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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION HALIFAX

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 9 AUGUST 2010

AT 10.00AM

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

THE COMMISSIONER: Would you swear Mr Warburton in please.

**<RICHARD FRANCIS EDGERTON WARBURTON, sworn [10.05am]**

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner. Mr Warburton, what's your full name?  
10 ---Richard Francis Edgerton Warburton.

Thank you. And I think your past history has been in a large array of company directorships and chairman roles. Is that correct?---That's correct.

I think you're currently the chairman of Tandou Limited which I think is an agricultural holdings company?---Yes, it is.

Yes. And Magellan Flagship Fund and you're also on the Board of Taxation?---Chairman of the Board of Taxation.  
20

Right. And you're a director of Citigroup Pty Limited?---That's correct.

Now, Mr Warburton, in the past you I think have also been chairman of the Commonwealth Studies Conference, chairman of LEK Consulting Advisory Board and vice chairman of the Council of Australian Latin American Relations, I'm just going to go through a number of these in batches because you have such a big history, Mr Warburton. Is that all correct?---That's correct.

30 All right. And I think you've also been a member of the Advisory Council of the Centre of Social Impact?---That's correct.

You're a former chairman and CEO of DuPont Australia and New Zealand and I think you were with them for some 30 years?---Yes, I was.

Right. But in addition you've been a board member of the Reserve Bank of Australia, correct?---Correct.

Chairman of Caltex Australia Limited?---Correct.  
40

Forgive me for this, Mr Warburton, but I think you're on the board of David Jones Limited?---I was the chairman.

You were chairman?---Chairman of David Jones.

Also of Goldfields Limited?---Yes.

Wool International?---Yes.

And you've been a director I think of Southcorp Limited, Tabcorp Holdings Limited, Nufarm Limited and other companies as well?---That's correct.

All right, thank you. Now, Mr Warburton, I know that in recent times you have been reported in some parts of the media for, in respect of some views expressed about fundraising by political parties and its impact on the business community but you have also been in positions in the past I think where companies have used or you have caused companies to use lobbyists, third party lobbyists, is that correct?---That's correct.

All right. And I think you've probably been observing political lobbying and various other kinds of lobbying of one kind or another throughout your working life. Is that fair?---Yes, I have.

Right. Now, Mr Warburton, is there anything that you'd like to say by way of an opening statement before we ask you some questions?---Yes. I, I think I was asked to attend today because I had make some comments about what I felt was undue pressure from some fundraising, particularly luncheons that were being organised and so I just made some comment saying that that could lead to some form of assertion that you may or may not have access to certain ministers if you did not supply those funds. So I think that's how I got involved in being asked to come along today. But you're quite correct, I have been involved in, as either part of the board or part of the executive to organise lobbyists which I consider to be a reasonable thing to do providing it doesn't go beyond the bounds of, of righteousness and, and go into corruption areas.

All right. Now, look, can we just start with the fundraising lunches. Can you just identify more accurately the way in which you saw the problem arise and what you think the problem is?---The, the idea of organising lunches and a lobbyist or a minister in some cases inviting companies to take tables for a fee for those lunches or dinners, it doesn't necessarily mean just lunches, I, I believe in certain essence are a reasonable thing to do because I think it's good for business people to be able to mix with ministers, I mean, it's part of the, the job you should be doing. However, I believed it was getting to the level where people were being put pressure, were being put under pressure to say not, not exactly in these words, I'll have to paraphrase it, that, look, we think it's a good idea to use her because if you don't you may not have access to a certain minister.

THE COMMISSIONER: Who would say that, Mr Warburton?---The person organising the function. Now, in some cases it was a minister, some cases it was a lobbyist who was organising the function.

MR GORMLY: And was it in express terms or was it implied in some way?---Much more implied than expressed. I don't know that I can recall anybody ever threatening quite as much because if they had I would've said,

well, I'm just not interested, thank you, I can get access to the minister if I need it and if he needs me I don't need to have pressure. So I don't think it was ever applied, I can't remember it being applied to me. I'm now speaking third party and I must qualify that 'cause I'm getting it third hand or second hand but I have had other chairman and other directors say to me that they've been absolutely annoyed that they were significantly pressured to take a table so they would have access to various ministers.

10 THE COMMISSIONER: There are two things aren't there? The one is paying for a table because I assume that sometimes the payment is quite high?---That's correct.

20 And the second thing is being called upon to make a donation once you're at the table?---There's two things. There's a knowledge that most of the functions, most of them would be organised as a fundraiser. Now, if the cost of a meal is, let me say, \$75 or \$100 and the cost of the entry point to the table was \$200 you know that at least 100 of that's going for fundraising, you know that, that's a given fact. It's when it goes to \$5,000 or \$500 or \$5,000 that I believe it starts stretching the bounds of credibility and then - - -

And the \$5,000 is for the lunch ticket?---It can be for an individual or in the case of sometimes they organise tables of ten for \$500 each but it can be individual, in fact there are some I know as high as \$10,000.

30 Yes. And it's that to which you object?---I don't object to it perse if it's quite clearly spelled out that this is a fundraiser, this is to raise funds for a party but if it's raised on the basis now, look if you don't come, look, you're going to have trouble getting access to the minister I resent that.

And what about calls during the meal for further funding?---That's quite common. I must admit I haven't felt, personally I have not felt pressured to do so however again I'm talking now second hand so I must qualify that, others have said that they've been told or implied quite categorically this will be a very good thing for you to do.

40 So really your objection is to the, to some kind of pressure being applied to pay for lunch or make a donation in whatever form it is connected with the lunch or dinner or during it with the implied threat that if you do not favours might, access might be withdrawn?---That's correct, that's, that's what I resent.

And does it ever, is it ever put the other way that if you do go and if you do pay you will get access?---Very definitely, it is put that way. That's something that has never particularly bothered me in the sense that I have never been concerned about it because I've always felt that if I as a business person have an issue to do with the minister or a council or whatever it might be and it's a big enough issue I can get access anyway.

Yes. But that, do you accept, Mr Warburton, that that might be a function of the power that you wield and the eminence that you hold in the business world generally? I mean without any false modesty I'm asking you?---I think so and, and so taking your question a little bit further those who perhaps don't have that same access could see that as a price to pay to get to see a minister.

10 How, I'm really trying to find out whether this is a, this sort of thing happens seldom or is it, does it happen more often and is it increasing?  
---Certainly the request for funds through the medium of a luncheon or a dinner or perhaps even a, a ball or something is relatively common. They, they come quite frequently to myself and to business people. The implied threat or the implied position I don't think is overly common.

