

HALIFAXPUB00319  
05/08/2010

HALIFAX  
pp 00319-00341

PUBLIC  
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION HALIFAX

Reference: Operation E10/0268

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 5 AUGUST 2010

AT 2.02PM

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

THE COMMISSIONER: Mr Gormly?

MR GORMLY: Commissioner, we have present in the hearing room Mr Ian Macintosh to give evidence. Mr Macintosh, if you could come forward.

THE COMMISSIONER: Mr Macintosh.

MR MACINTOSH: It's different being on this side of the room.

10 THE COMMISSIONER: I'm sure you'll handle it just as easily. Do you want to give your evidence under oath or - - -

MR MACINTOSH: Under oath.

THE COMMISSIONER: Under oath.

**<ALEXANDER IAN MACINTOSH, sworn [2.03pm]**

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THE COMMISSIONER: Mr Gormly.

MR GORMLY: Thank you, Commissioner. Mr Macintosh, can you tell us your full name?---Alexander Ian Macintosh.

Mr Macintosh, I'm just going to spend a minute with your history to have that on transcript if I may?---Ah hmm.

30 We have summoned documents, I don't need to do it in detail and then I'm going to ask you if you would want to make an opening statement?---Thank you.

So firstly, I think that you are currently the Pro-Chancellor of the Charles Sturt University. Is that correct?---Yes.

You are a former mayor of the City of Bathurst?---Yes.

And a former councillor of the City of Bathurst, the council?---Yes.

40 But I think you were also one of the first lobbyists to be seen as a lobbyist and to be working as a lobbyist in Canberra. Is that so?---There were a small group in those days, that's true.

All right. We're talking about the early 1970s?---Yes.

Right. You and I think a partner formed a firm and that firm offered an array of services including government relations and lobbying?---We did.

All right. And I think that you remained in that role for quite a long time, accumulated a large number of clients but including BHP for a period?  
---That's true.

Now, is there something, Mr Macintosh, that you'd like to say at the outset about the activity of lobbying insofar as it relates to this inquiry?---Thank you, yes, I would. Perhaps it's a different line but, Commissioner, I, you will correct my history but ever since a developer convinced Berkley's that building the Parthenon would be good for tourism lobbying has been part of the democratic process I believe. The focus on and growth of lobbying in New South Wales and elsewhere, certainly in Australia has increased in the last 20 to 30 years due to one, the politicisation of the public service, secondly, the emergence of politics as a career and thirdly, the speed and demand of modern communications. Lobbying is now part of the fabric of effective government because lobbyists provide a great deal of useful information, intelligence and research which may not otherwise come to the attention of decision makers. Now, I believe this is a double-edged sword because while the more information you have the more informed the final decision should be but information overload can mean making any decision more difficult and often delays a decision. There's no doubt, it's interesting that lobbying is a growth industry when it seems to, has not a very good reputation because in our day when we started there were probably four or five individual lobbying organisations, that was in the early seventies. By the time I departed Canberra in 1991 we estimated, our best estimate was that there was something over 600 so that obviously it's, lobbyists offer a service that people are interested in.

THE COMMISSIONER: And it pays well?---Hopefully. The view that it's a dishonest pursuit though flows mostly from the fact that much of the activity is said to be behind closed doors. This ignores A, the importance and the need for government to seek and consult widely on many issues and secondly, the need and in fact often the requirement that a great deal of government business is commercial in confidence or is about making a decision about a law or regulation which will affect many people some of whom may benefit by gaining early knowledge of it. And of course the other problem is that the news media as it applies as much to lobbyists as perhaps it does to the legal profession is that they only print bad news stories and so they focus on the odd bad news story that there will inevitably be and very little of the constructive work gets out. However, the human element ensures there will always be some who see an opportunity for personal gain but of course corruption or any form of unauthorised conduct doesn't happen with one person sitting alone in a room, it takes two people or more as far as I understand it and our system of government will only work effectively if there is a high degree of respect for it in the community and a similar level of honesty, integrity and fair dealing amongst those who deal with the government. Sadly, to me the respect for government seems to be in decline and this is actually a problem for lobbyists as well as for the wider community. Perception is of course so fundamentally important and

that's, that's what the press work on and I used to say when I was mayor of Bathurst to the councillors regularly till they got sick of it that perception is paramount in politics. And as your background paper says the control of lobbying by regulation alone is unlikely to be the answer. As well as develop and regularly publicise and refer to Code of Ethics which I think is perhaps a bit idealistic but I think it's a hopeful start and the Code of Ethics should apply both to lobbyists and to politicians and to government officials. But in the end modern technology which follows the money trail, which is capable of following the money trail by taxation and such like will probably be one of the most effective deterrents against really serious illegal practice, in fact the complex regulation is the least desirable and probably the least cost effective option. The human element both for good and bad will always be with us but if lobbying was stopped tomorrow entirely I think was said this morning I daresay government would cease to function in many very important areas.

Thank you, Mr Macintosh. What do you mean by following the money trail?---Well, yeah, I stress, Commissioner, in the worst case scenario where because if, there are regular tax audits, I mean we're all subject to regular tax audits and if there were, if it was known that people who dealt with government on a regular basis and, and politicians themselves were going to be subject to perhaps, not, not, not excessive scrutiny but perhaps more regular tax audits, for instance, something, look, I'm not an expert and I'm not an accountant but I'm sure that technology exists to concentrate a little more on that, where, you know, first of all there's, there's, there's some feeling and I don't know who you actually quantify that but that there's something to be followed up but I mean, I was aware when I was in local government and, and it's five, four years, five years since I retired from council that things were not well in Wollongong, it was sort of fairly well accepted if you like that Wollongong was a bit different in terms of the way in which it did business. Perhaps if some system that was established that had started to look as to what I call the money trail, I don't know, maybe that's, I'm making a suggestion.

