yes, I do.

The Canadian?---Yes.

So you don't want to, you wouldn't like to see the Canadian system here? ---No. I really don't think it would work. I think legislators, all parties involved in the public policy process would, would work around them.

20

Canadians are more law-abiding than Australians?---Well, according to Michael Moore. If, if, if you talk to a lot of the Canadian corporations, they, they directly lobby, there's no doubt about that, but the other tools of public policy they use a lot more. They, they use the media as an arena, they use research as an arena as well. A lot of the time corporations there who want to influence the public policy environment will go around the formal public policy process that may occur, for example, in the public service and try to influence the political process especially through the media and especially through ah, through motivating and marshalling public opinion.

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MR GORMLY: Can I just take you back to an answer you gave The Commissioner. You were asked why you thought there had been a growth in scepticism about lobbying and you referred to the growth in the corporation?---Ah hmm.

Can you just link those two up a little. Why does the growth of the corporation relate to an increase in scepticism of lobbying? I do understand your point that there's a lack of faith in, in corporations, but what otherwise do you see as the linkage between the two?---I think it's a, it's the lack of trust and where you've got a situation where you have a lack of trust, you will assign various motives or you assign various emotions to, to that lack of trust. So if the community doesn't think corporations can be trusted, you know, ipso facto there's a mistrust in their, often in their interactions with government as well and the power or influence that business is able to exercise with government. Now, up close and personal observing that, researching that, working with lots of corporations, that, that isn't the case,

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but if you talk to any journalist that probably doesn't work in Canberra, non-political journalist, if you listen to talkback radio, you know, if you dare to start a conversation with a taxi driver, which I wouldn't advise, especially in Sydney if you want to get there on time, that is perception that is at large in the community.

Do you see lobbying as essentially an expression of corporate activity?---  
Ah, from, from where I sit, no, no. It's a, some of the most active lobbyists are the larger not-for-profit organisations in

10 Australia at the moment. But I think perception in the community is that lobbying has got to do with big business, that big business can't be trusted, that there's also a decline in trust in government and public institutions. Put that into the mix then lobbying is perceived as something that is, is probably at the very least undesirable.

Is it, do you think it's true that the community also might take the view that a lot of the work of not-for-profit organisations, churches, charities and other institutions are also talking about property and the obtaining of benefit from government for whatever their purposes might be so that they too are  
20 lobby groups in the corporate sense? Do you think that's something the community would view?---I don't think, Mr Gormly, I don't think the community perceives that. I think if you think of an organisation like the Red Cross, I don't think what comes to mind in the community that their interactions with government would even be seen as lobbying, I think they would be seen more higher up as public policy advocacy. Although the activities could be and often are exactly the same as a corporation.

We've found in the course of the investigations, Mr Burns, and you'd probably be familiar with this, that charities and churches, as you've said  
30 yourself, do make use of the private lobbying industry and they're doing it presumably to pursue the ends that they see are appropriate to their end. Do you think that there seems to be an ethical difference perceived by the public for the non-commercial sector compared with the corporate sector?  
---Certainly.

THE COMMISSIONER: But not when it comes to private interest I would suggest. So for example, if a not-for-profit organisation wanted to have land zoned in a particular way and the local residents didn't and the not-for-profit organisation, be it a church, the Red Cross, some mental health  
40 organisation, whatever it is, would then be perceived as being in a position to exercise influence unfairly?---Definitely. And I think on a, on an ad hoc basis I think the public realises that. And I recall in South Sydney near where I live in Redfern, a situation in the last couple of years where the Hillsong religious organisation was reportedly involved in trying to rezone land. Now, the local residents I think got a, probably a reality check there that non-government organisations and even faith-based groups in terms of public policy do seek to influence public policy outcomes. But that's probably, on an ad hoc basis that's the case, but overall I think the general

perception in the community is that lobbying is something that's more involved with corporations and especially corporations trying to - - -

Do you accept that that can change, that there's, with the growth in not-for-profit organisations and their need to lobby, that that perception can alter?  
---Commissioner, I think it would be, it could, but I think it would be a very slow cook if that's the case. Again, trust the GlobeScan research that I was referring to which is, you know, pretty, pretty good long track research, shows that more than half of for example Australians I think, I think it's  
10 fifty to fifty-five per cent, have some or a lot of trust in NGOs. So it's the issue of trust that generally I believe, and from our research over the years, colours the perception that most business would have about the interaction between larger organisations and, and governments and the public service.

MR GORMLY: Well, I suppose you'd agree that the pursuit of transparency is one way of maintaining or increasing public trust in government institutions. You have no problem with that?---Indeed, indeed.

And that to the extent that corporations, which perhaps are not so trusted,  
20 lobby government, transparency is a pretty basic tool to try and increase public trust in the lobbying process?---That's correct.

Do you have a view about whether a register of the type that currently exists in New South Wales is a sufficient transparency tool for exposing lobbyists and who they act for?---I think that that is, that's a basic tool and I think it's a, it's a good tool and I think it should be, from my personal point of view, should be a tool in every Australian jurisdiction, whether it be a state, a territory, or even at the local government level.

30 THE COMMISSIONER: Can you explain to me how, I'm still not sure how it promotes transparency that register?---Well, it's, it tells the community which organisations may be acting or are registered to, to act - - -

So it tells the community who are registered lobbyists?---That's correct. It tells the community who the registered lobbyist who are permitted under the regulations to directly approach and try to influence the public policy makers.

40 Yes. Anything else?---I think that's, I that in itself is, is part of a transparent system. I don't think it's all of it.

It's part of it?---Part of it, correct.

And does the register do any more?---At the moment the register doesn't do any more in New South Wales. Sorry?



MR GORMLY: I think it does. It also tells you for whom that lobbying firm acts. They must list their clients. I think you actually made reference to that earlier?---That's correct.

Do you think that requiring a lobbyist to disclose the identity of their client is a reasonable transparency requirement?---Yes, I do.

10 All right. We've heard evidence, Mr Burns, that there have been instances of clients going to other representative professions like accountants and lawyers to avoid being named on the register. Would that cause you to think that there's something wrong with being registered or that the lawyers and accountants ought to be registered or some other option?---My view is if you're, if you're formally, if you're formally lobbying a government directly, like in government or the, or the public service or even local council, you should be registered. And I noticed in the discussion paper there are some firms that are registered that their core, interest in their core business is, is not, it's not political advocacy or public policy advocacy. It may be other activities and I think financial services was one of the organisations. But if you're seeking to play the part of the lobbyist I think  
20 the minimum expectation is that you be registered and that your clients or who you're acting for, the entities you're acting for also be published and available.

That view would logically extend really then to anybody who at least for a fee lobbies government?---That's where it gets a bit tricky and ambiguous. You could argue that, in my former role as a, as a corporate affairs executive, I was employed by a corporation and part of my role was direct approaches to government and meeting with ministers and staffers around issues that were pertinent to the corporation. That's where this gets  
30 ambiguous internationally. Should the corporation then be registered if the CEO of that corporation is mixing it with ministers and, and staffers and, and seeking to influence government policy, as most CEOs in this country do, in the interest of their shareholders and the communities in which they operate, should they be registered as lobbyists. This is where it does get ambiguous.

You're speaking there I think of perhaps the higher end of the corporations strata are you not? One might well adopt the view that if you were to stratify all of Australian corporations, that is all of Australian business in a corporate entity, that there is a very large chunk of Australian business that  
40 would never go anywhere near a minister or a public officer except on perhaps on the rarest of occasions. Do you agree with that?---Probably the large number of executives, but most, most corporations, most large corporations (not transcribable) on the BOW100 in Australia do have corporate affairs or government relations units. And you'll usually find on the executive team again, you're right, on the senior executive teams of most organisations that most senior executives do have interaction with the

public policy environment. Either senior public servants or ministers or their staff or seek to influence the public policy environment.

THE COMMISSIONER: Well, what about local government?---Less so with, less so with local government. Probably with the exceptions of the, of the capital cities, you'd very rarely find the CEO of a corporation interacting with a general manager of a council.

10 But you have other representatives of, other employees of the corporation?  
---Possibly, yeah, depending on what the, the issue was and what the nature of the business of the corporation was, Commissioner.

20 And what's your attitude to people like, to anybody seeking to influence government in a decision and in doing so for financial reward whether it's by way of a one-off payment or just a salary being registered?---That, that would mean probably that, I'm not sure how unwieldy this beast would be but, for example, if you're one of the big professional property development corporations and not the, not the smallest ones but if, you're example, Leighton Holdings or if you're Lend Lease if you're a Stockland you mean - -

Or if you're BHP?---Yeah, or Rio Tinto, you might have to register hundreds, maybe thousands.

What's wrong with that?---Well, does that serve the, I'm not sure how that serves the public interest.

Well, why doesn't it?---It doesn't serve the public interest if there is - - -

30 It's only a registration?---Well, is that all it is? If they were just registered as, as having interactions - - -

Well, that's the first step then it depends what else the register requires?  
---And, and - - -

40 But assume that it requires details of, requires details of a meeting not, or perhaps even so far as the topic but if that's a different and difficult question, leaving that aside but simply that a meeting was held between that person and, and a minister or a chief of staff or some other individual in government is still be defined?---I think you'd find that some corporations would say that's okay, that's, that's fine by us. I think other corporations would say, well, if we did that we might have trouble actually finding people to work with us to, because they might be very wary indeed of, of being on a register and, and having their meetings documented for fear that the very fact of doing so may suggest that there's somehow some impropriety occurring and, and - - -

But not if there are hundreds having to do it, not if it's a new rule?---Well, I think this is, I think various jurisdictions in the US have tried to go down this track and number 1 I think, from a lot of the corporations that you speak to, they find a way, they will find a way around that. That, that, the administrative burden for a lot of organisations, you'd find a lot of pushback from corporations in terms of the administrative burden.

10 The burden would be the burden on the register, not on the corporation?  
---Well, wouldn't the burden also be on the corporation number 1 to, to, to note any meetings that are actually being held.

It may not be the corporation, it may be the government?---Well, I'd say good luck with that one because I think you'd find corporations would be - - -

They do that in Queensland?---Yes. I'm not sure whether Queensland's sort of held up at the moment as a, as a register or as a regulatory system that, that's got a lot of rubber on the road yet.

20 Well, the register doesn't require all of this but the, the recordkeeping?  
---The recordkeeping, yeah.

Yes. But the, but the government departments have to keep records of the meetings?---And in other jurisdictions where - - -

And that's happening?---Yeah, and in other jurisdictions too where there's, in the UK for example, a lot of departments anyway voluntarily keep records.

30 And the Department of Planning here?---Well, especially after the events of the last couple of years, yes.

So what is the problem?---The problem is that you'd probably, and I'm not saying that I personally don't support this.

40 No, I understand?---I think the problem is you'll find that some corporations will find this unwieldy, they might, for the simple fact that they might find employees very wary of actually even making that contact if they have to be on a register. The suggestion would be that something untowards might be happening in those meetings.

Wouldn't that be a good thing, to make sure that people don't do anything untoward?---Well, I don't think - - -

Won't people realise that this is a serious business and the community disapproves of people doing things in secret so that if you're on the register, that's a serious thing and you should be careful?---I don't think at - - -

Isn't that the very thing we're after?---I don't think at the moment that, again I don't think this is, this is a systemic problem in terms of corruption with contact between - - -

Perception?---Well, I don't know whether it's going to, I don't think it's going to address actually the perception itself. You can have registers and you can even have records that meetings have been held but if you've, if you've got a problem with systemic corruption that's not going to actually address the issue, that's not going to solve the issue.

10

We haven't got a problem with it, we may not have a problem with systemic corruption?---And I don't think, I don't think we do.

So there is a perception issue?---There is a perception issue but I personally don't think that's going to solve that perception issue. The perception is - - -

Why not?---Well, the perception issue is much bigger. It's about trust overall in corporation and trust overall in government and - - -

20

But you I am sure will accept that whatever recommendations we make we can't cure the lack of trust?---That's correct.

So we have to address a much narrower issue and that is communications for reward between the general public and the government to try and make that more transparent. I mean, I think we're all agreed on that?---I think, I don't think you'll get any disagreement that transparency is important. It's to that level that - - -

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It's just the degree?---It's the degree of transparency, yeah.

So what degree do you support?---Well, I think, I think there's a fine balance between confidentiality and secrecy. I think there's a fine balance also between transparency and putting sand in the gears of, of the production of good public policy outcomes and good government and, for example, what's been proposed in the US at the moment, and even some of the provisions in Canada, probably haven't done a lot to, for the overall transparency of the relationship between the citizenship and, citizenry and, and government itself.

40

I'm sure that's right but what do you support?---Well, I, I personally - - -

What specific measures do you think should be taken?---Well, I, I personally support the, the register of, the official register of, of - - -

The existing register?---The existing register. I have no personal problem with meetings, with, and especially with departmental officials which, who operate on a, under a completely different framework and duty of care than,

than politicians and I think more transparency around who they're meeting, at least recording who they're meeting actually provides them with a protection that some of them may not have in some jurisdictions in Australia at the moment.

And would you support the making public of those records by government officials?---Yes, I do, yes, I do. What I don't support either for public servants or, or for members of parliament and especially ministers is, is the content of, of those meetings and the contents of those discussions being,  
10 either having to be minuted or having to be recorded or having to be made public.

Yes, I understand, thank you.

MR GORMLY: All right. Would you accept, I'm going to take you through a number of particular points. Would you accept then that there is no basis ever for there to be any lobbying event that is not recorded?---It depends what you call lobbying.

20 I'm not talking about disclosure?---Disclosure.

Yeah?---Are you talking about paid, paid lobbyists?

By paid lobbyists, including in-house and peak body?---And including an industry association.

Yes?---I'm not sure, and again there's, I have to - - -

30 You're going to talk about some exceptions, are you right, are you going to talk about people meeting at functions and so forth?---I'm talking about people meeting in functions, I talk about also that the call that the, that the premier or the minister or the member of parliament might make to the CEO or might make to the head of government relations. Now, that may be, that may not be about lobbying at all, it might be about discussion, it might be about seeking information.