Can you put a number on it? I know it's a ballpark number, very much an approximate number, say in a year?---A percentage of the implied - - -

20 How many do you get in a year, say?---Oh - - -

How many do you get to these implied, the implication position?---Yeah, I would, I would get at least one a week. Of course it increases immensely as you get closer to an election or some, some form of decision having to be made.

Yes?---Now, I don't attend once a week.

No, I understand?---Yeah.

30 And how is this put? Is it put to you directly or to your secretary or to your assistant?---Well, now that I'm a company director, I'm my secretary and so it comes through, through to me via email and so I get it via email or through the mail. And, and generally speaking, generally speaking I respond no.

40 And, and the, the implication is that to be read between the lines in the email or is that usually as a result of telephone call or some meeting?---That would be more the result of a telephone call. If for example, having said no, you might get a telephone call. However, I must admit that I look at any invitation and say in my own mind, is this something that I believe I should do because I may lose access or I may gain access. It goes through my mind some of the time when I get these invitations. But, but most of the implied situation would be a verbal conversation.

I'm going, I would like to ask, this question might be a bit pointed, but I, does this come from, from all sides of politics or only the, the party in power?---I think I've only known it from the party in power. I don't recall it coming from the other side.

And does it, is it, is it a phenomenon that one sees in federal politics or state politics or both?---On both. But you tend to get more of it from, from state politics then you do from federal.

And another pointed question if I may, it's up to you to answer. The source of this, how often is it the party office - - -?---Sorry, did you, did I, I missed the question.

10 MR GORMLY: No, no, the question is still being formulated?---Oh, I'm sorry. Sorry.

THE COMMISSIONER: How often is the source of the invitation coupled with the threat the party office?---I would suggest that probably 75 per cent are from the party office.

MR GORMLY: Mr Warburton, in the course of the lunches or dinners, assuming that you decided to go to one, is there in fact contact with the, a minister or ministers?---Well, sometimes it's direct, in other words, a  
20 minister is at your table - - -

Right?---and you have an opportunity to discuss. However, I've never considered it an opportunity to get into any deep discussion about issues because with so many people around the table, it's not possible to do. It's more, externally it's more aimed at if you need access to a minister who's not at your table, we can organise that.

THE COMMISSIONER: It's the open sesame, in other words?---That's right.  
30

It's the password?---That's right.

MR GORMLY: So the, the lunch itself serves no useful, no directly useful purpose. It's not because you're meeting the minister who is there, it's just the process by, if you go, it's a key. Is that the point?---No, no. I'm sorry. No, I wouldn't, wouldn't say that. I think they can be useful. In fact networking is very much part of our job and the politicians job, very much part of the job. We want to listen to other people's points of view. So it's not considerably, not lost by any sense of the imagination. It's just that I  
40 don't you get down to very deep issues at a, at a function like that. But you certainly network and hopefully it might've given you an avenue to see either the minister or whoever the person is at your table at some later date.

THE COMMISSIONER: And I take it it's the party office involved because the party office really is the organisation that is, as I understand it, mainly responsible for fundraising?---That's correct.

MR GORMLY: At the risk of sounding naïve, Mr Warburton, when you make a decision, when you or a member of the business community makes a decision to go to a lunch of that sort and you know that there will be a minister or ministers present either at the table or perhaps at a larger function otherwise what is perceived by the business community to be the benefit of knowing the minister or meeting the minister on that kind of an occasion, what arises from that?---Again if I could use the word networking, it's an opportunity to meet a person in a, in a non-specific business environment so that you can get a feel for the individual and that individual can get a feel for you so I class it as being networking and that to me is a very legitimate thing for business people to do and politicians to do.

But moving on a stage from that how would the network then take effect? I mean you've met the minister so he knows who you are personally and vice versa, what's the next stage, how does that arise as a benefit?---Well, there's one of two ways that I can think of. One is that you do have a specific need, a desire to see a minister or, or a chief of staff or whatever it might, a person of influence anyway to alert them to the fact that you have an issue that you'd like to speak to them about so you very specifically alert them at that function but then with the understanding that you'll catch up with them later rather than at the function. The other is, is purely so that that individual can get to know you better and you can get to know them better so that when a, a decision might arise that you want to get closer specific issues on the table you've got an easier access, it's much easier to get through the front door of, of a politician or a chief of staff if you've got some personal rapport.

THE COMMISSIONER: Mr Warburton, coming back to the thing that I was asking you about in connection with questions that Mr Gormly has asked you and this might not apply to you because of your particular position so much but I, I assume that there are cases where a person in industry or commerce would want to see a minister quickly and even though you might've been to one of his functions and met the minister you get a refusal. Do you, is there then an implied invitation as a result of going to these functions and paying to telephone the party office to say to the party office look, I'm having trouble now, remember me, I paid X dollars, I'm having trouble in actually seeing the minister, I'm getting stonewalled there, can you do something about it?---I think that's been used often. I, I, I'm not putting myself above the ruck when I say this by saying I don't think I've ever had to do it but I know it's been done quite often when somebody really desperately wants to get in.

So, I'm sorry, I'm not quite sure if I'm understanding you properly. You said you don't put yourself above the ruck in doing this does that mean you have done it?---No, no, no, no, I haven't used that avenue.

You haven't used it, you personally - - -?---I personally haven't used that avenue.

But you know - - -?---But I know, I know that it's been used and I know that people do take that position.

Yes. That's one of the reasons for going to these places and paying I suppose?---It's one of them, I mean it's not everyday that you want to pay \$5,000 for a lunch.

10 As I understand it in the United States these functions are the order of the day and one can pay, actually I mean \$20,000 is not a lot as I understand it in the United States?---I understand the same. It's, it's a lot in Australia though.

Is it increasing in Australia?---It certainly has been increasing.

20 Increasing in frequency and in amount required?---More amount required. I think the, the frequency has been fairly consistent as far as I've seen but the amount required has definitely gone up which I suppose is part of the inflation but also in, in, in, in jumps much bigger than inflation like from maybe \$200 a head to \$500 a head to, to \$1,000 a head.

And does the amount depend upon the particular minister?---Sometimes it would but other times it's just purely for fundraising for an upcoming election or something of that nature.

30 MR GORMLY: Being pragmatic about it it would seem the business community probably wouldn't object to a lunch where there is, in effect, a fee component for the lunch and a fundraising component as well but it's a question of degree or quantum, is that, would that be your view?---Well, I think the quantity would always come into it, you know, if it gets too high you start wondering whether, but I agree I believe it should be spelt out quite clearly what is the part of it that applies to the lunch itself and what part applies to a donation then an individual makes up his own mind, his or her own mind whether they want to pay \$500, \$1,000, \$5,000 or \$10,000 to give to the fund that's being clearly sought.