Yes, thank you.

MR GORMLY: Mr Macintosh, can I take you back to your comment about the causes of the growth of lobbying. I just want to spend a minute on that then I want to spend some time on the activities of lobbying as it was when you were lobbying compared with what you understand perhaps it to be now and I want to then move to your local government experience if we could? ---Ah hmm.

Okay. So just, just starting off firstly, with the growth of the industry we have heard evidence here of a fairly high level of capacity among lobbyists to get information, marshal it and present it in a way that's useful to government. We've also heard that there is a capacity for governments to lose control of an agenda, part of which seems to be attributed to lobbyists.

Do you think that there has in the past or that there is at present a mismatch between the capacity of lobbyists to put together information about a case and the capacity of government to deal with the same sorts of material?--- Well, I guess it, well, if I start at what I think's the beginning. I mean, the business of lobbying to me, leaving aside any improper dealings, the business of lobbying's actually, is very simple and you've just summarised it, it is to collect information on, on a particular issue, to, to marshal it, to understand perhaps how it might relate to the policy of the government of the day and to research the pros and cons of the particular issue and present it in the most persuasive light you can to the government of the day. Now, none of that's terribly sophisticated, it's a pretty simply system in a way otherwise I wouldn't have been able to do it. And so the, the problem is that I, I, I worry an awful lot about the fact that, I think, I, I, well, two things, I think it's reasonable for occasionally lobbyists to present a case which is so persuasive that the government changes its position or its direction or alters some because I think that's very much part of the lobbying process, it's part of the democratic process and, you know, it, if you didn't have that that is to say that governments always are 100 per cent correct and we know that's a bit over the top. But the, the second part is I think that you would hope that governments will have the skills and experience and the capacity to examine these arguments within the public service and that's why I mentioned in my preliminary there the politicisation of the public service where that commenced, as far as I could see, probably in the '70's, it commenced in a different way because it was, first of all when the world changed and Mr Whitlam came to power of course he moved a lot of people around which was his right and probably proper thing to do, later on, I think it was the Fraser government, who carried on from there and, and they started a definite government policy and it was meant to be constructive and that was that there would be increased opportunity for movement between the public service and the, and the industry sector and, and so both sides would gain. That was the philosophy and it was probably a good idea at the time but it seems to me that that's moved and morphed if you like into where a lot of public service appointments these days are politically motivated and politically based and the, if you could call it old-fashioned, old-style bureaucracy when we started working in the '70's there was somebody, if you were working on plant variety rights there was somebody who for 15 years had been studying plant variety rights and its effect around the world, in the department and as soon as you put a submission up there would be somebody in there who could advise the head of the department and then the minister or the minister's staff that there were fallacies or things that were wrong. Now, in New South Wales I think, you know, this is again obviously a very, very personal view, when, well, I became mayor in 1995. For about five years I, I deal a lot with the New South Wales bureaucracy because I had a background in, in lobbying. We had a lot of opportunity to improve Bathurst and in the nine years I was mayor we spent about \$90 million on capital improvements and most of that was money we, we got from federal or state government. Now, in those first four or five years the, the public servants, the senior public servants I dealt with, and I

put submissions to them for funding for improving our water supply and for building a, race facilities at Mount Panorama racing circuit, they were very professional people, they knew exactly, you know, where the holes in my argument were and so forth. By the time I left in 2004 a lot of those people for a whole range of reasons had disappeared and their replacements were first of all instead of one or two people who were senior and knew what they were talking about, were replaced by five or six and a lot of them who didn't really seem very switched into it. So that's, that's I'm sorry, that's a long-winded answer but those are the things that changed.

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I understand your point to be that lobbying works best when its received by competent government?---That's, that's a very good way of putting it, yes.

All right. Well, and that in turn - - -?---It, it's, it's, it works best but yes, in the interests of everybody - - -

Yeah?---Not just, not just the people you're lobbying for. I suppose if, if the government is competent it will look at obviously what you're saying and I'm not saying it always agrees, that's - - -

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Sure?--- - - - not necessarily the right outcome but you get a better outcome, a better quality outcome if you've got a competent government and a competent bureaucracy.

Right. And equally I suppose that's an answer to the, to the matter that I raised about mismatch between services and the capacity for lobbying to overtake the public service, change the agenda?---Yeah, yes. Well, yes, and I think, and that, that's, that's an important point I suppose because in, in that sense the ability in, to use the obvious recent one, the sheer capacity for the mining industry for the three big miners to mobilise the people that research the argument and everything else to go against the government is, is enormous and, and perhaps if we went back 20, 30, 40 years that didn't exist in the same way and I think the public service as I've just tried to explain were perhaps a little better to, able to cope with it if it had arisen.

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Just moving on then from that area to the question of what lobbyists actually do. Do you think that that has altered much, did that alter much over the period that you were lobbying? Do you think it's altered much overall?--- Yes. I think, I think it has. I think it has because again, it's a bit to do with poticisation. I mean when we started off with our business, the other three or four firms that were there, I, I could be wrong, but my memory suggests there were certainly some, including my partner in those days, my business partner, who had come from ministers office. There were no politicians directly as working directors, ex-politicians or ministers as working directors of, of, I think any of the firms, as I recall. Now that started to change fairly quickly probably in the, in the mid '80's, certainly in the late '80's. But then this goes to the problem of access. I mean, as, as everything grows and access is, is fundamentally important for everybody to, if they've