THE COMMISSIONER: Well, then it wouldn't have to be recorded?  
---Well, then you've got to get, so we get to the definition of lobbying.  
Does when the - - -

40

Well, seeking to influence government, let's take that broad, broad criterion?---I think there are, therefore is lots of public policy advocacy that, that I call it that goes on all the time and it's not, a lot of it is not through direct approaches and I think that - - -

Well, we're only talking about direct approaches?---Well, it does and I - - -

MR GORMLY: Commissioner, can we get some examples of that?

THE COMMISSIONER: Yes.

MR GORMLY: Could you, could you, that's, that would be useful, Mr Burns, can you give us an example of what you would regard as lobbying that it is, is not direct?---And this is where the term lobbying, I've got a little bit of a problem with and it's not just semantics.

10 THE COMMISSIONER: More advocacy?---Advocacy I think is more important. And that's what most organisations, you know, this has moved on in the last twenty years, thirty years, the whole idea of lobbying. If, if you're for example a not-for-profit organisation or if you're for example a number of businesses who are concerned about climate change, just going and knocking on the minister's door or the prime minister's door and saying, I want something done about this, isn't a very sophisticated way of doing things these days. And you'll find that corporations and not-for-profits get together, they commission research, they get that research published, they start a public discussion on about that. That's public policy advocacy. Lobbying is one part of that. If, if, if- - -

20

I don't think there's any suggestion that that be stopped or controlled? ---I don't think so either and I'm not saying that's the case, but as part of that process for example, if the, if the, and this is the exception that we're talking about, if the, if, if, if the, if the minister for water in Victoria picks up the phone and, and tries to brow beat the minister for water in New South Wales, that's definitely lobbying. Now, is it paid, is it paid lobbying? Well, it's not paid lobbying but you could argue they're both receiving a wage, it is paid lobbying. And again, this happens all the time. If our concerns is about people receiving a financial benefit, a third party receiving a benefit, do you include the government relations practitioner in corporations in that as well? Lobbying is only one part of, a very small part of what they do, they spend most of their time trying to make sense of the external wall for the, for the executives in the corporation itself and providing technical advice, they're, they're technicians and specialists, which a lot of lobbyists are as well. So a lot of lobbying is just not the direct approach, knocking on the, on the door of the official, it's seeking to influence that, that general policy environment, to warm up the environment if you like for people to be receptive to certain ideas or concepts.

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40 MR GORMLY: The in-house lobbyist of the large corporation we have found frequently includes ex-staffers.---That's correct.

Less so politicians, but sometimes ex-politicians as well. The corporation is itself an organic profit-driven unit which has largely a single goal and in the pursuit of that goal there seems to be no doubt whatever that it will actively lobby in the ordinary sense of the word, that is, knocking on the door of a minister with a proposed law with research or a worked out plan or whatever, but they are lobbying. Can I, can I suggest to you that even if

there are other roles associated with lobbying, it's usually possible to sort out what is active lobbying, that is a direct approach to government to get them to do something or to change something, compared with say starting a public debate. Would you agree with that?---There is a difference in that, yes.

Yeah?---Yeah.

10 But it's a discernable difference.---It's part of, yeah, it's lobbying being part of the public advocacy recipe, if you like, or menu. Lobbying is, is one part of the direct approach.

There hasn't been a lot of argument about who should or should not be on the register by reason of what they do. Would you agree with that as well? Usually people know whether they should be on the register or not? ---Generally, and it's self-selection.

Yes, it is?---At the moment it's self-selection.

20 It is, yes?---Yes.

That is an appropriate guide to whether people know they're lobbying or not though, isn't it? They're selecting themselves to go on the register?---And it depends whether, an audit has been done on that and found that a lot of people are approaching government directly who are not self-selecting and who are not being transparent about their contact with government.

30 All right. Well, by whatever method people are paid to carry out the act, would you agree that there isn't in principle any difference between what in-house lobbyists do for their corporation and what third party professional lobbyists who currently have to be registered do?---There's an immense difference. There is an immense difference, yes.

40 All right. Tell us about that?---The, the paid lobbyist is, is, is usually given a brief. That brief might be to not just open a door, it might be to open a door sometimes because they've got relationship or a, or a contact or they're aware that a particular department or minister is interested in a policy area at the moment so they can actually guide traffic. They can also help corporations that don't have a highly-developed public affairs or government relations function to actually guide them through an issue and to help them get the access that they need to put their case, to have their, have their say. The in-house government relations practitioner spends most of her or his time keeping an eye on the overall political environment and the socio-political environment that's affecting the organisation, including the economic environment. That person is almost like an interpreter. Working as a practitioner in a corporation in that role you're the window in and the window out in terms of how public policy is progressing and how it's affecting the organisation. A lot of these people are economists, they

can be political staffers as well. They understand the process but they also understand how to take temperature readings which might be on the horizon. So while they might be mixing with ministers and parliamentarians and public servants at events, they're not necessarily pressing the company's case, they'd be collecting information, collecting information for research, collecting information for that interpolation, sort of keeping in touch with business associations. It's, it's a, it's almost like a barometer or thermometer for the organisation. So the knocking on the, on the door for some government relations practitioners doesn't happen at all, mightn't happen at all.

In-house?---In-house, that's correct.

I must say, what you're saying does, is consistent with what we've heard from some in-house practitioners, but they do say that when they have to lobby, even though quite often their board members are lobbying as well, that is in direct contact, they will also take on the role of lobbying if, if asked to do so or if it's part of their job?---Or if they recommend that that is appropriate, yes.

Yes. So what were really talking about then perhaps is that for the in-house, so-called in-house lobbyist or in-house government relations person is a multiple of tasks, none of which may include lobbying but for the most part could include lobbying?---That's correct. For some practitioners it does include lobbying, for many practitioners, especially if they're more junior practitioners, they're more involved in the research and in sort of taking, taking the soundings, taking the temperature of the overall public policy and environment. And they in themselves might be former public policy folk so they might be keeping an eye on what's happening internationally for example, rather than direct approaches.

THE COMMISSIONER: And are there many, do some large corporations have many in-house people whose, one of whose tasks it is to actually lobby?---Yes, they do, they do. The average government relations function in a corporation in Australia has got around about four, four to five people in it. And these are large organisations, these are not, there's aren't the not-for-profits. And usually in those organisations the different practitioners have different roles. In most organisations the person doing, in corporations doing the direct lobbying is the, is the CEO and a lot of the groundwork and a lot of the research coordination is done by the head of the government relations function who will also do some lobbying, but the, but the chief, the chief lobbyist in terms of influence, effectiveness and responsibility, it's, the, it's the chief executive officer or members of her or his senior executive team.

MR GORMLY: Can I put this to you for your comment as a proposal. Given that we take a corporation and try to decide whether it or some part of it should be registered on a lobbying register, we understand from you that



corporations have a low level of community trust, there is a perception that it is that body which gets in the ear of government, so to speak, through lobbying to achieve its ends and perhaps to overtake agendas, to use the American language?---Ah hmm.

10 We know that a corporate entity acts as an organic profit-making unity, unit and it is desirable in the interest of transparency to know who it is that's approaching government, who's going to see ministers. Would you accept that those corporations which do engage in lobbying, whether the chairman of the board or the head of the government relations branch, whoever it might be, because whoever it is is always doing it in the interests of the company, justifies having that corporation listed as a body that lobbies so that in that way the public would know which companies are going to government and lobbying and which are not?---I think the- - -

20 Without identifying the individuals?---Yeah. Look, I think you'll find, my personal view is that that would be appropriate. I think you'd find a split in opinion in corporations in relation to that and some of that's driven by ideology or values or just the way the corporation operates. As long as that transparency is, is not a burden to corporations, you'll find a lot of corporations going, well, that, that seems reasonable to me, it's the degree then which you- - -

THE COMMISSIONER: You say that corporations won't like - - -?  
---Some won't.

30 - - - won't like a requirement that they also identify the people who actually do the lobbying on their behalf within their organisation?---Because it would be very hard, Commissioner, in a lot of instances to actually identify who those people are.

Why?---Well, if you're a senior executive and happening to be sitting next to a minister at a luncheon for, for the very first time, which actually happens, it happens quite a bit. You might be even at a social event or a sporting function where you have contact with a public official or a minister. You may have no idea that this is going to occur, so are you - - -

Maybe it shouldn't occur?---I don't think that's possible.

40 Well why, I mean we, we, the Department of Planning in New South Wales has laid down the rule that there should be no discussion with senior officials at least, I'm not sure of the exact details, but say it specified venues, including the offices on site et cetera. What's wrong with that?---I think we're getting to a situation where, are we going to restrict freedom of movement? And are we going to restrict - - -

No. You see the problem is the judges are very used to this. We've grown up with this. This has happened for hundreds of years. Judges meet

lawyers all the time at social functions. They entertain each other. They know that there are some things they're not allowed to talk about and they don't. I don't see why that shouldn't happen to people outside the group. Why shouldn't it?---I would hate to see any of my elected officials refuse to interact with people whoever they are, who have got a - - -

10 Well, it's not - - -?---legally have a view to, to put to them this, this, what you're suggesting is almost like going down a path where, where we're restricting peoples ability to, to move freely and to interact freely with elected officials.

They can move wherever they like and they can talk about everything except that when it comes to a particular decision that they're asking the government to make, that should be made in formal, that discussion should take place in formal circumstances?---And, and, and a lot of those (not transcribable) those decisions.

20 I'm not, this is a view that we've heard from a number of people. I'm just putting to you their view?---I think that view is impractical and it won't work. And it won't work for many reasons, most of, most of which relate to, are we using a sledgehammer here to, to crack a walnut? What is the extent of the - - -

It's no walnut?---Well - - -

30 This is, this would be the perception of corruption here strikes of the very root of the way in which we, we are governed?---I think the perception that I'm talking about, Commissioner, is perceptions of mistrust not necessarily of, of corruption.

It is perception of, you don't agree that there is, that there are perceptions of corruption?---There's definitely perceptions of mistrust. I'm not sure whether I'd take it so far that, that the citizenry out there think there's, there's systemic corruption in the way that governments and corporations interact. I think there's distrust there, there's suspicion, but to suggest that the, that there is corruption occurring - - -

Perception?---Yeah, but I know - - -

40 (not transcribable)?---I think it's even, I think it's even probably a big strong to say that perceptions of corruption occurring generally.

It's just all these letters we keep receiving at ICAC that lead me towards - - -?---Well, I must say, you know, most Australians are also employees of large organisations or a lot of them are and if you ask most organisations whether their organisation is dealing properly with the government, you'd probably get a firm, you'd get a firm no or people in there, or, or organisations in their industry you'd get a firm no. There's definitely a

perception that, that corporations may be using undue influence. But to, to go the next step and say that's corruption I, I would disagree with that.

It all depends on, I wouldn't (not transcribable) undue influence as corruption?---Well, undue influence may be, there's a difference between a discussion and a persuasive argument, I guess as well, so I'm not sure whether it's the semantics.

10 Well, do you say, lets bring it down to details. If, if a minister is of a view that a certain decision should be taken for the general benefit of the community and then pressure is brought in by some large organisation that will result in him not being, in there being a risk that he might not be re-elected and he changes his mind, you think that's undue influence and not corruption?---Well, it may, it's definitely influence because that influence may occur - - -

And it's, is it undue?---Well, it depends what the circumstances are.

20 Well, I put it to you, that the, there is a warning that if you don't, if you don't make this decision we, we will withhold funds from some entity of which you approve or our members won't vote for you?---I think that's a, if we take the recent public campaign about the mining tax, maybe the rent resource tax, maybe you can apply that to the mining industry.

Yes?---Which threatened to extend it's advertising campaign and to campaign against the government. That's the democratic process.

Yes?---It's influence, is it undue influence?

30 I understand that a democratic process. It's not a democratic process that a lot of people were happy with?---But it's a democratic process. And the alternative of - - -

But that's not what I'm talking about?---But the alternative that you (not transcribable) Commissioner, about restrictions on conversations that can or cannot occur or of, of, you know, suggestions that a senior executive to not be able to even be at the same function - - -

40 I didn't say that at all?---No, no, I'm saying, was that suggested to the Commission?

No?---Okay. Well, I misinterpreted what, what you said. But - - -

I said that they could talk about whatever they like except if a particular decision that the government is about to make on a particular issue in which, in which the individual has a financial interest, say, or some other material interest?---I'm concerned about the democratic right of, if you, if you

happen to be in business and you have business interests, being able to have a discussion about your concerns to a - - -

Well, this is to save democracy because there is a perception, the whole idea is that, that democracy is being weakened and battered down by people with a lot of money and power who are using it for their own advantage and not for the general community?---You kill, you kill the, you kill the golden goose which is democracy itself if you restrict the ability of any, either institution or individual in the community to have access to the public policy making process. Now - - -

There's no restriction on access, it's just controlled?---Well, even controlled worries me.

No one's - - -?---Transparency is very different from control.

MR GORMLY: I'm going to cut in if I may, Commissioner.

THE COMMISSIONER: Yes.

MR GORMLY: I want to stop this. I'm just watching the clock, Commissioner, I have some topics that I need to get to.

THE COMMISSIONER: You're quite right.

MR GORMLY: Mr Burns, can I just put that, can I just put the issue in this way. That if one accepts that there should be a proper recording, a business like recording by government entities of their interaction with private interests, a problem for that is that contact doesn't always occur in offices and formal places?---That's correct.