THE COMMISSIONER: And as - - -?---Sorry?

40 I'm trying to think of the best way to put this question, Mr Warburton. Applying the ordinary laws of economics I assume that the more you pay the more you expect?---I would think so although to be fair to those who like to give funds to parties for the election of a particular party they quite, will quite readily pay those large amounts but if you didn't have access I would certainly use that path.

And are there many businessmen who like to pay?---Yes.

And are they true believers?---No.



They pay because, they like to pay because?---Because it gives them an opportunity to see, meet up with parliamentarians or politicians from both sides but they may not be true believers.

No, because they generally pay both sides?---Pay by?

Pay both sides?---Yes, they do. But, but you'll find business people will lean more towards the side they favour than the other side but they'll pay both sides.

10

MR GORMLY: So given that the purpose of these lunches and dinners is fundraising and that the political parties do need to raise funds and the business community recognises that when they go to the lunches they're not just paying for the lunch they're contributing to party funds as well there nevertheless seems to be a degree of expectation raised in the minds of the business community if they're being asked to pay large sums like \$5,000 for a table or \$5,000 per head, whatever it might be. Is it your view, well, I'm judging this partly from transcripts of radio interviews that I've heard here, Mr Warburton, but is it your view that there is a reasonable range of figures at the current time taking into account the current climate that the business community will willingly pay, that is, both a lunchtime fee, a reasonable fundraising fee and provides access to a minister?---Let me see if I can answer that in two ways. One is the size you're suggesting?

20

Yes, yes?---Look, I think most of them would be in the range of 3 to \$500 most of them. When you get up to 1,000, 5,000 and 10,000 they are, they are very special cases in the sense that they're, they're very clearly big fundraisers from high net worth individuals or companies that are prepared to pay large amounts for that, for that fundraising. I, I would suggest that most times people go into, most times on the basis that well, we've got to do this to support the democratic principle, we will do it for that reason but if that leads us on to some other better outcome of a decision well, well, that's good. That's being benign, other times they go in specifically to get some outcome but I think that's more, must more the minority.

30

All right. What I'm exploring is whether there is some kind of a quantum difference between on the one hand legitimate networking and pragmatism about having to contribute to a party you wouldn't otherwise support and paying an amount of money that raises an expectation of a return or a favour on the other. Is there some money difference between those two extremes? ---Look, I don't think so. \$500 can be an awful lot to a very small businessman or a small person who wants access. \$10,000 may be just pocket money to some high net worth individuals or, or large companies. So, it really depends in relative terms of their ability to be able to pay those sort of funds.

40

All right. Thank you. I want to take you to another area now if I may.

THE COMMISSIONER: Can I just ask one more question, Mr Gormly?

MR GORMLY: Yeah. Sure.

THE COMMISSIONER: Mr Warburton, as you know this inquiry is into lobbying. It's not an inquiry into fundraising?---Right.

10 But you've been asked these questions because there is a general impression put it no higher than that, that some aspects of lobbying are inextricably linked to fundraising. Can you, can you comment on that?---No. As I said before most of the fundraising that I'm involved have been party sponsored and I don't see that so much as lobbying as professional lobbyists seeking to get you access to certain places.

But the, the implication which you have, about which you've testified relates to put it at its lowest, access to ministers?---That's correct.

And that is essentially the job of a lobbyist?---That's correct.

20 So it's in that sense that you have a link between payment of money and access to the minister?---That's correct. Perhaps if I can explain in my mind's eye, I must admit I see a lobbyist or a professional lobbyist as somebody who believes they have good networking or better access to a minister or a bureaucrat or something.

Yes?---Whereas on the party side it's, I don't see them so much as lobbyists, but if you take the, if I take the thrust of your questioning, I believe that yes, sometimes they could be seen as lobbyists in the eyes of some people.

30 Yes. I'm, I'm, actually that question is not directed to the usual kind of professional lobbyist who would regard himself as utterly professional and providing a very different kind of service?---Yes.

It's not to that to whom I'm referring. I'm referring to somebody who might not be, who might not describe himself or even be known as a lobbyist but someone who in effect does the work that lobbyists generally do in, especially in one sense and that is providing access to the minister? ---Yes, certainly that could happen. And in that light, I agree with you.

40 MR GORMLY: Mr Warburton, in a corporation that has a particular problem it would seem that they sometimes elect to use a professional third party lobbyist, even if they have internal government relations staff or even if a director or chairman of a board has some kind of personal access to a minister for whatever reason. Can you tell us something about the sort of factors that would cause a company to decide to use a third party lobbyist, a professional lobbyist?---You would certainly seek to use a third party lobbyist if you felt that they could gain you quicker and better access to the office suite of a minister or a chief of staff or a bureaucrat or, or councillor

or whatever it might be, because not all of us spend time in that area. You don't know sometimes the avenues by which to enter. And so these people are generally experienced people in that way. So you use them for that particular purpose. You also use them when either, as a chairman or the directors or the executive really don't have a good knowledge of or understanding of that particular party or minister or, or a bureaucrat that you're aiming to get to see.

10 It's been said in this inquiry that, that third party lobbyists will use not only their personal knowledge and their personal relationships to gain access for a client, but that they will also advise a client on whether or not they should use the access that the lobbyist has. That is that they'll look at the problem and advise on the problem so that while they could get you access to such and such a minister, they might advise you not to or they might advise you to go somewhere else. Has that been your experience?---Yes, it has. But that's just utilising the, the expertise of some people in that area.

20 THE COMMISSIONER: Mr Warburton, we've been told that a recent development is that in many large companies they have created their own departments, often called government relations or - - -?---Yes.

- - - which in essence is staffed by people who are specialists in, in presenting a case to government and in obtaining access to government. Is that right? Do you, is that your experience?---Yeah, very much so. That's very common, certainly I would think in the top 100 companies anyway.

30 And is that an expanding practice?---In the last 15 years, yes, I believe it has expanded. And generally speaking such internal in-house people would generally come out of a previous background in politics or bureaucracy.

That would be, that would be a very valuable qualification for them and an inducement to employ them I take it?---A very high qualification, you're correct.