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got something worthwhile to say and a minister or an ex-minister at least for a while, and certainly if his colleagues are still in power, is obviously going to have easier access. Now that's going to, that's going to make lobbying right at the beginning to the media and others seem suspicious. You know, you only, if the ex-minister's been talking to the now minister and they used to be working together in the same cabinet, well something's got to be shonky. That's, that's the immediate human and media reaction, if you like. So that's why I think, you know, that's another issue, but I don't think ministers and ex-politicians should be allowed to take part in lobbying for a number of years. But access is fundamental and the way in which it's, the way in which you go about it is, is, it's a long thing and, and I mean, if I could use some example, I mean I, I played golf on and off, a semi regular basis with Bob Hawke when he was Prime Minister, with Doug Anthony when he was Deputy Prime Minister, even with Grahame Richardson. My policy was never to talk business on the golf course. And one of the reasons that they played, they would play golf with me or ring, because I think they knew that I wasn't going to bend their ear on the way around. But what it did for me, of course, was, and I did it because I like playing golf, but it did for me was that back in their office, their staff knew that I at least was a, if you like, a golfing mate and therefore that helped to provide access, if you like.

Did you find it difficult in those years to mix with, in government circles, with sitting politicians and senior members of the public service and not discuss business?---I, yes. We, I think my partner and I were, no, I shouldn't say that. Probably the other, the other leading, and I think all the leading consultancies were pretty much of that way. I mean, there's always exceptions and always a time. I mean the, one of the values of a good lobbyist of course is that a minister or a senior public servant for that matter, will use them. I mean we, we would. And I'm sure other lobbyists would, would confirm that you occasionally get a call from a minister or a senior public servant saying, can you clarify some point for me or maybe sometimes can, we need to recommend somebody for a board, have you got any names. So, yes - - -

Well that's them, that's them, I take it, this is not in relation to one of your clients. This is a general inquiry because they know who you are?---Yes. Although the question could be on something we've been putting to them that needs clarification. And, yeah.

So you're saying there was a two way relationship of trust and they had to rely on what you were saying but in doing that and finding that the reliance was well placed they would then use that reliance to get information from you that would be useful to them?---Yeah. That, that was the ideal relationship of course and, and, if I say, the ministers who, you know, were, were really good ministers would do that or their staff would do that. And, I mean, I don't think, I'm always of the philosophy that when you met, as you do, whether you in a town or you can do it here in Sydney, you meet a

senior public servant or a, or a minister or a member of parliament on the golf course or at the school kids speech night or something like that, if you're waiting to talk business to them, then they probably don't really want to know because they're out there to see their kids graduate or play rugby or something else. So I, I personally just think it's not good policy. But there's, there's always the exception because something's urgent and you, it's an opportunity to say something and - - -

10 Mr McIntosh, there's been an issue debated in the course of this hearing about the proper and businesslike recording of lobbying sessions, that is where a lobbyist actively wishes to put a case to a government decision maker?---Mmm.

And no one obviously would disagree with the view or has disagreed so far with the view that such events need to be properly minuted and records kept at least by the government and presumably by the lobbyist as well. The area that causes some debate is the incidental meeting that occurs not so much socially as on the golf course, so that was very helpful to hear about that. But in deliberate sessions of socialising between politicians and lobbyists  
20 and the press gallery and any others who are involved at that close level of government. Now I, one presumes just from media exposure that the number of dinners, cocktail parties and other functions that occur are pretty numerous. They might be industry based, they might be sponsored, whatever, but it does mean that government officers and lobbyists will end up in the same room and it will be in effect a business occasion?---Yes, yes.

Now is it, was it your experience that business was talked about on those occasions or that it was avoided or that it was handled in some way consistent with the occasion? If I could just tell you the reason I'm asking is  
30 because of the problem about minuting or recording those events, particularly if they involved some kind of decision making or advance of information?---Yeah, that's, I think almost a question that's highly, it's impossible to answer. The distinction that you've drawn is, is very real and valid and that is an industry organisation industry dinner and, and you get all the mining companies in the one room and the minister comes along and there's, you know 100 or 200 people. And of course, you know then deep conversations are held over there in corner maybe or around the table. I don't think that, I don't think that it's possible to regulate that nor I think should it, we try to regulate it because I don't think it would work, frankly.  
40 The, but if we look downstream a little bit and, so what is the outcome from that. The outcome is the minister or the, or the person, the public servant concerned staffer goes back and tells his colleagues that I really think this is the way we should go. Now, you can't really minute that either, but I suppose this is where, you know, I get to my sort of, what was the word I was using, idealistic view, which is that, we, we just have to have some level of probity in administrative level and at industry level, because if you go back, if I'm a minister after a meeting and I go back and tell the staff, look I've listened to all these arguments and I think this is, we ought to



consider this or we ought to perhaps move in this direction. And this is industry policy and we decide to reduce the tax, I don't think there's anything wrong or illegal about that. The problem is that if I go back and say to somebody, if, if I take my wife and I on a first class trip around the world next week, well, I'm going to reduce, sorry, I'll start the other way. I think we should reduce the tax on the mining industry and next week by the way my wife and I are going on a first class business trip around the world. Then somebody, somebody somewhere has got to have enough intestinal fortitude or whatever to say well, there's something wrong here. I mean the  
10 system depends on people having some people in the system that are honest.

Sure. In other words you need to have an underlying stratum of trust?  
---Yes.

All right. Can I ask you to just put out of your mind the actual acts of illegality, that is, bribery by first class airfares, payment of money but come back to the industry meeting or dinner. If there's say an industry meeting or dinner presumably there will be perhaps competitors at that dinner. There may be someone from Rio Tinto and someone from BHP and so forth, a  
20 number of mining interests. What they will be talking about then is a general industry policy, things that might affect mining as a whole. If an individual company, that is, a lobbyist's client however wants a decision from the government that relates to that client or that relates to a project that's the kind of thing that is, would unlikely, be an unlikely topic of conversation where competitors are present?---Yeah, yes, I think so.