But the same people will mix socially. Now, a difficulty that's been raised with the Commission on a number of occasions is yes, we can record the stuff that happens at an office and at a table, but it's very hard to record what happens in a social event. Now, one way of dealing with that is to say, you, you do not continue to discuss business on social occasions. Another way is to take a pragmatic view that if it's raised at a social occasion it's unlikely to get down to serious business, in which case you make an appointment and the business gets transferred to an office. Now the question that, that one could pose about that is, do you accept the pragmatic view that nothing serious usually is going to happen on a social occasion, it will get transferred to an office where notes are required to be taken or do you take that extra step and require of the participants in a, an event that's occurring between private and public interests, do you require of the participants do not speak about business matters on social occasions. Now do you have a view about those two options? Do you take the extra step and try to ask people to be sensible about business and not discuss it on the social occasion or do you just take a pragmatic view?---I don't, I guess you take a pragmatic

view. But both those options sit a little bit uncomfortably with me anyway because I don't think, I don't think you could actually administer that or I don't think you could actually police that. And I don't think - - -

Well, the first one you don't police at all, do you?---Well, you rely on - - -

10 The pragmatic approach, you don't police it?---And you rely on the, the integrity and if that is, if that's the regulation or if that's the law you rely on those parties involved in that interaction to, you know, to, to tow the line and, and follow the line.

Okay. Now, can I just take you to some quick topics. Mr Burns, do you support the imposition of cooling-off periods on public officers after they have left office if they want to go lobbying?---Yes, I do.

Right. Do you have a view about the length of time that would be applicable firstly to ministers? What would you say would be an appropriate length of time?---I'd say 12 to 18 months.

20 Right. What about chiefs of staff and staffers?---I, I think of lobbying or being involved in government relations in their particular, most recent portfolio of interest, that should be 12 months but otherwise I, I don't think there should be any restriction if they're going into a different segment or - - -

30 THE COMMISSIONER: What's the purpose of this period in your view? ---I think the purpose of this, this period is, I think it's about the perception issue again. But I think just in terms of the, the public service and, and public officials rather than elected officials, that it actually provides them with a little bit, I guess, more protection and, but I think it's more of a perception issue than, than anything else.

Perception of what?---Perception that a, an individual might be using their relationships or their inside knowledge in a, a particular area or particular portfolio.

40 That's two things, two different things of course. I certainly understand the inside knowledge and 12 months may be enough to cater for that but relationships will go on for life?---they will but I guess, there's the perception issue that we discussed at length before, commissioner, is that the perception issue that, that someone might be getting a free ticket to ride because they've just come out of a, a particular portfolio and then are lobbying very heavily in that portfolio afterwards.

MR GORMLY: It doesn't really do anything though, does it, a cooling-off period doesn't really do anything to deal with the possible misuse of relationship to provide preference, would you agree?---Look, any

relationship can be used to, at, you know, at, at any time. It depends on the intent of the, the individual and what intent you apply to them.

Yes. But I suppose, as you say, it does something for perception?---It does something for perception but - - -

10 What about senior government officers, directors general of departments and other senior officials, do you have a view that there should be a cooling-off period for them?---For director, for lobbying, for (not transcribable).

Yes, for lobbying, yeah?---I really don't have a view on that because I, I think some of those people might be more effective to a corporation or, for example, some of the big management consulting firms by not directly lobbying but sitting back at head office and, and doing what they do best, which is collecting information and interpreting it, this time for the corporation not the government.

20 Do you think that there would be a problem for a politician or do you think there would be a benefit to the community if politicians were able to come out of parliament and go into, for example, a lobbying firm or an in-house firm but be restricted from making appointments or doing face to face lobbying so that there in a, in a kind of advisory or document production role that I think you were just referring to?---That, that occurs very commonly. There, in Australia there aren't a lot of members of parliament, former members of parliament involved in lobbying compared to the UK or the US for example and this is another side issue I think we use our, especially our former good ministers very badly in this, in this country.

30 Can you expand on that?---In, in nations like Canada, the US and the UK, you know, the former secretaries of state, former ministers, former prime ministers are actually expected to give something back to the community, either as, playing special envoy roles or heading government inquiries or being interfaces between public policy in the community and in Australia I think there's a, the expression is there's nothing more ex than an  
40 ex-politician and I think we've got, had some very good elected officials in this country that, that we, we don't provide a career path for. I mean, you don't go into politics for the money number 1, and once your career is over, even if it's been a good career, you're virtually out on your own and I think the community should expect something back from politicians, especially talented ones and, and provide them also with a more meaningful life after politics.

All right?---A bit off the, the topic but - - -

No, no, it's not, no, in fact, Mr Burns, on many occasions so far there has been considered the question of whether, if you want to restrict politicians from entering the ranks of lobbyists that there is therefore a period during

which politicians are unremunerated, so to speak, because the pension arrangements have gone. Now, while that doesn't affect any current person it's going to continue to be a problem in the future. Do, do you have a view about whether arrangements need to be made for politicians who are terminated from parliament for whatever reason but are restricted from entering an obvious field for a period?---I think politicians like, like other folk with a profession are driven by the political process and by public policy or, or the public good. Restricting them from being able to, to engage in that as a, as a, as a technician directly, a cooling-off period I, I agree with. Remunerating them so they don't get involved, don't need to get involved in lobbying, I don't think that's particularly good public policy. There are some former members of parliament who, who really enjoy the process, who, who actually want to be involved in the lobbying process. They may have even been so beforehand. I think restricting their ability and the benefits they can bring to that I don't think is good public policy.

Can I take you to the local government area again just briefly. Do you think that there is any useful distinction to be drawn between planners and other technical persons, builders, architects, who approach councils on behalf of their clients to persuade a view of one kind or another and what we might call political lobbyists, those persons familiar with the political process? Do you think there's any useful distinction to be drawn at local government level between those groups?---I've heard the two approaches, one by the, by the tradespeople and the, and the technicians called representations and the, the other approaches by, by paid political consultants or public policy advocates called lobbying and I think there is a difference. I think there definitely is a difference and just on a, on a personal note I think in New South Wales what's giving lobbying more of a bad name over the last couple of years and even the distrust between large corporations and governments has been the interaction between local government and, you know, small-time developers and either in, in WA or in, in New South Wales, you know, looking at your discussion paper, there's been discourse around perceptions of undue influence between developers and, and not big developers, these are, these are smaller-time developers and essentially local government and if, if this inquiry, in my view was to provide a great benefit to the community it would be actually looking at that area of local government and transparency around the interactions between those making representations or those lobbying local government over planning issues.

Would you accept then that a slightly more heavy-handed approach may be justified at local government level than in say at state government level?---I think an approach would be appropriate, an approach.

All right?---Because we haven't got one at the moment.

All right. You may not be aware of this but the two councils, Tweed and Sutherland in New South Wales, both have rules?---I'm aware of the Sutherland, yes.

And Sutherland even has a register. Do you think that's an appropriate step, a good step?---Yes, I do.

10 Would you wish to see on that register the name not only of the political style lobbyists but say of planning specialists who work in the area and meet and persuade government, local government?---I don't really have a strong view on that. I haven't, I haven't considered that but I definitely think if there are, a lobbyist involved or paid lobbyist involved that that transparency I think would be good for, for public confidence.

20 Do you have any knowledge or any view about whether the community could expect to see more of paid lobbyists in the local government area?---I think increasingly so. I mean, planning in New South Wales has been a messy public policy area for, for twenty years and the problems that we have in planning in New South Wales and confidence around the planning process, there's far less public confidence here than, than in many other states and even many other jurisdictions internationally in a, in a, you know, in a populous state like New South Wales. So, you know, I think addressing that would, would, would actually aid public confidence.

Ah hmm. We heard from a lobbyist in another inquiry that delay was a principal reason why people employed lobbyists at the local government level. Is that a view you'd support?---It's an observation I make that, yeah, that the process being constipated or the process being delayed and delayed without transparency, that at least appears to me to be, to be one of the major issues.

30 What would you say about lobbying between private interests and individual councillors? Do you see that as a democratic act or something that could be regulated?---That's a democratic act. I mean, a lot of democratic acts are regulated, as we, as we've seen. That is a democratic act. I think there is a, personally I think there is a whole issue around how local government interacts with, with, with the community overall and if that can be a focus of this inquiry I think that would be beneficial indeed.

40 What about contact between a private entity and staff of the council, would you accept that that is an area that could justify greater regulation without interfering with any democratic right?---That may not interfere with any democratic right, it may or may not, but it would be definitely, you'd have to consider the administrative consequences of that because there, from my understanding, there can be scores of interactions on a daily basis between, you know, one single officer and, and commercial interests.

Mmm. Thank you, Commissioner. Thank you, Mr Burns.

THE COMMISSIONER: Thank you, Mr Burns. It's been most informative?---Thank you very much.



Grateful for you time?---I enjoyed the discussion. Thank you.

**THE WITNESS EXCUSED**

**[11.12am]**

THE COMMISSIONER: Mr Gormly, do you wish to have an adjournment or shall we just go on?

10

MR GORMLY: I'm happy to go on or have an adjournment, Commissioner.

THE COMMISSIONER: Whatever suits you.

MR GORMLY: Well, I think we might go on if we may.

THE COMMISSIONER: Yes.

20

MR GORMLY: Commissioner, we have next Mr Peter Sekules in the hearing room, I'm sorry. Mr Sekules, would you like to be sworn or - - -

MR SEKULESS: I'm happy to be sworn.

MR GORMLY: Mr Sekules, your full name?---Peter Sekules, nothing in the middle.

Right. And you are a long term Canberra or person of a long term Canberra lobbying history. Is that correct?---Indeed.

10 And I think you're with the, who are you with at the moment?---Myself mostly. I have a, I look after three old clients of mine on an entirely, on a personal, on a direct, on a direct basis, I've worked for most of them for over 20 years and I'm sort of part of the furniture.

Prior to that?---Prior to that and I'm still connected with a firm that's now called Kreab Gavin Anderson. It was called Gavin Anderson and they, they purchased, purchased my, my firm Canberra Liaison which was a standalone government relations business in Canberra around about, about ten years ago.

20

All right?---So I, I, I'm, I, I, I do what they ask me to, I'm a sort of, you know, the law firms, I think, you know, sort of old partners they call them, consultants and give them an office and a car park and call on them in the rare occasion they can be of any use.

All right. But essentially through Canberra Liaison you've been a lobbyist in Canberra?---Absolutely since about '78, about 1<sup>st</sup> of July, 1978.

30 All right. And I think you have then, you were one of the early lobbyists along I think with Mr Macintosh. Is that right, in Canberra?---Yes, I think we were probably, best describe it as I said to that stage, at that stage there were, lobbying had begun I think in any sort of systematic way as a result of the changes, you know, huge changes, change of government in 1972 and the, then you had a number of individual, individual single, single person operators and then the big PR companies, of what were then the big PR companies Eric Watts and International Public Relations set up and then in due course in the late seventies sort of some sort of mid size firms I guess at which both by chance was about the same time that Ian Macintosh and, and the late Russell Parkes and myself and John Gall set up as independent  
40 firms.

Right. So as things do started small but grew?---Mmm. Mmm.

The lobbying industry in Canberra. Is that right?---Yes, yes, and, and, and change and dynamic, you know, in many, many, many changes over the, over that period.

Can you just take us through first of all your perceptions of the growth of lobbying in Canberra over the years and what it is that you think has triggered what some describe as an explosion of growth and what, to what now appears to be a substantial industry on the one hand and then whether you think there have been any changes but, Mr Sekules, I've just been reminded that I have neglected to ask you whether there are any opening comments that you'd like to make before we get into the individual questioning?---Shall I go to the, you know, there's perceptions, the growth in general observed from the previous thing and I think got some comments, comments on that that might, that might assist. I think, yes, the, the, the, the growth undoubtedly, the start, you know, came because there was a huge, there'd been a, a very, a very stable arrangement that had gone for, that existed, sort of, went through most of, most of the Menzies years. I did, I think I mentioned to the, to the people when I had an informal chat with the, with the office staff I've been conducting a, series of oral history interviews for the National Library on the history of, history of government relations and lobbying and a man who was the, who had been the, the chief executive of the Chamber of Commerce since 1958 and he described nostalgically the way that things used to work. The Chamber of Commerce, the Australian Chamber of Commerce would have its annual, would have its annual general meeting after which, after which was normally the case they would expect to go and have a meeting with, with, with Sir Robert Menzies and he described the way he would ring up the, he would ring up the, the, Hazel Craig who had been the long-running secretary, she'd been Chifley's, Chifley's and Curtin's before. She said, Yes, yes, Mr (not transcribable), when would you like to come and see the Prime Minister? So there was a, you know, so you had this, this change from this, from this sort of rather gentlemanly and, and clearly understood way of doing things and I don't want to, sorry, don't want to waste your time to go, but there's, as you were going through the previous, the, the way of, there used to be a, there was some literature which seems to have, seems to have sort of faded away about what was called pressure groups and this came very much in the sixties and there was a book written about the RSL for instance and the debate that used to go on internally with organisations like the RSL, the chambers of commerce, the CWA and so on and the agricultural organisations was the use of direct versus indirect methods, and they didn't talk about lobbying, they talked about, you know, influencing government. Direct meant, and this was, this was regarded as the proper way of doing things was to hold your, your state bodies would all come have their meetings, they would come together for their national meeting, you'd hold your annual meeting then you would go and present them to the minister and if you were a sort of a top level association you'd go to the Prime Minister and if, you know, lower down would go to the relevant ministers. So direct, i.e. behind closed doors it might turn up, nothing would appear in the press about it, they might put out a press release, direct was seen as the proper way, as the proper way of doing things, indirect meant going to the opposition using the media and there was, and the traditionalists within the organisations would tut-tut, this was a very, this was, this was, this was

improper, improper, most of the correct way to do it was, the direct was the behind closed doors because that was the accepted ways of doing things since it had been done since time in memorial. So the change came when you, both were associations, when you had a, a government came in that hadn't been in power for any length of time and the explosion of, of activity was, and I think I'll, I'll come to some of my remarks. I think your issues paper is deficient in this respect, is that what, what, the first thing that they, is what the hell is going on. That's what clients want to know, you get, when there's a big change, when there's a change of activity, so it's that, what is, what is going on is the main, is the main reason for the growth. And there was surveys which, which Jeff Allen, the, Wayne's, Wayne's chairman has done over the years and the first, what is the thing that we do most, it's not arranging appointments and so on. First of all it's, it's monitoring. It's gathering information. Finding out what's going on. And obviously when there's a period of big change, as there was in 2000 and again as there was in 2007, there was, there was a lot of confusion. There's not, there's not established systems of knowing how things go on. So there's a desire to know, please to us what the hell is going on. And then secondly, it's probably strategic advice and then you get down to the actual doing things, you know, making appointments and so on. So, so that has been, so yes, you've had, you know, if you compare why has there been, why has there been this act, why has there been, why is this industry grown up, I think it's the, you can look, very simply, if you look over a 50 year period, it's the, it's the pace of, it's the pace of change. And then obviously the other thing that has changed is the, is, is, is micro economic reform and in some cases macro economic reform where you've had a, where you've had a lot of government, a huge amount of government assets sold off and, and so you've got new organisations coming into play. Whereas there was one government owned airline called Qantas. There was one, there was, what was it called originally?