40 And does that, what, do you have any knowledge of what that does to the professional lobbyists, this expansion of, of in-house lobbyists, what does that do to the work of professional lobbyists?---I think there's a place for both because not every in-house lobbyist has the same access, lets say an in-house lobbyist comes out of, if I can just use these terms, out of one side, one party, let's say the Labor Party, but a Liberal Party is in parliament. It's quite possible that that particular person may not have access to the Liberal Party easily, however the know what should be done. And therefore they say, well, we think you should probably get an outside professional lobbyist to help us in that area.

Yes. But of course a large company will employ as in-house lobbyists people of every different political colour?---No, not that often.

Not that often?---No. They may at the very top, the top five or ten, but not when you get down lower than that. Generally speaking it's the one person banned with the secretariat.

So has competition amongst the lobbyists increased, a personal competition for a share of the lobbying market? Has it increased?---Look, I really can't answer that.

10 Well, I infer that it has with this growth of, of in-house lobbyists, it must necessarily- - -?---I think it, I certainly think it would've increased, but I don't have any facts or figures to back up my supposition.

I know that when competition amongst lawyers often leads to sharp practices. Does the same happen with lobbyists?---Look it could, but I can't give any experience of that.

Yes. Thank you.

20 MR GORMLY: Mr Warburton, do you think, we've heard a great deal from lobbyists to the effect that the market in Australia is small and the array of contact between politicians with authority or power and the private community is also tight so that the relationship between professional lobbyists and those that are lobbied is one of trust.

30 It's been put to us on quite a pragmatic basis, that is if you're not trusted, if you mislead someone, if you exaggerate, if you provide false information it's soon known and that that lobbyist will lose favour and so that there is in effect a self-sustaining integrity in third-party lobbying. Do you think there's any substance to that view?---Well, that's a view I'd hold for anybody in business or in, in politics or anything. If you exaggerate beyond reason and if you lose you integrity then that word gets around very quickly but so I don't think it's any different with a lobbyist than it is with a businessman.

Is that because you're drawing a general conclusion or a general inference from, from ordinary business conduct or do you think, have you seen signs of that in the lobbying industry itself?---No, I'm drawing it as a general conclusion.

40 All right. There, there does seem to be a public perception, and even the lobbyists tell us this, that lobbying is regarded as shady or productive of deals based on preference and favour.

THE COMMISSIONER: And secret.

MR GORMLY: And secret?---Mmm.

The behind closed doors concept. Can, can I ask you firstly to comment on that perception, that apparent public perception. Do you, do you think that perception exists firstly?---I do think the perception exists but I'm not sure that overall it's correct. There'd be instances obviously where it could be but I don't think overall it is but certainly the perception is there.

10 What, what do you think are the factors that have led to that perception?  
---Generally it'd come out of a press statement or release or comment about a particular decision that occurred and then the inference from the press that it had occurred purely because the lobbyist used maybe "unfair or incorrect tactics" so it's more, I believe, from press releases on that than anything else.

THE COMMISSIONER: But that's the messenger?---That's the messenger, that's correct.

20 And often the message is X dollars paid to Y on such-and-such a date, decision Z made on such-and-such a date?---The messenger could be absolutely correct and therefore - - -

Even though it's very difficult to prove?---It's extremely difficult to prove, it has been in the past but I'm, I'm sure, I'm being very careful here, I'm sure it does happen but what percentage I don't know and I think overall it's a very low percentage.

Yes.

30 MR GORMLY: Would you accept the proposition that there could not be any legitimate role for professional lobbyists in the donation of funds by clients to political parties? I'm not talking about fundraising here, I'm talking about donations?---Could you perhaps reword that?

Yes. But if a client is using a lobbyist to achieve a political end - - -?  
---Yeah.

40 - - - and a client wants to also, for whatever reason, make a donation to a political party, that it is important for the integrity of the system that lobbyists never play any role in the donating of money, the reference to it, the passage of it, the carriage of it, the promise of it or any other aspect of donating?---Well, I think they're threatening their own integrity if they do that because even if it was a pure and honest donation and it led to an outcome that was favourable to the client then I think the perception would be increased, that it was because a donation, in fact that the decision was bought and I don't believe a good professional lobbyist should get involved in that.

So do you think that similar considerations should apply to fundraising and the organising of fundraising events by lobbyists?---Again there's the

danger of integrity that could come in and a person could lose their integrity. I'm not saying it always happens but there is that danger that it could.

10 We have heard at times lobbyists complain that they are or can be put upon in effect to carry out fundraising activities, and they don't particularly want to and there's no direct benefit to them, but they feel obliged to do so. Do you think that there is room for preventing lobbyists from being engaged in fundraising activities, that is a prohibition?---Well, I, I, I do not believe they should be engaged in fundraising. Whether you could, whether you could get a fair law that, that prohibits them completely I, I don't know.

We've heard a fairly loud number of voices, Mr Warburton, in the course of this inquiry, in and out of the hearing, in support of the public funding of elections and therefore of course the campaigning that leads up to the election. Do you have any contrary view to that?---The view that, of what, I'm sorry?

20 That, that, that elections and campaigning ought to be publicly funded, that is to remove, reduce or cap private donations and fundraising?---Yeah. I, I personally would like to see it publicly funded so that you do remove that but I'm just not sure that that's practical.

But certainly so far as lobbyists are concerned you would favour their removal from those processes?---That's correct.

30 THE COMMISSIONER: Why is that?---Again, they place themselves in a position of, for the perception of an integrity issue. They could be, they could be buying off the politicians.

Yes?---Now, they may not be - - -

Right?--- - - - but the perception could be strong.

Yes.

40 MR GORMLY: Mr Warburton, we were earlier starting to list some of the problems that you thought were in the public mind about lobbying and why it was perceived to be in some way shady. Are there other factors that you would consider detrimental to the public perception of lobbying?---(NO AUDIBLE REPLY)

Can I suggest some to see whether you - - -?---Please, because I'm not quite sure where you're going.

Yes, of course, I'm not trying to put you on the spot. But there are some who believe that the involvement of former decision-making politicians, particularly ministers but also, also including their chiefs of staff who have

ministerial knowledge, in lobbying is, provokes a belief that access and even decisions arise from relationships rather than from the merit of a case or arise from contacts rather than perhaps an even playing field?---Yeah. Well, relationships or contacts per se by themselves aren't necessarily a bad thing, they don't necessarily lead to incorrect decisions or, or one-sided decisions being made but certainly first there's the perception that it could and secondly there are cases when no doubt it did have that or has had that effect. On the question of parliamentarians, politicians, ministers, chief of staff becoming lobbyists, I, I don't believe they should be excluded from doing that type of thing but I do believe there should be a grace period before they're allowed to do it and whether that grace period be a year or two year, I think that's, that's important.