If there were to be a lobbyist's client's business discussed do you think that there would be any difficulty about confining that business as distinct from general industry policy business to a business environment, that is, a  
30 meeting room where it could be minuted?---Well, yeah, I think, again I keep going back to my idealistic view. If we had, if there was a Code of Ethics and it would be brief and it would be on one page and it would be stuck on every minister's room and every parliamentarian's room and it would be referred to regularly by everybody who was in the business, have you read, is that in the Code of Ethics? One of the Codes of Ethics ought to be that if at a dinner like that I, as a lobbyist, approach the chairman of BHP and say, I'd like to have a talk in the corner, sorry, not the chairman, the minister, approach the minister, the minister should say to me under the Code of  
40 Ethics arrange a meeting in my office.

Right. You think that's feasible, that's a - - -?---I think it's feasible, yeah. And in a sense a minister should appreciate that you see because it's going to get him off the hook, he can enjoy the dinner a bit more and he can get, he can pick up a lot of information instead of having to stand in the corner listening to me which they're inclined to do and, you know, I'm pretty good at putting my arguments, I'm going to pin him in the corner anyhow, you know, and he should say, you know, all you've got to say might be very interesting, just ring my office and make an appointment.

So in effect the minister would be assisted by having a regulation or a rule of a code that stopped lobbyist business discussions in other than a business environment?---Yes, yes.

Are you - - -?---There's some judgement but, yeah, generally speaking if, if, if ministers adhere to that idea that as soon as things got, started getting serious that they can stop you and say, look, for all the good reasons both for you and for me make an appointment to meet me.

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And a prescription of that kind would not interfere with general industry discussion of the type that you've been saying is healthy and should be discouraged?---Not as I see, not at all. And that will go ahead in the room on that night and, yeah, and I don't think that's going to get minuted. I mean anybody standing outside the media will try to listen to somebody who's got a bit of scurrilous information but anybody looking outside will understand that, hey, this is industries meet with politicians all the time in a big room with a lot of people. What I think the people out there in lawnmower land have a right to be concerned about is when they see a minister and a known lobbyist or the head of a company or whatever standing in the corner at the function having a deep and meaningful conversation.

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Okay. Thank you, Mr Macintosh. Can I take you now to local government. I want to bring you up to date if I may just with a comment. I want you to assume that part of the discussions that have been occurring or part of the evidence that's been occurring in the course of the hearings concerns whether or not local government needs to be treated differently for the purposes of lobbying from say state government or federal government. Obviously the federal government will have its own lobbying registration arrangements but that's partly geography, they're in Canberra or specific places. In the time that you were in Bathurst did you see any signs of the use of professional lobbyists at local government level? By which I mean political lobbyists as distinct from say planners appearing for clients or acting for clients?---No, no, we didn't. We, no, there was, there was, I can't recall of anything of that nature. I mean we, as I said earlier, we, we were involved in, for our area some fairly large projects and the other government was involved, we spent \$32 million on enlarging the size of the dam for our water supply and we spent \$25 million on upgrading the facilities at Mount Panorama racing circuit. They were big issues and they affected the government, they affected local politicians because they were matters for discussion during election campaigns but I was, I was never, I was never lobbied, no.

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There's been some evidence that at state planning level, that is, departmental level but also in some of the city councils, the Sydney councils there has been a slight move or a slight presence of political lobbyists appearing, that is, people who don't necessarily have planning experience

but they might be pretty good at putting a case together. Does that surprise you?---It worries me. It worries me. I mean just on the side there's one thing of course, one of the problems that you'll be very well aware of is of course that in terms of trying to make rules for local government, you know, on the one hand you've got the Carrathool Council I think that has a population of 1,200 people and on another hand you've got the City of Sydney Council and to make rules that are going to work for the City of Sydney and Carrathool, that's one thing. But, but it, it, I mean planning obviously is the, I suppose the difficult area in terms of lobbying in the broader sense and one of the problems that's developed and I think it's developed fairly recently in the last ten years is of course planning is like everything else, it become more complex but I'm sorry to keep harping on it, it does come back to the fact that I think in New South Wales we've got both at political level and bureaucratic level a fairly ineffectual government and the reason I can say that about planning is that there's been a number of changes in planning imposed on local government by state government, there are a number of areas now where local government has to refer back to the state government, that causes delay, delay causes frustration and so that I think in a sense local government is finding itself in a difficult position where the rules are changing, there is delay involved in things that shouldn't be delayed. When I went onto council very simple DA's were taking, from memory, and please forgive me if I'm a day or two out, from memory DA's in Bathurst were taking around about six weeks in broad terms. One of the things we did in the first six, six months was to get that down to a week. Now, we could do that because there was very little state government interference. Now, that's blown out again in Bathurst and I think now it's about six or eight weeks again. But part of that is because so many things like fire requirements if the building is outside the city, environmental requirements have to be referred back to a variety of state government authorities for approval for the DA and they take anything from, and I can't give you the details but, you know, you go to the fire people for approval but they can't approve it till the environmental people have approved it. So you wait for the environmental people for three weeks then you can go to the fire people with approval from the environmental people and that's another three weeks and by this time people are getting frustrated. And so when you've got a developer who's got money tied up and paying interest and all that sort of thing these sorts of things start to become aggravated. Now, it's not an excuse for corruption at all but you can see that it's the sort of problem that is heading towards - - -

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THE COMMISSIONER: Well, it's an, it can be an incentive to corruption? ---Exactly, yes.

MR GORMLY: We have heard that delay produced frustration but that frustration can produce lobby as well as a means of - - -?---Yes.