TAA?---No, no, that was - - -

Ansett?---Telco, what was Telstra called before it was Telstra? The PMG. That was the Post Master General's Department that ran both the post and the, and the telephones. And then, and then you've got an explosion of, and many other areas. The Commonwealth Bank being sold off. So you've got these competitive, these new competitive elements and, oh, broadcasting, deregulation in broadcasting. So suddenly you've got a, just look at those, just look at those three, those three areas, airlines, telcos and, and, and, and banks. All of those three exist, they own their existence to a license they hold from the government. So therefore a lot of the activity they engage in is the, the monitoring and the watching (not transcribable), it's insurance. Their, their existence depends on that, depends on that, their permission to operate. And there's been more of them and so, yes, they are, it's only natural that they are going to want to focus, that they are going to want to focus their attention on that, on the one organisation that can do, that can actually cancel, can actually cancel that license to operate. So their, so I

think, you know, if, that's probably, probably a very simple look, but that's the, and then consequently of course, as governments got more complicated you had obviously lots of, lots of functions moving to Canberra from the States, so there's been more, more importance. But at the same time, the importance of Canberra has diminished incredibly. Just as a result of, as a result of the, of technological advances, as a result of, and also I think John Howard sort of moving the, moving the centre of power from, from Canberra to Sydney in terms of his residence. It is no longer necessary to, to be Canberra based. I think I'm right in saying that possibly the only, of the large lobbying firms, probably (not transcribable) Gavin Anderson I think is the only one that maintains a full service office in Canberra. Most of the others are based in the capital cities, a lot of them, a lot of them in Sydney and fly in and fly out for the, or just have a representative office. So that has been a, the carpetbagger syndrome is very much with us, so, but we, we the long time Canberra denizens would regards these meretricious players as, as mere carpetbaggers. So the, so, so that, so that is, that is a big change.

20 THE COMMISSIONER: You were going to say something about the perception of corruption you said?---The, the, yes, is quite, I think we are on the nose, not merely nationally but internationally and in the US, absolutely clear where the, where the problem lies there. And that is as a result of the global financial crisis. It is, there was an expectation that the banks and the major financial institutions, their insurance companies would be severely restricted in what they could do. And that simply hasn't happened. And that is seen to have been, as a result of the successful lobbying activities, particularly of the large banks. And that's - - -

30 And in Australia?---Well, could I go to the UK, because that's similarly a bit of the, a bit of the GFC, but mostly it's more like Australia in the sense of the, it's been the ex-politicians a bit. You recall that before the end of the Brown government, three ministers, one of them alas, alas an Australian, I am horrified to say, Patricia Hewitt, daughter of, of Sir Lenox Hewitt, a senior public (not transcribable) and a senior public servant, had to be removed from, you know, they were offering their, offering their, offering their services as lobbyists while they were still, while they were still members of parliament. And, and it was - - -

40 But this perception - - -?---Yes, the perception has - - -

- - - is much older than the GFC?---The GFC and the, the, I was coming to that, and I think the, one of the reasons is that the, the environment movement has been very successful as portraying, and this goes back to the early '90's, as portraying the lobbying process, usually the process of which they objected to, as being, as being evil, you know, dominated by corporate interests and so on. The titles of, sorry, I didn't realise, I'm coming, I'm remembering this out of memory. I haven't prepared for this. But my favourite title is toxic sludge is good for you. And they work in a whole,

there's a, there's a huge or at least, and New Zealand, Australia, Canada, US, I'm just, sorry, I'm just remember the titles, I'm sorry, just going, trying to remember a bibliography as I'm going through where they all came from. It started in the US mostly. And there was, so there has been, there was a systematic effort by the Green movement to, to portray the activities of PR, PR and lobbying and government relations as, as inimical to their interests and, and, and corrupt. Of course, they used the very, in the process of course, in the course of this, they learnt how to use these processes themselves and have been very, have been very successful at it.

10

MR GORMLY: Can I just stop you for a second so that if we were to try and, your opinion about the root of the adverse perception of lobbying is that in part it is because it's behind closed doors. I infer that from what you were saying earlier that, whereas originally it was seen to be the way to do things, it's not now?---Exactly. That was an accepted, that was an accepted, that's right.

And now, and now it's not?---No, no.

20

All right. Secondly, because there were social changes where for example one large unit that was not corporate oriented, the Greens or the Green movement focused on lobbyists and lobbying and identified and labelled it? ---Mmm.

Is that right?---Yep. Yep.

And also said that it wasn't a good thing?---Mmm.

30

That identification and labelling, do you think that that was the start of a public perception that lobbying existed?---That's a reasonable point of view. But it seems as though the, the term, we certainly, when we set up in, in the late '70's, it was a term not well, not particularly well understood.

When do you think it came in in Australia?---It certainly was, certainly by the early '80's. It was sort of relatively new and we were all quite trendy and, you know, one would be asked to be on TV programmes and talk about it.

40

Labelled as a lobbyist?---Yes. So some of us deliberately, to distinguish ourselves from the large PR firms, if you like, were setting up quite, quite deliberately made a point, we went, you know, insisted on having ourselves, having a listing in the, in the public, yes, I can this, from 1980 there wasn't a listing in the Pink, not the Pink Pages, the Yellow, the Yellow Pages, there wasn't a listing for lobbyists. And a few of us got together and said there ought to be. So I suppose if you wanted to look at a particular, a particular point in time - - -

So lobbying appeared in the Yellow Pages at some stage did it?---It was around 1980, I think, from about say, 1979, 1980.

Right. Did that continue? Do you know if there's still an entry for lobbyists in - - -?---Oh, indeed there is. Indeed there is.

Right. Right?---Yes, yes. Mmm.

10 Okay. So there's that labelling and pointing to the corporate activities that caused an adverse perception?---Mmm.

Do you think there's anything - - -?---Oh, no, no, no, don't forget women's and the, it's not, if I would disagree with Wayne, because Wayne works for, you know, his, he's a corporate, his, his focus is, is largely corporations and if I would, if I were to disagree with him, it would be to let's look at the, let's look, let's look at the, the not for profits. The women's electoral lobby, the most effective I think certainly of the, I think they're now called, the young women call them the second wave feminists. You know, the first wave being Pankhursts and the votes for women. The second wave  
20 feminists of the '70's deliberately labelled themselves the women's electoral lobby. And that led to, you're familiar with them aren't you? You know what I mean by - - -

Yes, yes, but I'm not sure that I follow how that fits in to the adverse perception?---Not at all. You were asking me, you were asking me when did it come, when did the nomenclature become common, in common us.

I see, I'm sorry, I see, right. So just going back again to perception, if you could just stay with that for a minute, is there anything else that you would  
30 point to which would explain why there's an adverse perception of lobbying?---Oh, yes, I mean, the activities of, the activities of former politicians. I mean, if you go, or, and those very close to the political process. I mean, the '83, the original lobbyist register came about following the, the Combe-Ivanov Royal Commission and, and while David wasn't a, you know, wasn't a politician per se he was a, he was nothing but a political, you know, he was a political apparatchik and had been for his whole career.

40 All right. So that's what actually triggered the first Commonwealth register?---Mmm.

Right. All right?---It was the Hope (not transcribable) there was the Hope Royal Commission, I, I, I've been, I've been going back through it and I realise it's more complicated that to read it over it, read over it night before and I think, I think the lobbyist register was set up before the Hope Royal Commission into the, the into the whole Combe-Ivanov, actually we had it by December, December 1983.

All right. So that that kind of event where there's been misconduct by somebody lobbying is a contributor?---It was actually found, in his defence, they, they, the royal Commission could find, could not find that he'd actually done anything wrong so, yes, we are getting to perception, we are getting to perception issues.

And then moving beyond those conduct issues, do you think that there's anything else that has contributed over the years to an adverse perception? ---Both, the perception of lobbying, it depends where you stand. It has become far from being a term that a public interest group like the Women's, Women's Electoral Lobby would, would incorporate in their name as, as a badge of pride or something that would differentiate themselves, it's now almost become something that you would, that you would eschew. I mean, the lawyers go to, the legal, the law firms that are actively investigation, involved in lobbying will deny for a moment that they're lobbyists and so it's become, yes, it's become a, a, it's a, it's a, that's a, I mean there's a bit of up and down in this, there's a bit of, and there's certainly a, it's certainly true that, that governments to the left are keener to regulate the activities of lobbyists than are, than are governments of the right and to come to that perception issue again, the, if you were, if you had for instance one of the right, if you, you had, you were to have one of the right-wing think tank, the people from the right-wing think tanks, the Institute of Public Affairs, CIS, those sort of people, I mean, they would, with a curl of the lip they'd talk about the green lobbyists and that would be to them the, the people who, the people on the left are lobbyists and therefore are, and therefore a bad thing, the people on the, on the left, the sort of, the greenies and so on as I've said were, will, will only have, will only refer to it disparagingly if they're talking about, you know, business interests who are wrecking the environment. So there is a perception issue but I think it cuts, you know, it does cut both ways.

You're saying that part of the perception issue is, is also just ordinary political perceptions?---And argy-bargy.

And conflict?---We're on, as I said, you know, nationally and internationally we're on, we're, we're on the nose so, and that's, and that's, and I tried to go through the sort of, you know, the reasons for it.

All right. Let me just take you to another matter then, moving beyond that. You've referred to the growth of government and the complexity of government and it's micro-economic control of, well, it's control of the economy, increased control of the economy as causes for the growth of lobbying. Do you think that we are at a stage where if, and this is just a theoretical question, where if lobbying were to be completely stopped, that is, that you could only go to government in your own right, that that would interfere with either government or community need, that is, do you need lobbyists?---If you just take the period since the, the change of government federally, the huge amount of the activity has been of a public consultation



nature. There have been a large number of any number of, you know, it's clearly on the public, any number of inquiries, public and so on and so those activities and a lot of organisations have found, have turned to consultancies to sheer, to cope with the sheer weight of work. If lobbying, if third parties, third parties weren't allow to engage in that activity I'm sure they would have around another way of doing the, of, no one, no one's indispensable. I'm sure, I'm sure organisations that need, needed to make representations to government and the point I'm making is in the last, in the last three years a huge amount of the activity has been all, has not been knocking on doors and making appointments, it's actually been keeping up with the need to, to engage in, in, in very public consultation processes.

That sounds like it's a useful industry?---Yes, I would, I would, I would say, one of the remarks I was going to make to you was the, was the, your own, as I'm sure you're aware, quite a few of the, in the industry have found the reference, the, found, have found offensive the reference in this, in your Issues Paper to "officials being subject to lobbying" and I was, I was interested therefore to look in fact at the, at the preamble to the lobbyists, to the New South Wales Government Lobbyist Code of Conduct and I draw attention, your attention to this very sage paragraph right at the beginning, "Lobbyists can enhance the strength of our democracy by assisting individuals and organisations with advice on public policy processes and facilitating contact with the relevant government," so, yes, yes, I would say not only useful as I'm sure it comes as a huge surprise to you is that I would say that it is an indispensable part of the democratic process.

Well, that's the point. Do you think it is, it's now serving a purpose which makes it sufficiently useful to the community to call it indispensable?---If the lobbyist, if, if, if it were, if a decree were to be laid down that the, that there shall be no more, there shall be no more lobbyists, that you've all got to do it not for, all organisations have got to, I'm sure, I'm sure there, I'm sure a way would be found.

All right. Are you - - ?---I think it (not transcribable).

You're not the first, Mr Sekules to draw that piece of wording in the Issues Paper to our attention?---I'm very please and I hope repetition will, will, will, will, will not, will not so much bore you as impress upon you the, it's validity.

THE COMMISSIONER: I don't know why you're so sensitive, I've grown up with being told that, or reading about the sympathy expressed for people who are subjected to lawyers?---Yes, yes, yes, it's the subject of many good jokes. The, but it doesn't, however, it doesn't, it doesn't stop the Bar Association or the Law Society defending, defending their respective professions at every opportunity.

MR GORMLY: But would - - -

THE COMMISSIONER: But they, they subject government officials to lobbying as well?---Absolutely.

MR GORMLY: Would you accept though, Mr Sekules, that that, those, that wording in the Issues Paper does at least reflect a perception in the community that some lobbying appears to overtake or interfere with appropriate government agenda?---The, I think it reflects the, something that we should probably take with a bit of grain of salt and that is when public officials say I know very little about the New South Wales planning system I say but surely the, one of the reasons that the planning bureau, planning bureaucracy in any state or local government exists is for people to come and make application to - - -

Certainly?--- - - - building approval and so on, for the very reason they're there is to be, is, is, is to process, that's why they're there. So in some respects one can take with a grain of salt when ministerial advisers and ministers are saying oh, if only these dreadful people, the citizens would go away I could get on with my job so much better. But, yes, I do, yes, on the other hand, yes, there is, you know, excessive, yeah, there are, there obviously are cases when people have been, been, been worried and unnecessarily.