Do you have a view about how long that should be at New South Wales state level?---I would have thought a minimum of two years but I'd personally rather see two years. Did I say, a minimum of one year.

A minimum of one year you'd prefer?---A minimum of one year - - -

20 Right?--- - - - but I'd prefer to see two years. I think I, I think I said two years.

It's currently 12 months, it's currently a year?---It is 12 months is it?

Yes?---I, I didn't realise that.

30 Yeah, all right. Do you, you say that because of course that may cause knowledge that they have from government level to go stale within a year, it seems to be a general view that it usually does go stale within a year, but what about the relationships, they will of course persist long-term. Do you accept that a one or even a two year period is unlikely to touch the relationship problem?---It's unlikely to and again I repeat that I think the relationship and a contact per se does not involve inappropriate actions.

40 What would you say of the proposition commonly heard that if you could afford a professional lobbyist who was a former minister or has an array of contacts in the government of the day you have an unfair access to a minister that is unavailable say to a small business that can't afford to pay the lobbyist's fee?---Yes, there is that possibility and it would be an argument against doing it but I think that's personally stretching it too far.

All right. I know you've been at senior business levels by the look of things most of your life, Mr Warburton, but from your observations of smaller businesses have you, or from what you've heard have you thought that access was more limited to smaller players than it is to the big players?---It's definitely more limited however it does depend on the issue and if the issue is one of, of big magnitude in a state or federal then generally speaking the government of the day or the bureaucrats would like to hear the views of

these people but certainly it is much more limited in small business than it is in a large business.

Well, in effect you're saying that a larger business is likely to, it's not a question of equal access it's a question of need, a big business is likely to need more access and therefore like to get it?---Most, most times, yes.

10 Do you think that there's a degree to which smaller businesses are deprived of access they need?---There is in the sense that it's not easy to get appointments with high level bureaucrats or certainly ministers, it's not easy to get them and the less, the less you are known the less you have an issue that doesn't appear to them to be very important even though it's very important to the business person then you have a much greater problem of getting access, much greater problem.

20 When you do need access to a minister we've heard that chiefs of staff play a very substantial role as gatekeepers to the minister's diary, has that been your experience that chiefs of staff play a very high role in determining access?---Yes, I do and I don't think that's unreasonable quite frankly.

Can that problem partly be dealt with by conversations at social functions and lunches with the minister himself?---It can be, yes.

THE COMMISSIONER: And do chiefs of staff attend those lunches and functions as well?---Yes, they do, yes and so the same applies.

30 MR GORMLY: If something, one of the issues that's arisen, Mr Warburton, if I can just fill this out for you is that if you are to have a system of regulation at all and if you are to have a reporting of the contact between non-government interest and a minister or government interest and that that interface should always while facilitated should always at least be recorded an issue that's regularly arisen is that not all lobbying occurs in a business environment where notes can be taken and, that is, that it will frequently occur at lunches or functions and so forth. An argument about that is that if something arises it's, as you said earlier, unlikely to turn into serious business but it might turn into an appointment later. But do you think that if there is a system which does not record lobbying that occurs at social functions do you think that that is a significant hole in a recording system or a noting system for contact between government and non-  
40 government?---I think the huge difficulty you're expressing there is, is to define whether it's lobbying during the particular function.

THE COMMISSIONER: Could it be easier if one differentiated between arranging to have a meeting on a particular topic on the one hand and discussing what decision should be made on a particular topic on the other? ---I'm not sure I'm quite with you. In relation to a function versus an appointment?



Well, if one said you don't have to record a meeting at a social function which leads to an appointment being made later that you don't have to worry about and you don't have to worry about a conversation at a social function where the topic of the meeting is disclosed?---Yeah.

10 But once there is a meeting that involves considering important issues and considering whether a decision should be taken then there should be a formal meeting with notes taken and more than one person present?---In the latter stage, yes, but in that early stage the, the, which I think I'm understanding both your questions is that if that meeting occurs in a function then it should be recorded I think that would be vastly impractical because I mean I could do that walking - - -

20 So you're suggesting it shouldn't be, it doesn't have to be recorded? The actual meeting that leads to the formal meeting may not be recorded but the formal meeting needs to be recorded. What do you think of that proposition?---Sorry, recorded in what fashion? If the discussion should be recorded I'd be very wary of that because it could be confidential discussions.

It used to be recorded 20 years ago, every single meeting used to be recorded by a note taker?---I'm sorry, it still is now, if I have a meeting with a minister and I can't recall any more than the number of fingers on my hands over the years that I've had a meeting with a minister just by myself there is always somebody there taking notes so either the chief of staff or one of his staff, always. That's a federal and state, I don't know what it's like at local council area.

30 Yes. And that's subject to FOI?---I believe it is, yeah.

I think that's all we were asking you?---Yep.

But I think Mr Gormly was asking you whether you thought that that kind of note taking as feasible at social functions and you've said you think it isn't?---I think it's impractical.

Yes.

40 MR GORMLY: Do you think it's true to say that there's not a lot of determinative business, that is, decision making type business one way or the other conducted at social functions?---I, I can't think of any that occurred but I do know that ones that have led to it at some later date but I don't remember any at a social function. Now, it's possible but I haven't got any experience of that.

THE COMMISSIONER: It would be very unusual wouldn't it?---Most unusual, most unusual. There, there are people around, there's, there's just too many external influences.

MR GORMLY: So if you were to design a system that required public officers to, by record we mean note, keep ordinary business records of meetings between government and non-government you really wouldn't be losing too much by not being able to record what happens at social functions. Most proper business is done in a business environment. Is that fair to say?---That's fair to say, yes.

Right. All right. Can I take you to another area?

10

THE COMMISSIONER: Are you finished with the register?

MR GORMLY: I haven't started on the register, Commissioner, I was going to, perhaps I'll deal with the register now. Mr Warburton, are you familiar with the New South Wales Register for Lobbyists?---No, I'm not, no, I read the notes before I came and I thought I'm not sure how to answer that because I really don't have any knowledge of that.

You've never had to use it, is that what it boils down to?---No, I have not.  
No.

20

I'm going to give you a thumbnail sketch of it. It's a register online kept by the Department of Premier and Cabinet, it's supported by a Code of Conduct applicable to ministers and public, other public officers which says you may not deal with a third party lobbyist unless that lobbyist is registered on this register. Lobbyists therefore do register, there are 111 on the register at the moment or thereabouts, New South Wales register and when they register they must declare their names, the names of their staff, the names of their clients as well and some other peripheral contact type detail. There's no indication of the number, venue of meetings or who they're with or dates or topics it's just a declaration of the name of the lobbyist and the client in effect. In Canada there are much wider systems requiring extensive details. Do you think that at the present time from your knowledge that the business community itself would draw much benefit from access to a register of that kind?---They, they would draw benefit from at least knowing who lobbyists are so it's like a Yellow Pages I guess, you've got that access.