- - - overcoming the, you agree with that?---I do, yes, yes. I think so and I think that was your original question because of lobbying emerging at local

government area and, and of course as the Commissioner said, lobbyists may not come cheaply so you've got to have a pretty big project. You're not going to lobby or you're not going to pay a lobbyist if, if all you're doing is building a house but if you're building a 50-storey building of course it's worth your while.

Or alternatively you have second-rate lobbying?---Yes, and there's some of them around too.

10 Cheap lobbying, yeah?---Yes, there's odd ones of those around.

Can I take you to the planner now. Just before I do you will be perfectly aware that, that this institution, the ICAC, has had a, a steady series of complaints about corruption and findings of corrupt conduct at local government level for a very long time and in the evidence that's been heard so far it is common to hear people point to local government as the area that most requires some form of regulation for corruption purposes and it's been an area of activity for corruption purposes for a long time, the control of it.  
20 Do, do you consider that the institution of lobbying procedures in local government that included people who push for say, DAs or other benefits from council, including planners and other technical experts, would assist in controlling or monitoring or raising awareness about corrupt conduct at local government bodies?---Would, would, sorry, would - - -

So if you a registration system for lobbying, not just political lobbyists but others who lobby as well, including planners, do you think that that might assist in dealing with corrupt conduct at local government level?---I just don't know how effective it would be because the thing breaks down so much, I mean, if, if you said well, it will apply to councils with a population  
30 of more than 200,000 people or some criteria like that so that, and the reason, you know, if it's a big number you, there's, I think there's perhaps more chance that human nature takes its course and you can do, you can make some deals that are less likely to be heard about. If you go out to Bathurst or anywhere smaller where you've got 30 or 40,000 people and make the same, I mean, the, the same, the same regulation in a sense is probably not necessary because the word goes around the town pretty quickly that the mayor has met or the town planner has met with so and so and, and so there's always somebody that's a next-door neighbour in town who doesn't want that building there will hear about it. I mean, the, the, that  
40 doesn't preclude, of course, corruption but, you know, my point is that I'm not sure how you could set up a register of lobbyists and, and expect, as I said, Carrathool and City of Sydney to sort of work with it and then in, in somewhere in the middle there it would, it would collapse because Carrathool are not going to worry about it and there's no need for them to, the City of Sydney are going to do it but somewhere in a middle-sized council they're not going to adhere to it for whatever reason and then they will be the ones in trouble and that sort of will always be the case and, and it doesn't achieve anything except makes more work for you.

What would you say of this proposition, that, I understand your point about that, if, if you look back over the history of corrupt conduct at local government level from a lobbying point of view, it's probably reasonably true to say that it frequently involves not so much individuals wanting to renovate their home or build a house and it doesn't so frequently involve the very large scale building company or developer, it applies more to the lower to middle-rank commercial venture. Would you, is that a proposition you'd agree with?---Yes, I think that's, I think that's probably fair, yeah.

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At present their attempts themselves to deal with local government where corruption occurs is a direct dealing between them and council staff, sometimes councillors or the mayor?---Yeah.

Do you think that there is a case for requiring the conduct of business between council and developer, not individuals so much or at all, requiring the intervention of a planner or some other person that we might otherwise refer to as a lobbyist to advocate their position so that you end up with a separation, a professional separation between council or council staff and

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councillors on the one hand and the urging commercial entity on the other? ---Yes, the idea of putting it, an intermediary, I, I suppose my basic, not very helpful response to that is, you know, that, that I don't want to employ another person, lobbying or anybody else in, in the middle if you like and, and, and, you know, perhaps to go back to my former proposition if, if it became very well known in local government that if it, I don't think you can stop, I think it would be unreasonable and unfair to stop, to say there can be no further meetings between a middle-ranged developer and the town planner. I, I think that's interfering with the process but, but the step is to say if a middle-ranged developer approaches the town planner his

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immediate response has to be (a) we're going to meet in my office and (b) I'm going to have another senior member of staff - - -

Present?--- - - - present. Now if, if that isn't enough to work I'm not sure - - -

THE COMMISSIONER: And (c) take notes?---Always take notes, always take, always have a second person in the room, it, it always happened in Canberra, it always, I, I, I don't think I ever had a, not a serious business meeting certainly in, in Bathurst without often the general manager or,

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and/or both the general manager and the town planner in the room at the same time with me. But that was just my personal preference.

You'll appreciate that it's, it's an irony that I'm suggesting to you that we use lobbyists to prevent corruption when - - -?---I did, I like that approach.

- - - (not transcribable). But it's, we trial ideas, Mr Macintosh?---Yes.

Anyway you're against it, is that right?---Yeah, I think, I think so. I think, as I just outlined, I feel if, if, if we had this referral to the office, have a second person keeping notes, one of the things about that is that's a, that's a, sort of uniform system at all levels of government then which is sort of, in a way, I think, is a nice thing to have and not have a separate system for state government or for local government and another one for state and a third one for federal.

10 All right. So in a sense what you seem to be saying is that the best safeguard against corrupt conduct or undue influence or inappropriate influence between say this lower to middle-rank developer on the one hand and council staff on the other is really appropriate and good business practice?---Yeah.

Meet in a, meet in a, a business-like place, have someone present and take notes?---Yeah, yeah.

Right?---Look, I, that's right and - - -

20 MR GORMLY: What about the discouraging of discussion about projects between council staff and developer if they're meeting in the queue at Coles?---Well, yes, I mean you, you probably can't have a very long and deep and meaningful discussion there for a start. But - - -

30 But it could be the start of something couldn't it? It could be the start of agenda?---Well, but if it, if it starts to get serious, the same rule applies. You starting to talk to me about something that's, that's, you know, fundamentally important to our project, so make an appointment to meet me in my office. You know, I haven't got time now, my wife's waiting in the car.