Just follow that idea of lobbyists moving the agenda of government or taking over the agenda of government. It's possible from externally to see how that might happen if lobbyists are extremely well prepared and resourced and confident in their approach for a particular industry or client to a government that may be doubtful of mixed resource and perhaps of less certainty about desire or outcome to see how those confident lobbyists could well overtake or in effect take over the agenda of government. Do you think that there are other ways that lobbyists can interfere with or take over the agenda of government than simply being well-resourced and confident and knowing what their outcome is?---You're speaking now of lobbyists in general - - -

I am?--- - - - be they associations - - -

Yes. What I'm trying to get to, Mr Sekules, is having looked at some of the history to now look at some of what people complain of as the mischiefs or the bad side of lobbying as distinct from its obviously good side?---The, whether a, I, I, could I put the boot on the other foot and whether a particular government is susceptible to such lobbying I think has a lot to do with the, with the state of a particular government at a time. A new government coming in after a successful election (not transcribable) victory and this is true equally, it's sort of true equally at state or, or federal level, in my experience there, you, you know, they're untouchable probably for the first, for the first term. I think the recent government, the recent government in, sorry - - -

THE COMMISSIONER: I was just thinking of the mining - - -?---I was about, and the point I was about to make is I think considering the, this, this recent government, this recent federal government has been quite unusual for coming in, coming in, coming in with such a, coming in with such a mandate and clearly, and clearly in control for being sort of so wobbly in its, in its first term. That certainly wouldn't have been the case I would say in my, you may have a different view but the first, first term of the Howard government and certainly not the first term of the, of the Hawke, of the  
10 Hawke government. I mean I think in the mining tax you could, if you look back I was actually working for, doesn't matter I suppose, I was working for Esso at the time at the, and during the time of the first Hawke government when they introduced the, the resource rent tax and, and, you know, they were done like a dinner. (not transcribable) were able to, to proceed with its agenda and that they were in a very powerful position and, so therefore, yes. And when, and, and when governments have been (not transcribable), the longer, the longer, the longer they've been in, in, in power the more susceptible they are to those sought to, to, to others setting the agenda. Now it may not be, you seem to be implying that it is necessarily, necessarily a  
20 bad thing. If you look at, look at, if you look at the business, business generally and the sorts of things that business want from government unlike say, and I think this is, this is, tends to be true, I think this tends to be true in most Western democracy. Farmers form, tend to seek political action themselves, there are country parties, national parties, there are in, different agricultural parties. As we've seen the Labour Party, the unions have found expression through, expression (not transcribable) through the, through the political system and most recently we've seen it, we've seen it with the Green, the Green movement is now a party. Business tends not to operate that way and so very often the sorts of things that business as a whole are  
30 putting to government say in terms of tax reform, in terms of where interest rates should be going, those, those, those broad, I mean, I, I, I reject that there's necessarily, they're necessarily a bad thing.

I mean I don't want to get involved but there are examples that spring to mind that some people think are bad, pharmaceutical industry for example, the pressures that they bring. One can even say in the medical profession there are some people who think that their influence prevents medical services being available to a wider spread of people at lower prices. And there are many areas depending on one's political point of view where one  
40 can, we were told at the very beginning of this inquiry about the struggle that President Obama had with getting through his health regime and which he was unable to do, it was a very much watered down version of something he had a mandate from the electoral to do and a small group of very rich people stopped him from doing it?---There's a, there's another version of that, of that particular, of Obama's problem and that was because it's a problem similar to the last term of the Howard government when they had total control over the senate that his own side caused many of the problems because they felt that because they had total control of the, of the legislative

process they put unnecessary barrier in the way of the passage of that legislation and have reduced the, reduced the President's authority. Sorry, we're not here to argue the rights and wrongs of American. But the, medical politics is, medical politics is very - - -

Sorry, all I'm saying is that there are two sides to this, that's all?---Mmm. Mmm.

10 There are perceptions that the agenda can be set by persons other than those who are elected to do it. There may be an argument that that's not a bad thing as you've put but there are two sides to the story?---There's two sides to the coin. The, the, talking about pharmaceutical companies is interesting because they say in a federal, in a, in a, in the federal sphere are not unlike say would analogous to planning, planning in the state sphere. I mean they, they mostly operate in a, in a regulated, in, in a, in, it's mostly regulation, you know, what a drug company needs is to, first of all it needs to get its, its marketing approval then it will hopefully try and get to the next stage of getting the, of getting government, a government subsidy. Similarly with, with planning isn't it you've got a, most of it operates within a, within its own legislation, within its own, within its own, within its own, within its own regulatory sphere. And I think there's a difference between - - -  
20 Yes, I can see the point?---Mmm.

There are some industries where the regulations affect the decisions, the conduct of the people themselves?---Yes.

And others where those seeking to influence government are really at large?---And I, I, I no longer, haven't worked for pharmaceutical companies for many years but I, I noticed with some, with some amazement how they  
30 changed from being medical, regarding themselves as medical companies at which the inventors of the new drug were regarded as the, as, you know, as, as, as heroes to becoming marketing, to becoming marketing companies of, of, of pharmaceutical products and whereas they would never, whereas it was never, there was never any effort to, to, to lobby at a political level then entirely, 20 years ago there was, you would never go beyond the confines of, sorry, I can see how this is not relevant. (not transcribable) It is, it is, it is, I mean, yes, I would agree but do they, do they try and, is it, if lifesaving drugs are, are available we do have a, does Australia have to have its own, you know, there is, there is, there is another side of the coin and it goes very  
40 much to the point that Graham Richardson made to you in the, or made to somebody and it was repeated in the issues paper that in the, how often, very often lobbying comes about because of regulatory delay and I say regulatory delay and that has certainly been the case of some of the activity of the pharmaceutical companies was the length of, the length of time - - -

MR GORMLY: Taking to approve a drug?---Approve, yeah, go through the Australian system.

All right.

THE COMMISSIONER: I think we should focus on specific issues now.

MR GORMLY: I agree, Commissioner. I just want to take this agenda point one step further, I just want to bring the agenda issue to Australia, Mr Sekules, in a particular way. There is a concern about the growth of lobbying in Australia and about the power it can exert. There is a perception that the hugeness of lobbying in the US and the considerable efforts that President Obama is undertaking to do what he says is clean-out Washington of its lobbyists and so forth that perhaps Australia is going down that same path. We've seen similar public parallels drawn between litigation in Australia and America and there is justifiable concern perhaps in both fields. Now, the point I'm asking of you here about agenda is whether you have seen any sign in Australia of the increase, the considerable increase in the size of the lobbying industry in Australia and the taking over of agenda in policy fields in Australia, that is, do you think that there is a relationship between the growth of lobbying and perhaps a loss of control by government over policy areas?---No. If I look at the, I don't think there has, there has been, it's, it's, there's been a considerable movement between sectors, the sectors of government relations. The, the move has been away from, away from consultancy. This is over the last 10 years, away from consultancy and away from associations to the, to the in-house. And to give you an example, two of the, the largest of the international PR firms (not transcribable) and Bersten Marsteller actually closed down, closed down their Canberra offices in the early, in the early - -

THE COMMISSIONER: That, that suggests that any regulation to have real effect of the lobbying industry would have to apply to in-house organisations as well?---Only if it's to be, if it's to be not, not seeing through a dark glass, I can't, yes. I'm, I'm, I realise all the problems with, with dealing with the, with the in-house people, but yes, I've got a, I've got a, I've got a quote to that effect here. I'm sorry I can't, I did it, it was an interview I did with, and I'm sorry I forgot to ask his permission - - -

MR GORMLY: What's, what's the quote?---It is, he says, I asked him, in terms of in-house professionals, national associations and a consultancies, who is going to be the winners and losers going forward? This is a guy who is in a very, he's one of those, one of them himself and I'll, I'll get his permission if you like, if you want to use it. There is no doubt in-house professionals are in the ascendancy. They have gone from being the tail on the dog to the nose on the dog. They are now increasingly reporting to the CEO. They are on the executive committees and they are seen as direct advisors to the board. That is a substantial difference from 10 to 20 years ago, when they were just seen as flunkies at the end of the decision making chain who wrote the press releases dictated to them by the CEO, the CFO or the chairman. And he goes on to say that can't be matched by the general,

by the general consultancies. This was a point about who was up and who was down.

THE COMMISSIONER: Is that a recent quote?---November, 2008.

MR GORMLY: Is that published item that, that - - -?---I think it's on our website, so I think I can get, I can probably leave you with a copy of this and - - -

10 That would be good?---and direct you to where it is.

Thank you.

THE COMMISSIONER: And things have progressed from then in the same direction?---Yes, I think so because you've had the, I don't think there's been any, there hasn't been much, there hasn't been much change - - -

20 What's, what's the reason for it, Mr Sekules?---Well, the reason is, I would differ a bit from, I would differ a bit from - - -

Wayne Burns?---from Wayne Burns on this. And it is that the, he, he, I think he got it partly right in the sense, yes, you've got larger, you've got larger, larger organisations. But because you've got, and in Australia you've got, this may, this may take to your point about, about who's, who's controlling the, who's controlling the agenda, is that you've got, in you know, say mining, you've got two very large, two very large mining companies. You've got four very large banks. Two, sort of possibly three very large, very large, very large telcos . And so they are in, they are in fairly intense competition and they have got huge issues with, their intellectual property, their brand, those intangibles are, are very important to them.

30 THE COMMISSIONER: Well, the television channels is another one? ---Absolutely, absolutely. Or possibly as technology moves, maybe the Googles, the Yahoos are becoming more important in that and the, and the Foxtels and the, the old free to airs less so. Certainly, the communications companies.

40 Yes?---Certainly the communications companies. And so you've got the, and so they are less, they are less willing, those intangibles are their brand, their reputation, which are vital to their, to their share price, to their ability to generate profits are so important to them, they don't want to share them either with others, their competitors in their national associations or with outsiders, people are not subject to the, the confidentiality requirements and the sanctions that would go with being, go with being an employee.

Yes. The more, the more technical the, the product, the less likely an outside lobbyist would be used?---That will always be the case. If you've

got, I would disagree again with Wayne in the sense, in terms of the size of a, an Optus or, an Optus or a Telstra has a much larger corporate, corporate affairs branch or division than four people. The, I mean they will have a whole, they will have a whole stack of regulatory people, they call them regulatory, it seems to be called, as opposed, it's rather different from the way Sam Haddad and Grahame Richardson sort of referred to technical, usually the people who deal with the communications and media authority on a day to day basis on technical issues will be called, will be referred as regulatory. And then the (not transcribable) , then you'll have, you'll probably then have a, may have a government relations person and the government, in those very big companies, the government relations person is probably what we, is probably a direct competitor to us, a corridor walker. Probably comes down, will come down to Canberra for the three or four days parliament's sitting and, and have a, sort of a, a list of things that he or she is supposed to do and things to find out and, and things to prosecute. Then above them will be, will be the corporate affairs, the sort of person that, that this person is talking about here, will now report directly to the CEO. And you've heard, well obviously from what you said before, you've been hearing about this, this development.

20

MR GORMLY: All right. I want to take you now to, to completely different areas, if may Mr Sekules. Firstly, you published books in '94 and 2006, I think. Is that right?---No, I don't think there's anything that recent. '84 and, '84 and '91, I think.

Oh, was it. I'm sorry?---As I say, I try - - -

All right?---In many respects I'm a long way out of date.

30 All right. Look, I won't trouble you then. I actually thought that the second book was in the '90's. Am I wrong about that?---It was called, the '90's, yes. It was published in about, in about 1991.

All right. Well - - -?---The nineties not noughties.

Yeah?---What I have been doing more recently which is relevant, is the, is the interviews with the, with the library, with the National Library.

40 I was just interested in the very significant difference in tone and nature of the first book from the second, yet both endeavoured to do the same thing. Was that a reflection of a change in lobbying as you saw it at the time?---I think the first one, '84, was directly after the, directly after the, the introduction of the first lobbying scheme. And, and did we, did we feel under threat. Did we feel that, as we're talking about now, by the stroke of a pen the government could, could wipe us out, yes we did.

You were concerned about being, about there being a register?---No. No, no, no, much more, much more draconian than that. I mean we were

concerned that the, that the, that there would be, that what was at that stage a fairly, you know a fairly, a fairly new industry would be, would wiped out at the stroke of a pen.

I see. You were concerned that there'd be such control or that there would be an extinguishment of the industry?---Yeah.

10 All right?---Don't forget this was, this was a new government. This was a, a new government coming in with, and here was one of, you know, one of, one of our own who had seriously dirtied the nest. It would not have been, the, that government made sort of three, three bad blues in its first, in its, in its first year. There was the - - -

That's okay?---That was one them and so yes, was it likely that they would've panicked and said, right, that's the, that's the end, yes, yes.

Right?---Were we under threat, yes, I think we were.

20 Okay?---So that was, so '84, I was, I was starting to, you know I was justifying, justifying our existence a bit.

All right?---Whereas in, by '91 and so on we were a much more, I think particularly with the, what the Hawk/Keating government did with those, those, there were a lot of summits. There were a lot of, a huge amount of economic reform in which we were all playing, you know, I mean we were, we were playing, playing a, you know, playing, playing (not transcribable) The industry was - - -

30 The industry was well established by then. Is that right?---Yes, yes. I perhaps could afford to be a bit more light-hearted and - - -

All right?---confident that the children, the children's school fees might be paid after all in '91, which might not have been the case in '84.

40 Do you think that the current wave of consideration of lobbying, both with this inquiry but elsewhere in Australia and elsewhere in the world, is producing a sense of threat to lobbyists or do you think that it's just a recognition that some degree of regulation is being called for?---No, I don't, I don't feel, I don't, I don't feel the same, I'm not aware, I'm sort of, I'm a, I'm a sort of an observer now, if you like, that's not directly involved. I don't feel the same sense of threat that they're about to be, about to be wiped out. I think, yes, there is a recognition that it's an integral part of the, it's an integral part of the system and not least, excuse me, and not least because not-for-profits and individuals, yeah.