30

THE COMMISSIONER: Why would you want to know that?---I would want to?

40

Why would you want to know who they are?---If you're starting out and you say I believe we need a lobbyist where do we go?

I see?---And so - - -

Just from that point of view?---Yeah, from that point of view. Apart from that I don't know that my business would do it. I do believe the register is a

good idea because it's transparent and I believe transparency is one of the best issues that you can have in relation to this lobbying area.

MR GORMLY: What aspect of that register would you regard as providing transparency?---That a person is a registered and recognised lobbyist.

Ah hmm?---And then I think you said that they, they have information of the different people involved and the staff and so forth.

10 Yes. Yes?---That, that doesn't tell the public very much at all as to what that particular lobbyist does, but that would need an ongoing stage as events occur, surely.

THE COMMISSIONER: What do you mean?---Well, the person's registered as a lobbyist, and then the next stage is they actually do something for a company, in other words they have a client. And then the next stage, well do they do with their client and they take the client - - -

20 Do you think that should be on the register?---No, I don't. I don't, I don't believe it's necessary, but I think other people do. I don't believe it is.

MR GORMLY: Mr Warburton, a proposal of the many that could occur here, including abolition of the register would include not only having the name and client of the lobbyist, but listing who the lobbyist met on the government side for a particular client. So that if the lobbyist saw the minister for agriculture on behalf of an agricultural company, that there would be entered into the register, saw minister for agriculture on 30<sup>th</sup> of July, 2010. That's, that's another option and that's an option of the type that the Canadian's have adopted so that they have an online register which  
30 lobbyists are required to enter information into and it includes that information. That would give you a greater transparency in the sense that you'd know the lobbyist, the client and who was being lobbied on behalf of that client. Do you agree that that at least does provide greater transparency?---It certainly does create a greater transparency. My concern is a business person though would be, if it breached some commercial confidence, not by what you said but the very fact that here is a company, perhaps seeing a particular minister or - - -

40 THE COMMISSIONER: If that was subject to FOI laws?---It, it, hopefully it would be, what's said in those meetings. But the very fact that - - -

No, I'm not talking about what was said, but I'm just talking about the fact of the meeting?

MR GORMLY: It's discoverable in any event?---I think, I think that transparency is reasonable. But I just get worried about the fact that it could lead to commercial in confidence information getting out.

THE COMMISSIONER: But that's (not transcribable)?---I don't mean the actual fact.

MR GORMLY: Sure?---But the very fact that a person went to the minister of agriculture, somebody could say, ha, ha, why is company A seeing that person, they have something up their sleeve. And - - -

10 But if you have, if you have say an independent trained official who had the power to receive applications from the business people who, who met the minister to say that this is commercial in confidence and shouldn't go and gave reasons to this person, would that go, a reasonable way to meeting your concerns or not?---Yes, it would. Yes, it would. Look, that's not going to happen very frequently because, I give the example of the company, Tandou which I'm involved. We were involved in irrigation in the, in the Murray Darling Basin. We, we would obviously like to meet the minister or the chief of staff quite frequently and most people would know that we're meeting them because of irrigation matters which could be either of a specific nature or it could be a general Murray Darling Basin nature. So, most of them are not a great problem. But I just keep, in the back of my mind I keep thinking of some situation where - - -

20

THE COMMISSIONER: It is, that is, must be so if you're in a, if you're in a competitive situation with another company and you're both looking to get a government contract on something and you think that the time is now right to see the minister. That piece of information could be very valuable to your competitor?---That's the one I'm thinking of. That's exactly that situation.

30 And that would be the one which, one would, if the situation were to be adopted of this kind of disclosure where the, let's say the, the independent official would have the power to say this does not need to be disclosed?---If that could be done, if that could be done in a practical sense, that would help to assuage that.

Yes. Yes.

40 MR GORMLY: Mr Warburton, just for your comment in, in Canada, admittedly at national level, so a different constitutional arrangements, nothing is excluded from the register even in the area of defence. So that if there is a defence supplier wanting to see the minister for defence, it goes on the register. All that's there is the name of the company and the date that the minister is seen. It doesn't seem to have caused, the Canadian Commissioner is saying that it doesn't cause any problems. While I accept that I can see the basis for your concern, do you think it's possible that that is a, a concern based on outside possibility rather than the benefits of transparency that would arise?---I think you're, I think you're correct. I'm perhaps just being very cautious about - - -

Yes?---what would be an outside situation, because in most cases the fact that you, as a business person went to see the minister of defence or went to see the head of the department of defence and you're a defence company, I don't think people would treat that as being anything unusual.

Mmm?---In fact they'd probably expect you to be doing that.

THE COMMISSIONER: (not transcribable) transparency of the situation - - -?---I think that's good.

10

- - - is that, it means that if say, a year down the track a contract is awarded and someone want to see what the procedure was that led to the formation of the contract, that person can see that, that there was possibly an element here and can ask for an FOI application for the notes, then that's subject to FOI laws and they may or may not be produced. And the FOI would, would ordinarily protect against state security, I'm not sure about commercial in confidence, but that's possible?--- I mean that's the risk because - - -

20

But that would be much later. It would be much later. It would be after contract's awarded?---But the fact that let's say I as a defence company got to see the defence minister and eventually 12 months down the track actually won a defence contract, if people went back and said, ah, but Mr Warburton saw the defence minister on whatever, if so facto, he must've squeezed the hand of the defence minister. That's pushing the boundaries a fair bit I think. Because, in fact I'd be saying, why weren't the other suppliers seeing the defence minister.

Well, that's what, and you would say that?---Mmm.

30

And that's how democracy works. Everybody knows what people are saying?---Yeah.

It's not secret?---That's right. But, but an inference comes out of it though by some people.

It would. It would. And then, I know that's the risk but we, at the moment another inference comes out?---Yeah. Yep.

40

I mean you are getting inferences coming out. Why, why was this given and there is a suspicion?---Well, as I said earlier, I, I prefer transparency.

Yes?---But I just keep wondering in my mind whether there's areas where that transparency may be dangerous.

There are, if I may so, a very valid comment in which we, of which we are completely conscious?---Yep.