40 There's nothing wrong with, with instructing council staff, I take it, to adopt that view as well?---Oh, I wouldn't think so. I'd be, I didn't do it, but I'd certainly say that, I'd be very disappointed if you said to any Mayor in the country that you should adopt that view and they wanted to argue with it. But what they'd argue with is if you wanted to put extra people in and say well we can't afford another person or another adjudicator or umpire or anything like that. But if you say to them, if anybody starts a conversation with you in the local supermarket about X, Y, Z, tell them to make an appointment in your office and when they come have somebody in there and take notes.

We've heard that in, in country environments that, that different rules are required then in the city because of the much closer community. And I think when we've had that evidence it's been from people who are talking about very much smaller places then, then Bathurst?---Mmm.

But even in Bathurst presumably people would much, be much more likely to know one another. It still couldn't impair ordinary social conduct if you had a business rule that prohibited the discussion of business except in appropriate circumstances. Do you agree?---Mmm. Yes, I agree with that. Yeah, yeah.

10 All right. Now whether or not you approve of the, of the checking that may be required at present between councils and the Department of Planning or other government departments, can I ask you about Mr Haddad's protocol for lobbyists at the Department of Planning? And I'm not sure if you're familiar with that. He, he now requires that departmental staff when they see a lobbyist for what's usually a state significant project, that the meeting occur only with another departmental officer present. That it occur either in a departmental office, in council offices or on site and in no other place. And that notes be taken which must then be entered on a file so that there's a permanent record of the meeting. It sounds like a good protocol. We will hear from him as to whether it's working or not, but there doesn't seem to be any reason why it doesn't. And some feedback we've heard is that it does work. Can you see any reason why that protocol would not be  
20 extended to local government in that form?---In every department, mmm.

Yes?---Across, yeah, I see no reason at all. I mean I hate to say this, but I think probably if you went back 20 years that probably pretty much happened (not transcribable). Not so far as they were instructed to come in, but once they got in they'd be always someone there and there'd be notes taken. But I see, I mean I, I can't think of any problem or any sound argument against that across all levels of government and all departments.

30 Well it's an irony isn't it, Mr McIntosh that when those procedures did exist, there was also bureaucratic behaviour built around them to which the public objected and which was seen as slow and cumbersome. There was then a change in public service style to get rid of the bureaucratic behaviour but what went with it was good business practice such as note taking and, and accompanied meetings and so forth. And what we're doing now is suggesting that that part of the old system be returned. Is that a reasonable analysis?---But was, was there a lot of objection?

40 Well, we could, we could argue, I take your point. We could argue about that, but some would say that there was a problem about bureaucratic behaviour and so that a new friendlier and more direct style was introduced. And of course technology had its impact as well?---Well, yeah, I suppose you know, some time in the past of course we all loved to pick on the bureaucrats for being bureaucrats, holding things up and making things difficult and so forth. And, and part of, part of that is what I think, I mentioned before, which is, was the, for want of a better word, the politicisation of the bureaucracy to, because senior politicians thought that if they put somebody of their own ilk in there and said speed it up, it would get speeded up. But that hasn't worked. I don't, well, when I say it hasn't

worked, I mean I think that's caused problems and I think it probably actually leads to delay in a lot of cases. Certainly, it's caused you know, at the top end where you only have people who are of your political persuasion who are going to probably give you advice based on your political party's policy, then you're not going to have a good government. I mean public servants, good public servants are there to say, well, you know, like yes minister, you've got this option, minister, that option or that option. And, and you take your pick, minister.

10 All right. I'm just watching the time, but I need to raise some other matters with you before we stop. Can you tell me firstly as to file notes of conversations kept with say council officers or for that matter departmental officers, you are referring to file notes that would be kept in effect permanently on the file. Is that so?---Mmm.

That is a government file?---Yeah, yeah.

And you, do you accept that those are documents which would, subject to the ordinary exclusions be available under FOI arrangements?---That's, 20 that's a very interesting question I think, to use a cliché. There's some, I, I have, obviously I'm hesitating because I have some reservations about that. I mean, and I'm, I'm probably not as familiar as I should be with the workings of FOI. I mean, what I was thinking of was that perhaps provided there was a time lag, meaning if, if, does the FOI, if we have this meeting today and it's all minuted and of course it'll be typed up by tomorrow, can an FOI go in the day after tomorrow to get the minutes of this meeting?

It can, but it might not necessarily be met for some time, that is usually weeks. And there are a whole series of categories that would prevent the 30 production of those documents?---See I would think in, in, and this is not across, well it could be across the board I suppose, but in, in areas like local government, or planning areas and development areas what I'm getting to is that I think that, I would only like to see those notes become public property in any shape or form after a period, a long period of time. Like not as long as cabinet minutes, but you know, maybe two, three, five years or something.

Can you tell us the reason for that?---Well because if you're going to have a free and frank discussion and minute views, it's a competitive world, I mean 40 they'll be - - -

THE COMMISSIONER: There would be a commercial in confidence - - - ?---Clause in there.

- - - clause and yes, you will not, that will protect that category of, of material?---Yes. Yes. Yeah, yeah. Yeah, look I, I'm sorry I haven't really thought a lot, deeply about it and, and perhaps with commercial in confidence and the FOI rules that allow you to take these things out - - -



Subject to obvious exceptions?---Yes, yes. Okay.

MR GORMLY: So subject to obvious exceptions do you think it would interfere with, with business of government to allow more or less current access to ongoing records? Do you think there are other reasons that - - -?  
---There's, there's two problems. They're always going to be, it's always going to be somebody who, the three people. There's the sticky beak who wants to get in there to cause trouble. There's the opposition who want to  
10 get in there because they've got another project going. And there's the media who are always going to look for some misrepresentation or something that they can blow up a bad story on. And so, you know, we have to weigh on the one hand against those three sort of downside if you like to the upside of having visibility.