All right. Let me take you to the specific topics. Now, I want to ask you firstly about cooling-off periods and former parliamentarians conducting lobbying. First of all, I think it's your view, unless I'm mistaken, it's your



view that some of the modern odium that is attached to lobbying or at least the scepticism about it, is because it has within its ranks former politicians? ---Who have, if I could add that, you know, who, who have, who have muddied the waters, yes.

Right?---Your Issues Paper, you know, goes much further than that obviously.

10 Mmm. Do you consider that there is nevertheless room for former politicians in the ranks of lobbyists?---Oh, yes, yes.

Do you think there is a value in having them there or not?---I think it would be, it would be a, a mistake to, to, to say that yes, that they're, that they, the knowledge and expertise they have built up, and there is a particular, there's a particular, a new sort of business model making effective use of former politicians which I could turn to if you like.

20 Do that?---Good. And that is the, a chap I had a lot to do with who was head of the, CEO of the, of the Gavin Anderson Organisation when, when, shortly after they bought us out. He's now set up his own firm in Adelaide which is called Bespoke Approach. And he was one of those people who was really very much involved in sort of financial, financial consulting, involved in, which in way is sort of like a separate part of the whole communications or PR as, as government relations is, and became very much involved with government, working for government mostly, but state, state New South Wales and state on the various sell-offs and buy-offs along with the investment bankers and the lawyers and so on.

30 Yes?---Part of that process. Now, he has now set up his own firm. He's, the two people he's got working with him is, one is Alexander Downer and the other is Nick Bolkus, former Senator Nick Bolkus.

40 Mmm?---And Ian Smith sees this as, as a finding a way of harnessing, harnessing the abilities and knowledge of former politicians, both of them are, both of them former ministers, in a way that is perfectly, everybody knows it's, it's, you know, it's, it's perfect, everyone knows who they are, what they're doing and it's avoided some of the, some of the opprobrium which is attached to the perhaps rather clumsy efforts of politicians themselves to get into this, to get into this industry.

Now, you say it's avoided the opprobrium because we have a Liberal Labor Member in the same firm or because they're doing government work?

---That certainly, I think that certainly, that certainly, that certainly helps. That's, was a, when we set up in the seventies, my partner and I both made a, made a big thing of being on, having backgrounds in different side of politics. The issue now that it was wrong to be one side or the other wasn't an issue at the time, it was more to say here we are, we can solve, it doesn't matter who's in power, whether you need to lobby one side or the other,

we've got the, you know, we've got, we've got the expertise and the knowledge in either area. Gavin Anderson and Kortlang always followed that idea of being, covering both sides and Ian Smith has now taken it to a, to a different level.

10 There seems to be another trend developing though at least in New South Wales where a Labor-oriented firm with obvious contacts in the Labor field may be being to some extent, let me withdraw that, that there is a Labor firm that is obviously very well-acquainted with the Labor side and there is emerging a new very Liberally-oriented- -?---Yep.

20 - - -firm on the other side, presumably in case there's a change of government. That seems to be a fairly clear sign of an acceptance that a lobbying firm that is associated with the same party as government is a useful thing, at least for the firm or for the firm's clients. Do you accept that that is a trend that exists as well?---I accept that that's a trend that's existed and I think it is, it is, it is a part of a process of increasing politicisation of decision-making where, I mean, it started very much with the, I suppose it really goes back to the, to sort of the Kennetts, Kennetts and Greiner governments whereby they were saying no, we are going to take more control, we at the political level are going to take more control of, of, of the agenda. Howard government obviously followed it. So one would find oneself in the normal course of work, find going to the public servants less and to the advisers, to the political level. It even got to the, the sort of revolting American expression, on the hill in Canberra, going to Capitol Hill sort of went into the language. So yes, there has, the current trend is towards a greater politicisation and so I think you're seeing the, you're seeing the government relations industry reflecting that, reflecting that, that greater level of politicisation.

30 Right. So the politicisation of lobbying then might relate to the level of government at which decisions are made. If it's at the political level, then lobbying will become political. What happens if decision-making is pushed back to the public service again?---I think you'll find then that the, that the firms like Kreab Gavin Anderson that always maintain, that will always maintain both sides and still recruit from, and will still recruit from the public service as well as from the, from the ranks of the, of the apparatchik ah, will be, will, will be the winners. I think this is a, this is a - -

40 A normal (not transcribable?)---It's a very dynamic, yes. A lot of this, it's not, it's not, you know, if you look at it as I've been doing sort of over forty or fifty years, it's a very very dynamic- - -

Mmm---?- - -a very dynamic process. Also I think you'll see that the, of course the ones that get a lot of publicity tend to be those ones that obviously attach closest to the- - -

Right?---And I think probably the, the, the sort of specialists, the, the discreet, sorry, when I say discreet, standalone government relations firms are not, probably don't do the majority, although they get most of the attention, they don't get, they don't- - -

All right?---?- - -still a lot of work goes on elsewhere.

10 All right. Thank you for that. Now, just on cooling-off periods then. Do you have a view about an appropriate cooling-off period for somebody who was at ministerial level at state level?---At state level. This is sort of the (not transcribable) argument. I have, I can't get out of my mind the report which Justice, Justice Nigel Bowen, the former, former chief judge of the, of the Federal Court and a very, one of those people who was an eminent lawyer who was a very fine sort of foreign affairs minister and attorney general, he did a report after what was known as the IBM Faicom affair where the, where Faicom is now Fujitsu, where they complained there was an improper, there was allegations of corruption by, I can't remember which one, I can't remember, whichever one missed out on the government- - -

20 What did he say?---It said, he said on this, this was a case of ex people, computer experts and (not transcribable.) He was, put the point that as a, as a, is it fair to take away as a matter of common law, to take away from somebody their right to make a living in, in, in the only area, in perhaps the only area in which they have expertise. And, I mean, I put that to you as it always sort of comes back to me in, in this. So is the- - -

THE COMMISSIONER: It's always- - -?---Huh?

30 It's always a matter of balance?---It is a matter of balance and I must say- - -

40 Because the common good may be so powerful, the benefit to the community to prevent a particular person from earning money may be so powerful that it overrides that, so it's always a judgement that has to be made.---There, there, I think the economists have, were you economists, you'd be looking, you'd probably be looking at this slightly different, you would be saying is there a market failure and obviously one would say that in, in the case, if, if a, a major piece of procurement has, has been corrupted and the government has not got the best value, then, the public have not got the best value of money through a process, then, yes, then, then, you know, yes, there clearly has been a market failure and it is a, it is a, is that, there's a certain attraction to the, because it's happening anyway as, as Wayne said, to the idea that yes, you, you can be an advisor, an advisor to a law firm, an accountancy firm or, but, but you can't be actively involved in, in face to face contact or - - -

MR GORMLY: Do you think that is workable or not?---That, that, that seems to be more workable than, and then fear, than the, I mean, you realise, I, I'm saying this having been rather peeve that, that our ex-MPs in

particular have, have, have, have muddied the, muddied, muddied the, muddied the otherwise pristine, pristine waters of the government relations field, sorry, I'm, I'm being ironic but they are, they have yet, you've got to look at the fact, I mean, how, someone who's been an MP for 20 years or so, I mean, unless they can find employment, they may still only be in their, you know, may still be sort of in their 40's, well and truly in working age but - - -

10 THE COMMISSIONER: There is the confidential information issue?  
---With ministers there certainly is, yes.

Yes, but not necessarily members, ordinary members?---Mmm. I would think it, but that's, but that's fairly clear, isn't it? To what, if you're an honourable, whether, whether you've been sworn in as a, whether you've been sworn in as a minister or even frankly actually at the lower level as a assistant member or parliamentary secretary, you may have been privy to, to, quite sensitive information.

20 MR GORMLY: Sure, or a chief of staff for that matter?---Mmm, mmm.

Well, what would you see as an appropriate - - -?---But it's difficult, isn't it, because they haven't been, it's quite clear whether, whether someone, someone gets sworn in by the governor, entitled to a, to a, to a state funeral when they die and someone who is essentially a, an employee - - -

Well, it's a question of knowledge, isn't it?---Yes.

30 If they have the knowledge it's saleable and the question is whether you prohibit a period between their having that knowledge and the time when it's safe for them to be, going into the market or for the knowledge to go dead?---Mmm. I, I - - -

So would you, I'm going to press you in this, Mr Sekules?---Yes, I know, yes, yes.

Do you have a view about an appropriate period during which ministers ought not be lobbying?---I don't really, I honestly - - -

40 All right?---I, I don't. It's the, and I, whether it's the, I notice that Queensland for instance, in Queensland they put that actually - - -

Two years?---They, but they put that in their lobbying, in their lobbying rules don't they, that's their, that's part of their lobbying, lobbying code.

Yes?---And is that the most appropriate, is that the most appropriate place for it? I mean, it's - - -

Well, putting aside the mechanism by which it's done, Canada is five years which seems to be a very long period?---Mmm.

Queensland is two years and at the moment New South Wales is 12 months? ---Mmm. The term of a, would, wouldn't this be, I mean the number of years and months is a bit, I mean, would a, would a, would the life of the parliament be the, be appropriate, the most, the most appropriate?

All right, life of the parliament?---Mmm.

10

Okay. Right, now would you lessen the period for staffers, chiefs of staff and staffers or would you say it's about the same?---I mean, I think they're in a, they're, they are, they have less, they have less ability to, they don't have, they, they have less recourse to public funding in the, in the form of very generous superannuation entitlements, I think, and particularly if they've been political employees you live by the sword, live by the sword, die by the sword and, and so I think it would be rather, I think it would be, for, for somebody who, who probably may in fact be much, would be younger. I mean, the, like we say policemen seem to be getting younger at my age political, chiefs of staff and political ministers seem to be getting younger too but they are, I mean, they are in their, you know, they can be in their 20's and 30's.

20

And they're on a career path?---They're on a, they're on a career path.

They, they also have access to ministerial level information?---They do, they do so, so - - -

So it would be appropriate perhaps, would you think, to have some period? ---To be some, some period but I don't think it, I don't think it's fair to, to, to, if the period of one parliament were, were reasonable for, for ministers so - - -

30

One - - -?--- - - - I think that would, that would be an unreasonable interruption in their, in their career and ability to - - -

One former senior New South Wales minister told us that he thought that most government information in the hands of ministers ceased to be current within weeks or at the most months. Is that a view with which you would agree?---There, no, because they know how to sit, well, they should, I mean, you know, as we've seen, how often they don't but they should be, the knowledge, it's the knowledge of how the system works that really, that, that is, is, is going to be of enduring value than, than, than a particular contact with a particular person.

40

Yes. Well, that is, that is a legitimately saleable body of knowledge, isn't it?---Mmm.

How the system works?---Mmm.

All right?---Surely there, surely there must be a way of, of quarantining, of, of, of ring fencing the, I mean in the way, in the way that, in the way that judges, judges would, would regularly do in relation to court cases they're currently hearing, there should be a way of, of quarantining the sensitive information.

10 Yes. Right. Can I just take you to the register for a moment. Firstly, I think you do support the existence of a register, is that so, for, for lobbying, for lobbyists?---Yes, oh, yes, yes.

Yes?---I think it's a, it's very, it's a, it's a, it is - - -

20 No, I just want to take you if I could just to these steps. I'm not trying to stop you from discussing them but if we could just get your view first, would you extend a register so far as to say that those who wish to lobby government by direct contact with a view to altering legislation or deriving a benefit from a government decision should generally speaking be, should generally speaking declare themselves so that they, the public can know who it is that's approaching government?---Yeah, level playing field, absolutely.

All right. You have no problem with that as a general view?---Mmm.

30 That would cut out most people but it might end up with a larger bank of people than just the current lobbying professionals?---Yes, where, where the, the glass, the glass would not be quite as, the glass would be a bit, would be a bit, a bit more, a bit less opaque than it is at present.

THE COMMISSIONER: If you put in the people employed by the in-house organisations?---The, I, I would certainly put, without, I have no doubt at all in, in saying that the, the other third party, third party operators, the lawyers, the accountants and, and others should be, that, that to me is a, is a no-brainer in the, in common parlance.

40 And the employees of the large companies who have got their big departments as you've explained to us?---I, I, I, if I could just, this is not a diversion, I actually, I've been sort of asking around about that because obviously the in-house is the difficult, is the, is the difficult one, you know, we don't have to, you know, you've already put the arguments about, everyone knows who they are anyway. The, I was speaking to, to someone who is one of my old clients who is, which is large, an association which is large enough to have a specialist regulatory, regulatory affairs person and she said that, that were there a requirement to, to be so registered she would have no, no problem at all and in fact would probably sort of welcome it because in that, within that field, that is like a - - -

THE COMMISSIONER: It's a qualification?---Precisely, a qualification, a licence. It, it, it could confer on her within her organisation - - -

A specialist quality?---Mmm.

And what about NGOs and non-profit organisations?---Well, I think so, I think likewise that they would probably, this is, this is guess, this is guesswork, that they would probably, probably quite, quite welcome.

10 But apart from whether they do or not, what's the equity of it?---Well, if you're, if you're, if you're trying to seek transparency in relation to those who are using the, influencing, influencing decisions and you've got a, a slightly more workable, you haven't got 99 different websites to find it, then you've got, then, then yes, I, I can't, I can't really see the, see the objection. I can see all the problems with the CEOs. Maybe with the companies and, and large, and NGOs would be required to, to register in relation to themselves and, and provide a, a main, you know, and identify the main person responsible for those activities within the organisation rather than having to do this list of the CEOs sometimes but, you know.

20

(not transcribable) the register is, I mean, if the register is, if the register is to tell the world who are lobbyists then simply listing the main person responsible allows a, allows an infinite number of people to do lobbying without anybody knowing that they are lobbyists?---Most of them are required, aren't they, to, I've got a, mostly you're required to say who you're lobbying.