MR GORMLY: All right. Now there's just one last matter, Mr Warburton. Its' - - -

THE COMMISSIONER: Have you finished with the register?

MR GORMLY: I have, Commissioner, yes.

10 THE COMMISSIONER: Another thorny subject, Mr Warburton. At the moment the register is for registered lobbyists. But there are a number of people say that that's unfair and they target the in-house lobbyist, where there's large growing group of lobbyists in the big company who do exactly the same job except for one client, that there are registered lobbyists do, the professional lobbyists do for many?---Mmm.

20 One can understand that if the register is simply to show who the client is and you don't have to put in the in-house lobbyists because everybody knows who their client is, it's their employer. But if there are, if the register is going to show other material such as details of the meeting, just that the meeting was held, that's a different matter. Would you have any objection to the in-house lobbyists being put on to, required to be put on to the register?---I must admit I hadn't applied by mind to it previous to this question so, I don't think so because if I apply my mind to what we in a banking organisation have to do with APRA as far as registration of meetings and so forth that it's not, it's not highly onerous and I, I think that it could be reasonable. I hope I'm not dobbling in a lot of my colleagues in the business community by saying that.

30 THE COMMISSIONER: That applies actually to all kinds of in-house lobbyists. I mean, for example, employers groups, trade unions?---It, it does, it's a very wide group.

Yes. Who, to use their latest jargon, move under the radar?---I think they probably could anyway but, because it'd be a very large group. I mean, who do you, who do you name, if you think of business it'd be quite right but you've also got NGO's, you've got unions.

Yes?---You've got a very large number of people - - -

40 But you've got the - - -?--- - - - who normally wouldn't consider themselves lobbyists some of them.

No, they don't?---Mmm.

But they do the same work?---Yes.

What's in a name?---It would be a big - - -

Should a label protect you?---It would be a big practical issue.

In what way?---Just, just the mass of it and who do you, who do you classify as a lobbyist?

Anybody who does lobbying work?---I, I guess so and I don't disagree with you.

And, you know, what's a list, these days of computer?---True.

10 Why, why is that onerous?---I'm just thinking of who you would name in that list. For example, if you have a, an in-house public relations, government relations person and that person sends somebody else off to the, to the minister, should that person be registered too, it, it - - -

There are undoubted problems of definition?---Right.

That should never stop an able lawyer?---But, but it, it is transparency and I, and I repeat again, I like the transparency.

20 Right.

MR GORMLY: All right. Mr Warburton, there are just two quick questions about, in fact about what we were talking about before. Firstly, even if one accepts the Canadian system of putting in information about when and with whom meetings occurred, we hear that doesn't cause a problem, do you think, in your experience that if a company went to see a minister about a matter that it would regard, well, it would regard the conversation as confidential, perhaps involving commercial in-confidence issues, that they would be less forthcoming or less frank, that is, that their  
30 discussions with the minister might be interfered with knowing that the date and details of the meeting, that is the date and the fact of the meeting was being published?---I think that's, I think that's always a concern that a business person has when they have a meeting with a minister or a chief of staff, particularly if it's recorded, that an FOA request could be agreed to and that information then gets out.

THE COMMISSIONER: But that happens today?---That's what I'm, I think I'm alluding to.

40 Yes?---Saying that it already happens and so, so therefore I don't know that it will change very much in what you've just described.

MR GORMLY: All right. Now, the last matter is about lobbyists lobbying and a government agenda, I just need to introduce it this way. This has in the past been substantially an American problem arising from a very large growth of lobbyists in Washington and a suggestion that lobbyists can without acting in any way corruptly or directly corruptly can take over a government's agenda. Now, as I understand it it occurs in this way, that

lobbyists who know exactly what they want for their client and whose clients know exactly what they want from government, go to government and put confidently some assertion and the government who must choose for public benefit purposes some proposal are much less confident about what they're doing but they have a series of lobbyists, each perhaps pushing a different interest and after a while the government starts to select between in effect the goods being offered by the lobbyists and that they lose control of their own agenda. That's led to, for example, statements in Washington like we're going to clear out the lobbyists and take, take back the  
10 government agenda, that sort of thing. There is a very substantial growth of lobbying in Australia and of lobbyists. Do you accept that there is a risk that lobbying can lead to loss of agenda by a government, that is uncontrolled lobbying can lead to a loss of agenda?---There, there is a risk and, and I've, I've certainly seen that in America, I've been over there and involved in situations like that, there is a risk. I think we're a long way from that risk in Australia, a long way from it.

THE COMMISSIONER: One might talk about the mining industry in Australia, didn't the government lose its agenda there?---It, it lost its agenda  
20 because of a bad policy and a bad execution.

Is that, that might be - - -?---But they certainly had an effect, they definitely did.

Yes?---But it was a very open and transparent effect, wasn't it?

Absolutely. So is the gun lobby in the United States?---That's an incredible one, that, that is, that is massive. I'd like to believe that whilst there's lobbying and I think it's a good thing, that politicians still maintain and hold  
30 their own agenda. If, if we get - - -

Yes, we all - - -?---If we get back to the mining one - - -

That's the desired situation?---That's the desired situation?

Yes?---Yes.

MR GORMLY: All right. You don't - - -

40 THE COMMISSIONER: I interrupted you, you were saying if you get back to the money?---No, no, get back to the, the mining one and maybe it's a - - -

The mining one?---Maybe it's a bad one to do because I think you've got a legitimate reason to fight hard against what I think is bad policy but that's my own personal opinion so - - -

Yes, well, I mean, so does the gun lobby say that?---Yeah.



MR GORMLY: Mr Warburton, you wouldn't see the agenda issue as being a problem in Australia that you've seen?---Can you - - -

That is, that is, that, that the active role of lobbyists and the unrestrained access that they may have to government, you, you don't see that sort of thing as being a threat to the capacity of governments to control their own agenda?---No, I don't.

10 Right.

THE COMMISSIONER: And you probably know much better than I but I think the general public's view of what happened with the mining tax is that a great deal of pressure was brought to bear through the media and other indirect means that proved effective enough, although there were meetings and so on between the mining industry and the minister and there's nothing wrong with that, I mean, that's how democracy works. There is, I suppose what I'm saying is that there isn't really evidence of lobbyists speaking directly to the government in that context in Australia?---Not, not in that context, no, no.

MR GORMLY: Commissioner, I have nothing further from Mr Warburton.

THE COMMISSIONER: Yes. Mr Warburton, thank you so much for coming and giving us your time. It's been very valuable to us, we appreciate it?---Thank you. I wasn't sure what, what I could offer but I hope it has been helpful.