Transparency?---Transparency, yes. And, and so somewhere in the middle I think is, is a timeframe and, and perhaps a, a very close, see the problem with FOI as I see it at the moment is that, certainly this is what the media  
20 will say, is of course the government of day selectively cross out parts that in fact we should've been allowed to see. Now, if I was sitting there I might've crossed them out too. We'll never, never know. So that's another thing that makes governments, that's why some discussion this morning, governments are not trusted.

All right. Well, let's put the FOI, legitimate FIU assessments aside. I gather from your view that those three categories that you've identified are reasons why you would not give contemporaneous access to records anyway because those three groups even if they're outside the FOI categories will obstruct or interfere with or slow down ordinary government business just  
30 by being sticky-beaks and by - - -?---(not transcribable) and I think for the wrong, wrong reasons cast doubt into people's minds about the honesty, integrity, validity of a government decision at whatever level.

Okay. Thank you. Now, the last two questions are firstly on cooling off periods, do you yourself have a view about how long, for how long ministers should be prevented from lobbying at state level or for that matter federal, well, let's say state level after ceasing office?---Yes, I think it should be a fairly long period before they can either work in any known paid capacity as a lobbyist or take a, a paid government job and I think, I  
40 think, you know, I'd argue for something like three years, I mean of course you wouldn't have to wait that long for a minister to change at the moment, three weeks would be plenty but, you know, I think there's some validity in, the minister that's in the job today might've moved on reasonably, they've been promoted, government's changed or something in three years and that cuts that umbilical cord if you like and I think that's important because it comes back to what I said earlier, it's, a lot of, the way governments run is about access and, and people rightly or wrongly and often quite wrongly

will see a minister as having preferred access if he can get back in in six months or three months or whatever.

So you'd link a cooling off period more to an election cycle then?---Well, that's, that's one possibility.

Yes?---Yeah, yeah.

Okay. Forgive me for one second.

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THE COMMISSIONER: Mr Gormly, I have some questions, perhaps I can ask?

MR GORMLY: That would help me, Commissioner, there's one very good question I want to ask and it's just gone away.

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THE COMMISSIONER: Mr Macintosh, you said that you were worried about lobbyists becoming involved with local council decisions, why does that worry you?---Well, I think, it depends of the level, I mean I would, I'm not so worried about lobbyists becoming involved, as I say, with the big Sydney City Council. I think to bring a professional Sydney lobbyist into let's say a smaller council and not to pick anyone out but, you know, Cootamundra or something it then does become a risk where as I say the checks and balances that I see at the higher level is that there will be qualified, experienced staff who will be able to understand what's wrong or what's right with the lobbyist's view but if you bring some, as I say, very experienced Sydney lobbyist who knows how to do the research, marshal the facts and present them to some of the staff at a smaller country council I think there's an unfair advantage.

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But there is nothing one can do about it as far as I can see or can you suggest how one can deal with that situation?---No, I don't think, I think you're right except, you know, that would, that would then, I would hope that in a council that small of course one of the things that would happen is that a lobbyist, I mean, if he was going to approach the town planner, the town planner even at Cootamundra should be conscious that this is something I ought to tell the general manager about and the general manager should tell the mayor and the mayor should say well, if that lobbyist is coming to town I want to talk to him or I want to see him. That would, you know - - -

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Care needs to be taken?---Care needs to be taken.

And the, the issue of the register, coming back to the register not local council now but government a number of people have said that a good purpose of the register is that it tells the minister who the person is acting for. Now, I assume, please correct me if I'm wrong, that if a lobbyist goes

to see a minister the first thing the minister will ask him is who are you acting for?---Exactly. Exactly.

I mean, it would be an extraordinary thing for the minister not to know who the person is acting for?---Absolutely. I, I, I can't concede that that's possible.

10 And I can understand that the minister might want to know beforehand but I mean it would be very simple to say you want an appointment with me tell me who you're acting for?---Yes, I mean, I would think, I don't know of any time I've ever tried to see a minister, that you ring up, ask for an appointment, what do you want to talk about?

Yes?---Yeah.

So - - -?---Because, because any minister wants to be briefed before you get there.

20 So I have some, I have to say that I have some difficulty in understanding what the point of this register in its present form is. I just don't see, I mean you've got a list of people who are registered lobbyists and so?---Yeah, I'm with, I'm with you, I mean I don't think, first of all if you're going to have a list of registered lobbyists there shouldn't be any exclusions. That's another issue.

Take that as a given?---Yes.

30 And also assume that the lobbyist has got to list his clients?---Well, you see I, straightaway I've got, I've got a problem with that because, and there's pros and cons I know but one, I've got a problem from the lobbyist's point of view because certainly when we were in Canberra there were probably four, there were probably four good sized national lobbying firms and they were all pretty good dare I say it what they did. We would register ourselves as lobbyists but we didn't list our clients because if I listed, I mean they would know that we work for BHP but they may not know that we work for, I don't know - - -

For anybody?---Anybody.

40 (not transcribable)?---And it's a competitive business you see so as soon as this company's hired these people as a lobbyist but I know somebody in that company, I know somebody who's on the board so I'll go and lobby them and see if we can't get their business. Now, you know, that's, that's a very personal business - - -

I thought all lobbyists were honourable men?---But that's business, Commissioner.

MR GORMLY: But also sounds like market forces operating?---Yeah, that's right.