Yes. But the people who are actually doing the lobbying you don't know. Does that matter?---I'm drawing the distinction now, I'm trying to work out  
30 what is a, obviously the third parties are easy, the difficult one is the, is the, is the in-house.

But the third party have got to list the people you say?---No, you'd have to be, if, it depends on the, who gets listed Steven (not transcribable) and Steven or the, or the, or the lawyer who's doing - - -

Both?---Both, okay, yes, that's the way we have to do it. So with third parties that's, what I'm trying to tease out is, is, is there a way of having, effectively including the in-house without, and meeting the objections  
40 which, which have been put forward about the, that they're - - -

MR GORMLY: The question is, Mr Sekules, if you know who the interest is that's lobbying, that is, if you know that it's the Amalgamated Metalworker's Union which no longer exists or you know - - -?---(not transcribable)

That's right. Or it's the AMA or it's Westfields does it really matter, do you think that it matters to actually have the person within that organisation

publicly identified or do you simply need someone responsible within that organisation?---Organisation, that's the more practical, that would seem to be a more, you're having difficulty with that?

10 THE COMMISSIONER: Yes, I am because you might know that Westfield generally are employed as lobbyists in-house but how does this tell you whether at a particular time Westfield is doing any lobbying?---Because you will have a requirement, most of them three months, three months, twelve months, twelve, most of the registers New South Wales (not transcribable) three months you, you, you have to change, you have to, you are required under - - -

To do what?---To, three months, if removing client between quarterly, if removing client in between quarterly confirmations list under additions.

MR GORMLY: But you don't know who they're lobbying, you don't know which government officer they're lobbying?---No, not specifically, no.

20 That doesn't have to be - - -

THE COMMISSIONER: You don't even know whether they've done any lobbying in that period do you?---(NO AUDIBLE REPLY)

MR GORMLY: You don't?---You, your, your, yeah, you're probably - - -

The New South Wales one you don't do you, you just, you've got the name of the, you've got the name of the lobbying organisation and who - - -?  
---We have to say who we're lobbying.

30 THE COMMISSIONER: What, (not transcribable) Commonwealth?---No, no, in New South Wales. No, no - - -

No, you don't?---In the Commonwealth one, sorry.

MR GORMLY: I didn't think you did in the Commonwealth either?---You list, you list the client, you list the person you are lobbying.

40 THE COMMISSIONER: Yes?---Sorry, sorry, I beg your pardon, the other way around, who you're working for but not who you're lobbying, yes, I'm with you.

You list your clients in general but you, that doesn't tell anybody whether who has done lobbying at a particular period?---Particular time in a particular place. Sorry, the old Commonwealth system you had to list which areas you were - - -

Is there something wrong with that system?---The old system, it was very broad and you never had to change it, I mean, yes, there was plenty, there



was plenty wrong with the old system apart from it not being, not being transparent at all. The old Commonwealth system?

Yes?---It wasn't made public so that was a - - -

10 So is there a, the question that I'd really like to ask is is there, do you see practical or other problems involved in requiring lobbyists to report not necessarily immediately but at some reasonable, in some reasonable time who they have been lobbying, who they've met, who they've been lobbying and on whose behalf?---The, their clients I'm sure would object.

But does this apply to everybody?---I know this would apply to, apply to - - -

They might still object, they would still object?---I'm sure they would still object, yes. I, I can see more practical, I can see, I can see why it is desirable from a point of view of complete transparency.

20 Yes?---I can see - - -

30 The problem with regard to commercial in confidence - - -?---There's commercial in confidence and I would, I think there's a competitive issue too. I'm able to draw on, I'm able to, I have a nice little list here about which of the seven, what, what, which, what requires when in, in terms of the seven different, the seven different schemes brought by, by the person who is responsible for making sure when you're talking about a firm of sort of 40 to 50 people. Now, a single, is a single operator going to, are they going to, they're obviously going to find it more difficult but are they just more, the more complicated it is the more likely they're just going to say, they're just going to ignore, they're just going to ignore it. And then if we have the total transparency I draw your attention to the two, my two other clients who are associations who are, where there's a, who basically have a chief executive who does everything, this is why they use someone, someone like me, and they would, they would find those sort of, which will include government relations activities, they would find these, they would find those, those additional requirements very onerous.

40 Why? They just have to say two things or one thing, two things, we met minister X on that date?---Now, now Commonwealth, State, which register is that?

No, no, this is a notional one?---A notional one, yes. But I'm getting to the, I'm getting - - -

I'm not sure if it's in Queensland but I mean it might be. I think, no, I can't remember.

MR GORMLY: It's not, Commissioner.

THE COMMISSIONER: But that's just an idea?---I would put, I was, I was, I was absolutely amazed I must admit the line of questioning before that public servants no longer list every, every meeting and, every meeting they have particularly with, with, on sensitive matters of, when people are seeking to influence them.

10 I'm talking about a meeting at a cocktail party?---I would, I, I would, if we're talking about people involved in purchasing decisions for instance, big computer contract, big defence contracts and I would hope major planning decisions, major planning decisions at a state level the, it was always my understanding, I would, I would expect, I would, I would expect when I was dealing with anyone in that area that they would be, that they would minute, they would minute any contact they'd had with me be it social at the weekend, at the football or what have you for their own protection. It, it strikes me as, as, as amazing that that, that somehow the standard of, of public administration has fallen to such a level that it has to be somehow - - -

20 That's interesting?---I was, you know, in my brief and glorious career as a public servant, you know, in the seventies, you know, in a very, admittedly a very sort of unconventional department, the Department of Urban Regional Development, you know, those were, certainly those, those practices were, you know, were - - -

Where would you list them, Mr Sekules?---On the file. Now, whether that is publicly available is subject to, would be subject to, to (not transcribable).

30 MR GORMLY: But whether publicly available or not how would you get from a conversation in a social, that's the mechanism about which you get from a conversation in a social setting, a garden party and the file, how would you actually do that?---If I may, and I'm quite sure this was the case with that (not transcribable), that group of, group of, Department of Finance public servants responsible for those big asset sales that it was, that any contact would be, it was a requirement - - -

40 But would you write it down that night or would you write - - -?---Sorry, I, sorry, I was a briefly and ingloriously a public servant but, but, but I would expect from discussing with my many friends who, who are officials that if they were dealing with a sensitive matter that it would be, it would be minuted, the files, the sort of typically on a, on a, on a public service, on a public service file note I think there's very little difference in practice in, in, in between, between jurisdictions. There's obviously the documents and there are, there are those printed things called minutes.

THE COMMISSIONER: And - - -?---Minute, I think a department, a minute and so that's a sort of a blank bit of paper and it's got a thing for the date and you can notify notes for file.

Would you put in a notice to what was discussed?---I, I've always assumed that the, that if, if it's in a matter, if it's a matter on a, on a, on a big contract, on a purchasing matter which is likely to end up, which is probably going to end up in court, sorry, if anything goes wrong it's going to end up in court but, but a public official will do that for their own protection.

10 So any significant matter should be noted?---I, I, I believe so and I, I, I thought that was, I thought in a, in a purchasing area, in, in a sensitive area things, things involving say are national security, you know, which of course was the big issue in the, going back, back to '83 but that would be, that would be done as a matter of course and for the, not for reasons of transparency but reasons, for the reasons to protect the, one of my, I was speaking to one of my confreres about the effect of the current New South Wales and she was suggesting that there is a sort of, already it inhibits the flow of information of what people say at meetings, at meetings are not agreed to as, as readily and for instance, you know, there will be two people, two people at a meeting, I mean I would regard it as extremely strange to  
20 ever see an official on a, on a form of representation on their own, you know, if there was only one person in the room I would, I'd start wondering if they were expecting the brown envelope that you seem to, it seem to be, I mean really it's, I'm, I'm quite surprised that there's, that this isn't, that these things aren't a matter of course.

MR GORMLY: Mr Sekules, can I just take you to, I'm going to take you to an extract of the Canadian Commissioner of Lobbying's register and just, I have to tell you something first. In Canada, anybody who is registered as a lobbyist and that includes the whole array of paid lobbyists, in-house et cetera, they must declare various matters about themselves. They have to  
30 declare who their clients are, but what they also have to do is to list the government officers that they expect that they would have to contact in the course of their work for a particular client. So that if the client is a, a company that makes fishing trawlers - - -?---Yep. Yep.

- - - they may well list two or three departments that they would have to contact for that client. And so that what - - -?---So prospective - - -

40 Yes. It's prospective. But they have to adjust it in quarterly reviews, quarterly statements?---Yep, yep.

So that they have to adjust it to also account for the departments that they did contact. But it's still only a list of the, the departments that have been contacted. Now, if you look at the page that's on the screen at the moment which is page 252 of the list of scanned documents, you'll see there at the very first line that among the many thousands of, I think it's three and a half thousand entries for lobbyists in Canada on this particular register, 1,654 of them have listed that they need to or expect to contact Industry Canada in the course their work any of their clients. And if you just move further

down you'll see that 830 entries appear for Health Canada and so forth. Now there's no information provided as to whether in fact those departments did need to be contacted, who in them were contacted or when or by whom. Do you yourself think that there is any utility in identifying the government department which lobbyists expect they might have to contact in the course of work for a particular lobbyist from a point of view of transparency?---Is it, is it better than the, is it better than retrospective. The, this was the way it worked with the, with old Commonwealth scheme. We had to sort of say an area, the areas where you expected, and that  
10 seemed to be, well that scheme didn't work did it. But at the same, that was probably for other, probably for other reasons. From the point of view, if I could say then from the point of view, looking at the old scheme, the, it faded away because it wasn't being used for the purpose, which was, for which it was intended, and that was to enable Commonwealth ministers, staff and departmental officials to know who it was who was, who was approaching them. And it, and, and it withered on the vine or a conservative government came in and got rid of it because they don't believe in these things as much as the, as much as Labor governments do. Did it wither on  
20 the vine because it was not transparent, bearing in mind that its purpose was really to inform the insiders or did it wither on the vine because the, that information wasn't being, there wasn't a requirement to update, to update. So all I can, all I can say to you is on the basis of, on the basis of experience, that the, when the idea of a prospective identifying the people you'd be dealing with prospectively was, was in existence. It didn't seem to be, it didn't seem to be particularly effective.

Well, can I suggest and this is purely a personal view on my part, but if it assists you in formulating a view, that from the point of view of  
30 transparency and public information it really doesn't help anyone to know that a, a lobbyist who appears for a hospital supplies is going to see the health department?---Exactly. It's a statement to the bleeding obvious isn't it?

Mmm. Well, yes, I would've thought so. I can see why it may be useful for statistics gathering purposes, but not from a transparency point of view. Would you agree with that?---Yes, yes, yes. The prospective, the whole prospective idea, yep. Yep.

Well, even if it were retrospective, even if lobbyists had to list those  
40 government departments that they did in fact contact in the previous three months and you've got a hospital supplies company contacting or having contacted the health department on its behalf, you are not being told anything of value. Do you agree? Even if they contacted the taxation office, it's unlikely that they'd be being told anything of value.

You would expect - - -?---A hospital supply - - -

- - - that a hospital supplies company might in the ordinary course of its work contact the tax office?---Seeing that, seeing that they would be, seeing that they were, if they were doing something in relation to - - -

But you wouldn't know (not transcribable)?---No, yes, it doesn't tell you much, no.

10 All right. Well, what about though the practicality of putting on to a register the date and identity of individual government officers, that is say ministers or directors general that were contacted by a lobbyist? Let's leave practicality aside for the moment. Do you think that there is a transparency utility in doing that, that is telling the public that this lobbyist contacted minister X on such and such a date.

THE COMMISSIONER: For whom?

MR GORMLY: On behalf of, on behalf of the named client.

20 THE COMMISSIONER: On behalf of the named client?---Right. And if it's, obviously if it's, there's a certainly a, if we're going to that level of, level of detail and it's apples and oranges and it's a, we're only, it's only for a certain class of, it's only say the existing lot.

30 No, no, it would be, I think assume that it would be all lobbyists?---All lobbyists, all lobbyists, in, in a perfect world everything would be listed and it would all be publicly available. I'm just trying to imagine the mess, I'm just trying to imagine the, this mass of data and while you are meeting a theoretical, you are, you are, you are meeting a utopian situation. I can't, you'd have, you'd have thousands of pages of this. I can't see, I'm, I'm searching to find the, like in theory it's fine, but in, I really can't see the utility. I can't see - - -

All right. We won't - - -?---of someone ploughing through all this to, to find out something out.

40 THE COMMISSIONER: It will destroy transparency because they'll be so much information?---Information overload. So the only thing I know what it would get used by would be mendacious, would be probably would be used by the media mendaciously in that or a political, or for political purposes and, you know you can, so all heavens, good heavens, Peter Sekules is, Peter Sekules went to see so and so. I know they both had kids at Canberra Grammar, what's, what's going on here. I think, I can see it, I would fear that it's, that's it's, the use, the mendacious use and mischievous use, I mean this certainly went, this has certainly gone on with the, you know, with the, with the, to a limited extent with the lobbyist register, people using it as an excuse not to fulfil what is, you know, what should be part of their duties.

So it would be information, it's not going to produce transparency and it's likely to interfere with government business?---I think that's no unreasonable. Yes, I'm just trying to imagine this, 'cause I'd like to come if you like to the, to what the problem are with the present, you know, with the  
- - -

Please do, tell us?---Well, I was going to say that you've got, it seems to me you've now, we've now got seven, we've now got seven registers which are  
- - -

10

Across Australia you mean?---Across Australia, I beg your pardon. I beg your pardon. I'm talking domestically, which are, and there's far more similarities, there's far more similarities than, the dissimilarities. And, you know, as you're probably aware, I mean the Commonwealth, the Commonwealth and the states have recently agreed to, to harmonise the consumer, their fair trading laws. And the Australian consumer law has been passed by the Commonwealth and the states are in the process of passing complimentary legislation. And I would've thought surely if we can harmonise as a contentious area which certain sort of politicians,  
20 politicians are so fond of, then it's not beyond the wit of ability of government - - -

If the will is there - - -?---to have one, to be able to have, I'm not, I can (not transcribable) uniform, I'm not sure, but sort of to harmonise and so you've probably got one, one place to go to.