I've remembered my question, Commissioner. Mr Macintosh, my question actually stemmed out of your considerable history of being a member of a large number of government bodies, associations, boards, committees et cetera over what appears to be quite a lengthy period of time. I'm not sure if any of them coincided with your being a lobbyist but the question is this. In New South Wales at present registered lobbyists are prohibited from  
10 sitting on government boards and committees. It's been suggested to this Commission that that's a mistaken ban because normal conflicts, rules of conflict would apply so that if people did have a conflict then they should declare it and not vote and that by having a total ban you deprive the state and its various boards and committees of considerable talent and experience often on boards where there is no payment so that it's not even as though they're there for a financial reason. The argument in favour of it is that lobbyists frequently appear for different clients as lawyers and accountants do, and that there may well be a conflict arise because of their interest in a client and their apparent closeness to the government by being on a board.  
20 Do you have a view about whether registered lobbyists should or should not be prohibited from sitting on government boards or committees?---Yes, I do. I, I think they should be prohibited from sitting on government boards because, you know, there will always be conflicts of interests of course. You get elected to council and you have to declare any conflict of interest, you do, and any corporate board I guess, certainly on the university council but if I, I just think it complicates the system. If you're on a council and you're bringing particular expertise, legal, legal expertise, accounting, engineering, whatever, that's, that's fine but a lobbyist is going to bring, it seems to me be dealing with different sorts of issues and, and, and if there is  
30 a need to argue that or for that particular government board to understand then sitting outside is a lobbyist who can come and lobby but to have a lobbyist inside the tent to me I think only is, has the, at least the possibility to complicate matters and, and, and bring problems and - - -

All right?---If you don't have them, you don't have them, you just (not transcribable).

So in effect while an accountant or a lawyer or anyone else might contribute to the work of a, of a government board it could never be that a government  
40 board should be in the need of the services of a person who lobbies government?---I, I - - -

I'm agreeing, I'm agreeing with you, Mr Macintosh?---Yes, yes, yes, yeah and, and, and may well require a lobbyist for, for another, I mean if I, I can't really think of, but I mean, Country Energy who supplies our energy supply may, may well decide to - - -

Well, I suppose a government board should make submissions to government if it wants something changed but it probably should not lobby - - -?---No, well, it shouldn't.

- - - in the sense of persuade or advocate?---I'll, I'll retract that, it shouldn't employ an outside lobbyist, no, that, that's true, there should be no need to do that.

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

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THE COMMISSIONER: Mr Macintosh, I was just, this is, I'm, I've just got one question which is really the question that, that this Commission is required to answer so I'm going to ask you that?---Thank you.

You, you accept I think that there is the perception that there's a problem with lobbyists, I mean, put, put simply?---No, I think I must have not conveyed very well. I think - - -

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No, not the reality, I know you said - - -?---Oh, a public perception?

Yes?---Yes, I think there is and - - -

Yes?--- - - - and, and that's partly to do with the media because they only pick out the worst.

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Yes. Do you think that anything can be done by way of regulation to improve the position to remove that perception?---I would seriously doubt it. I'm not sure that regulations are a good way of improving people's perceptions.

Well, by regulations I include, I include these changes to the Code of Conduct that you've suggested for example?---Yes, well, yes, yes.

That's one?---Yeah, well, okay.

40

But the register you, okay, I get the sense that you don't think that the register really helps or is counter-productive?---I guess, you know, if, if there's a register of names and companies and, and, you know, it's Macintosh Consultants and it's on the register and, and every, and, you know, where, where does, where does it stop. I mean, I don't, it doesn't include an organisation, it includes individuals and I don't, you see, I, I, you, you don't, I don't know what we envisage as a register but these are individual practising, if you like, political lobbyists so they're, they're the National Farmers Federation because by its definition the National Farmers Federation are going to lobby for something or other so that's, they're visible and given so I'm talking about the, these people who are, their sole business is on the door is lobbying and, and then if you put, have a list of names which then, this is where I think if it was going to be effective you'd,

you'd have to go. I think you'd have to go and I doubt that we want to go that direction and what I'm going to say is this, you have a list of names which, it doesn't exclude anybody who is in a consultancy sense, that, that includes accountants and lawyers and consulting engineers and so forth, if they regularly have a cell in their organisation or a person who, whose job it is to lobby politicians and bureaucrats, but then if it's going to be used for, on a monthly basis, let's say for argument there's a list and there's 100 people on it in New South Wales and every month by law the minister's office provides a list of meetings he's had with consultants, not the, not the issue, but he says during the month of March I met with Macintosh and somebody else and somebody else and somebody else, that's all he says, that then for anybody who's interested will know that Macintosh represents BHP or somebody else represents somebody and if they're interested they can then follow that up one way or another and have a pretty good idea what's been talked about because it would be a topic for the day or the week probably and that should give some comfort to the people out there in lawnmower land.

20 But you don't like the idea?---Well, if you went that far - - -

For the reasons that you've explained?---If you went that far and ministers would do it and, you know, it comes out that these are meetings they've had in their diary mind you, these are not - - -

Yes?--- - - - meetings they've had at the local leagues club.

Yes?---If it went that far then I think that may give some, I mean, I'm really thinking off the top of my head, Commissioner, forgive me and - - -

30 Yes?--- - - - but if it was thought through that's the one thing that I think could give people some comfort - - -

Yes?--- - - - that they could find out what was going on.

Thank you, Mr Macintosh. It was a pleasure to see you again?---Thank you. I've enjoyed it. I hope I was helpful, Commissioner.

40 You were certainly very helpful indeed, Mr Macintosh, so I really am sincerely grateful to you, thank you?---Thank you, sir.

**THE WITNESS EXCUSED**

**[3.17pm]**

MR GORMLY: Thank you, Commissioner, that's - - -

THE COMMISSIONER: And that's it for today.

MR GORMLY: That's it for today.

THE COMMISSIONER: We'll adjourn until tomorrow at 10.00.

**AT 3.17pm THE MATTER WAS ADJOURNED ACCORDINGLY[3.17pm]**