MR GORMLY: I understand your point, Mr Sekules, and you can be assured that is a point that's being considered. But would you accept that if you were to have a single register that if one wanted to know what was going on within a particular parliamentary sphere, that is what's happening between the public service, private (not transcribable) and a particular parliament, that you probably would have to localise, at least on a harmonised register, localise to each jurisdiction?---Sorry, I, sorry, I meant that you'd only go to, you'd, you'd go to, I would imagine it would have separate state.  
30

Right. Right?---For instance, I'm sure the Queenslanders would not wish to, you know, given the ah, ah, the way their ex-politicians have behaved, would not, would not wish to forego, in the interests of harmonising,  
40 consultants have to advise if previously held positions with government (not transcribable.)

Yes?---So therefore, I mean, not only that, but maybe others, maybe others would want to do it, so there would be, I mean, just as there are say with the Fair Trading, you know, I think states can still do their own thing to a certain extend, so by harmonising I meant that you would in fact probably be one Website rather than having to go to seven. For instance, I'm told that New South Wales is the clunkiest in some respects because to, to put

something, to, to put an entry on, you actually have to download, you, you actually- - -

A piece of paper?---You actually have to download a bit of paper, sort of fill it in and send it- - -

10 And fax it?---Fax it in. Whereas the others are, are, are nearly on line. However, could I add just to, just to, because I'm sure the, I'm sure they're avidly listening in or will be following the transcript. I'm also advised that the, it is, in other respects it is the most user, it is the most user-friendly and provides the most information about what it's about and why and so on. So- - -

As a Website, do you mean?---As, yes, yes, yes, sort of saying, taking the steps you have to, the steps you have to do to, so its, it's content, in terms of its content it seems to be the best practise but it needs a bit of, a bit of tweaking on the IT front it would seem.

20 All right. You raised yourself my last question, Mr Sekules, what may be my last question. Yes. No, it's not my last question. Do you see any utility in making public, particularly in the case of the in-house lobbying department, the presence of staff who have served as public officers and either as ministers or perhaps more usefully, chiefs of staff or other senior staffers or senior government officers so that it could be known that a particular company was lobbying with a person who would be known to the person that is being lobbied? You have ex-politician A in a large company lobbying current minister B. People should know that there was a prior relationship?---The, the first part of your question, do people with that background fulfil a useful purpose within a, within a corporate affairs or an external relations department, I think the proof is in the pudding, isn't it? I mean it's a, it's a, it is, it is happening. But the ones that, obviously while I'm formulating this answer I'm sort of flicking through my mind and thinking of the ones I know and the, most of them, certainly the ones in the senior positions, have got the, what, what, what distinguishes them is the range, range of their experience. They're not merely, I think most of them are not merely, that's not the, you know, being, being, being, being staffers or, or political, or political party operatives is not their, it's the, it's the breadth of their experience. And I've always felt that it was one of the strengths, one of the weaknesses of, of, of, of our system of business and government and academe, but it wasn't possibly to move easily from, from an academic position to a, you know, and, and, and, and so on. So- - -

30

40

You're saying it's useful to have former politicians as lobbyists?---Not necessarily for, it seems as though, the, the strange thing about politicians is, even ones who have been ministers, is that the fact they never seem to have really, even though they've been, they never, so often don't really seem to understand how government works, whereas their chief of staff, someone

who's been a senior public servant has probably got that, and I think when I'm looking- - -

10 Mechanical knowledge of the operation.---That's what, yes, they're more useful, they're more useful to the, and, and, look, when we look at it, I mean, this is, some of these, some of the people you're talking about, I mean, it's interesting, isn't it, as, as we have noticed at one hand ex-politicians are really muddying, muddying the waters and, and, and causing um, getting themselves drawn, drawn, drawing attention to themselves in, in, in most unfortunate ways in Queensland, Queensland, WA and so on, yet at the same time, ex-politicians seem to be increasingly in demand for high profile roles. And one looks at, one doesn't have to look any further than John Brogden as a former state leader of the opposition. Both, both the free-to-air, free-to-air television and their opponent, Astra, have both got ex-premiers using their, in this, in this role, Greiner is heading up the Queensland, the opposition to, the opposition group to Queensland Railways. So, sorry, I wish I could explain this to you, but the seems to be a dichotomy, isn't there, between their own fact.

20 Yeah?---Organisation are seeking, Red Cross is headed up by, I think even (not transcribable)

(not transcribable) accept that they, former senior politicians can be people of great ability in demand in the community and that it would be a pity to lose their services?---And these were very up-front roles.

Yeah.---This is a very public role.

30 But just coming back to that question of whether there should be a public declaration that people have served in public office. Do you think that that is something the public would need to know for the purposes of transparency?---I wonder if it's something and should it be for instance a requirement as is, in a, with a, with a public company, a public company listing requirement as is the, you know, salaries above a certain level. I'm, I'm wondering if it's- - -

40 Well, I'm really thinking of in-house, in-house personnel?---Yeah, but I just want to say, it's, is it a, is it, is it, is it a matter, is it, is it a matter, a lobbying matter or is it a corporate, a corporate (not transcribable) matter?

No. I'm thinking, I'm thinking of the, the public interest in knowing that an in-house- - -?---Yes, oh, yes, but no.

- - -an in-house officer was a former chief of staff of the minister that sits in the same office as the one that is there now?---(not transcribable)



And they've known one another for twenty years?---And, and how is the best way, how is the best way of, of making that, how is the best way of making that- - -

Well, should it be made public and, and then there's the mechanical question of how it's made public. So the first question is, should it be something that is public? Because there is a clear implication of relationship with that occurs?---Mmm. And I think most of those, they're usually, those people are usually pretty well-known. I mean- - -

10

I think you're reluctant to tell us?---Well, I was going to say, the ones, you know, I'm sure we all know exactly what, and you're not going to draw me into saying who, who, who, who these people are, but the, it is publicly, certainly the ones, and I think you're thinking of are very publicly well-known. I think if they're not, if it's not in the paper, if it's not in the paper every, if it's not in the papers every day it's every other day.

I can assure you, Mr Sekules, I do not have a particular person in mind?  
---Ah hmm.

20

This is about the design of a system in the future. And, and the question is not what's happening now, but if in any, in any in-house, anyway, look, I think I've, I think I've put it and I think I understand your, your view.

---Yes. My, my ah, I'm, yes, it's, I've, I have said here, I've said, I've got- - -

You're not (not transcribable) favour of doing it?---I can see, I'm quite clear on, on other third, transparency in relation to, reporting requirements in relation to- - -

30

Right.---?- - -other third party, third, third party government relation consultants and lobbyists.

Yeah?---In-house is more difficult and I think I'd probably be more sympathetic to the, I've been more sympathetic to the idea of, of their inclusion on the grounds, on those grounds. You're now certainly asking me something that I haven't, that I haven't considered.

40

Considered. All right.- - -?---and it just seemed to be, you know, I can see huge, I can see - - -

You can see problems.---I can see objections and I wonder if it's, I wonder if it's relevant because is the transparency in relation to those people and their activities and in an relatively small country like Australia, relatively small country here it's going to take, it's going to get out, it's going to be come publically known by other means.

Let me take you to another topic and this really is the last topic. First of all, would you accept as, I want to ask you about donations and fund raising in so far as they relate to lobbying. The first question is, would you accept that as a – as a prohibition it is reasonable that lobbyists should not be involved in the giving of donations by their clients because it would be impossible to separate the giving of a donation from that for which there is lobbying?--- Advising or handing over the - - -

10 The envelope.---You're talking about the, you're saying lobbyists shouldn't act as intermediaries from their clients?

Yes, I am.---Yes, we certainly took the view from the outset that we would not, that we would not handle money and - - -

20 And is that because there is a perceived conflict?---There's, there's, no – not because it's perceived conflict but because there was a, there's always a belief that lobbying is, that Canberra lobbyists – sorry I'm going a few. Canberra lobbyists are like Washington lobbyists are basically are fund raisers. So we wanted to separate out, we said, no, no, we're involved involved in policy activities – involved in government decision making and regulatory activities and don't want to be and a – because – right. A lot of the, actually less so now but then a lot, a lot of your clients in the normal course of events would be American so we'd like to make a distinction you know between, between what what an Australian lobbyists was and what a Washington lobbyists was.

30 I want to set the fund raising aside for a moment. A donation by a client – a client can make a donation to political party anytime they like – they don't need a lobbyists to make a donation.---Certainly not, no.

And if a lobbyists who is acting for a client becomes involved in the process of a client giving a donation to a political party there is inevitably going to be a confusion of intention or purpose in making the donation.---Oh, it's worse than that because it will, it will distort the, the reporting – it will distort the reporting the, the - - -

40 It will look like a bribe won't it?---No, well yes, but I'd suffice to say apart from that it's going to, whose name is that, whose name is the donation going to appear under.

Whether it's in the client's name or the lobbyists name it's the recipient of the donation knows who's given it or from what source it's come it will be inevitably linked either by the donee or by the party or by the public with that for which project the lobbyists as a lobbyists.---Oh, yes, yes. I'm approaching from - - -

All right, okay.- - -?---you're approaching it from the point of view as potential obviously, your, your working for ICAC for a corruption body.

Yes.---You're looking at it, and I'm looking at it from the point of view of, as you've seen as - - -

I'm just seeking as a prohibition on it.---Oh a that, that, yes, yes, I would think it would be a um - - -

10 All right.---Hang on is that the only, so, we are going to introduce, this is a, a prohibition is, and how's that some, that would have to some legislative form.

Yes, it would yes, that a lobbyists is prohibited from being involved in any aspect of the donation of money by a client to a government or political party.---But that, not, not, that doesn't include advising.

20 No, of course not. No I'm just talking about the process of money being handed over from A to B.---And I'm adding to the – and I'm in the sense of adding to the – I'm adding to the argument if you like is the fact if the, most, most lobbyists would advise most clients to give equally to both sides as much as they can.

30 Sure.---Now if – if the a – and you know it's a difficult – it's a tricky business I mean – and don't forget one is a certain organisations are certainly leant fairly hard by um – a to um do the right thing. And to, to make sure that when the Sydney Morning Herald publishes the list that you're clearly seen as having given a \$100,000 depart is quite important. You don't' want to be seen as have been, you know, given \$100,000 to one side and none to the other. Now if um – now if you muddy the waters by having a third party handing over the envelope, putting a name on the cheque – your – I – I put it to you that you're distorting the - - -

Of course, I understand that.---?- - -reporting process which has taken a long time to, to, to establish and um - - -

40 I agree with Mr Sekules. Fund raising, of course, is a slightly different matter although it's related. Do you think that there is any room for lobbyists to be engaged in fund raising for a particular candidate or party when they are also promoting client interests with what may be the same government?---It's very hard to sort of totally separate out the, separate out your, your, your based in – your organisation is based in a particular electorate the local member's having something and you know, should you – having the normal sort of function whether election related or not – should you, should you be involved or not. I mean the inclination is to, is naturally to um, you know - - -

To be involved.---?- - -to be involved, yes. At that, I mean I don't think that – until there's a hundred percent – and obviously that activity will go on until there is a hundred percent – you know until there's- one hundred per

cent public funding of elections and very often at the local level probably not much would trickle down and they'd still want them – would still want to have the chocolate wheel at the fete you know its – I think you can get a bit too Presbyterian about – about a – about those sort of activities – a fair bit of it is just the normal give and take.

10 Yes.---Do you think there's any room to solve the problem, do you think there is any room for leaving fund raising to those who are not involved in pursuing client interest with the government? I'm talking about another prohibition Mr Sekules, I suppose?---Yes, yes.

Fund raising can be done by many sectors of the community and is – the involvement of the lobbyist in fund raising is where a problem seems to emerge?---So therefore you create a prohibition and so, and so we go and organise the – we just go and do it under the guise of the – of the local preschool. Less transparent, less – I think you're a – I think it's potentially for, for certainly in the minor – you know - - -

20 You think it's asking for trouble and enforcement.---I just think it'll you'll find a way around. At the lower levels is not a – it seems to me to be just part of the – there's not huge benefits and I don't think you will – I don't think you'll – at that level of – at level of activity I don't think you'll um – any obligation or any potential corruption is likely.

30 But preference and favour could be associated with it though, couldn't it? Good fund raisers are very valuable?---Yes, and if it's a – if it's a doing something for a – if an MP has particular – you're doing something for their particular locality or because of their particular interest you know all well and good. There's a Tasmanian MP, a Tasmanian senator has got a – a Liberal Senator has got a huge interest in health issues and conducts each year just in the Canberra in the middle of winter when really no one really wants to go to Canberra a sort of a health seminar of which obesity issues, advertising and so are discussed. And it's a – I mean on all sides it's a valuable exercise it's a place at which the activists and the companies and the associations meet on common ground and – and yet – and there is funding for that – you know – there is some of the organisations involved fund that. I think if you're saying, no, no, no we're going to, you're going to outlaw that sort of activity I think you're tipping the - - -

40 Have unintended consequences.---Yes, unintended consequences, yes.

All right.---Thank you Mr Sekules. Good, thank you.

THE COMMISSIONER: Mr Sekules thank you very much for your good and interesting information you've given us and for our time.---I would, could I just add one thing. It was rather amusing – I recently went to a conference the first ever international PR conference in Borseth a few weeks ago an Irish academic amazed us all by unmasking the, unmasking the first

UK lobbyists and there he was complete with horse-hair wig and he was a – he was a barrister at law who was appointed by the British Farmer’s Association as early as 1913 and called lobbyist. I think there was some surprise that the term was used and but I would point out to you of course, but as the were, the NSW Law as it now stands applied in the UK in 1913 he would not have been required to register.

Thank you. We’ll adjourn until 2.00pm.

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LUNCHEON ADJOURNMENT

[1.01pm]