30 Yes, it has indeed?---Okay, thank you.

Thank you.

MR GORMLY: Commissioner, we have next Mr Aaron Gadiel of Urban Taskforce Australia present to give evidence?---I can depart now?

THE COMMISSIONER: Yes, thank you?---Okay, thank you.

MR GORMLY: Thanks, Mr Warburton.

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**THE WITNESS EXCUSED**

**[11.19am]**

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

MR GADIEL: The oath, please, Commissioner.

MR GORMLY: Mr Gadiel, can you tell us your full name?---Shaun Aaron Gadiel but I'm commonly known as Aaron Gadiel.

Thank you. And you are the, I think the CEO of Urban Taskforce, how could I forget, of Urban Taskforce Australia. Is that so?---That is true.

10 It was just a momentary thing there, Mr Gadiel. You have I think a background in legal studies but you've been actively involved in the taskforce now for some years. Is that so?---Yes, I've been Chief Executive of Urban Taskforce for three years. Prior to that, and I should put it on the record, prior to that for eight years I was an employee of the New South Wales Premier's Department where I served as chief of staff for three different state government ministers so - - -

Thank you.

20 THE COMMISSIONER: Mr Gadiel, what is the Urban Taskforce, forgive the question?---I'm happy to answer it. The Urban Taskforce is a non-profit industry organisation that represents property developers and equity financiers and our job is to - - -

Private equity?---Yes, absolutely, that's right, private equity financiers in the property space and, and property developers and our job is to talk to both the wider community and to the public sector about the issues and concerns of the urban development industry.

30 And do you represent particular developers and particular problems from time to time?---We don't lobby on individual matters, no, our interests are issues that affect the industry or an important segment of the industry.

Policy?---Absolutely, public policy is our, is our, is our issue.

You don't get involved in a particular development application?---No, we don't. We always take interest in what's going on in our industry and the way you understand the policy works is by looking at the practical effect of it so we always take an interest in the case studies that emerge but we would  
40 never go to government and say, Government you should be approving this project here, this particular project, we talk about things more on the aggregate and to the extent that individual projects referred to they're just illustrations of what, how the system works.

But there must be a degree here, I mean, I assume that for example if there was a vast area of land in say the Hunter Valley that a large number of developers wanted to have developed and there is opposition to that would you take a hand in that or not?---Well, I can give you a real life example

with something called the Western Sydney Employment Land Investigation Area. It is a vast area of land, 11,000 hectares and we're very much of the view that that land needs to be and should be rezoned to create jobs in western Sydney. There are individual developers who are our members who each have different bits of that land, if you talk to them, it won't ever all be rezoned at once and if you talk to them they'll have different views about which bit of that land should be rezoned first and how it should be funded, we don't have issues in that but we are of the view for instance that that vast area of land should be rezoned and if someone were to come out and say no, it shouldn't we would certainly take issue with that.

Do you provide schemes that answer problems with the development, say transport issues and shopping centre issues or whatever, do you play a part in that? I mean if you say well, this is an area of land that should be developed you've got to give reasons for it no doubt and answer criticisms? ---We do.

And so you get involved in the nitty-gritty to that extent?---We do, yes, but we do speak in a high level tone so we don't go commission a transport strategy to develop - - -

I understand?---But we, we do draw on information generally already in the public arena and from time to time we do commission our own high level policy reports but again we do tend to look at the system in aggregate or at large scale.

Yes. But basically you represent the developers?---Indeed.

Yes. Thank you.

MR GORMLY: Now, I think that Urban Taskforce limits itself to 85 members. Is that so?---That is true.

And does it actually have 85 members?---We have close to 85 members but it's a little bit short at the moment.

Okay. But the intention is in effect to have a, I don't mean it in that sense but a, a fixed number of members and not exceed that?---Yeah, just to ensure that we don't lose our focus. So what's happened to some industry organisations in our space in the past is that it becomes tempting for someone like me as CEO to accept any membership we can because it bolsters our revenue base but the cost of that as the industry organisation who is focussed if it's taken over by consultants for example the consultants end up sitting on your boards and committees and they favour red tape because it's how they make their livelihood. Our organisation whilst we include some consultants as members try and make sure about 80% of our membership are legitimate significant property developers and equity

financiers, in doing so that only works if we limit the membership. So it's a discipline on us to make sure we don't lose focus about who we are.

All right. You would accept that you're a lobby group. Is that so?---Look, I wouldn't, I wouldn't dispute it, if you would ask me I would say we're an industry group just to distinguish ourselves from third party consultant lobbyists who lobby for individual projects.

10 Well, I was going to suggest to you that because of your closed membership that you probably wouldn't be regarded as an industry group in the sense of an industry representation group?---Well, I wouldn't agree with that proposition.

All right. Okay.

THE COMMISSIONER: When you make your representations do you make it on behalf of all 85 or do you do it on behalf of the majority or even a minority?---We speak on behalf of our organisation as a whole, we never claim that every individual member company agrees with every single thing we say but - - -

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Sometimes they don't?---It is possible, yeah, but one of the benefits of being narrowly focussed is that that kind of disagreement is much less likely to occur so if you're an organisation that represents landowners and developers for example you're far more likely to get disagreement because landowners like to keep rents high which means stopping the development of new property assets, developers like to meet demands which means developing assets. So one of the reasons we keep our membership tightly focussed around the development side of the property industry is to avoid the risk of those sorts of conflicts in managing - - -

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You represent a group of members whose interests are more or less identical?---More or less, yes.

40 MR GORMLY: All right. Now, Mr Gadiel, we needed that expanded introduction to understand the nature of Urban Taskforce but I would like to see whether you would like to make some form of opening statement about lobbying?---I would, thank you, yes. Well, first I'd like to start by addressing the issue of political donations and I appreciate this is an inquiry into lobbying but these issues sometimes get run together. We are of the view that the need for political parties to secure funding from the private sector has contributed to a weakening in the public confidence of government decision making in the recent years. The Urban Taskforce Australia does not and never has made political donations or organised political fundraisers nor have we ever encouraged our member companies or anyone else to make such donations but it is important to note we have always defended the right or property developers to participate in the political process on the same terms as everyone else. For many years we have publicly campaigned for reforms to our political system based around

two principles, one, full public funding for all election campaigns and party political activity and two, a complete national ban on all political donations by anyone, whoever they are including business, trade union or environmental interests. In December last year the New South Wales Government banned, or the parliament banned political donations from large professional property developers, the businesses as you observed, Commissioner, that we represent. The new New South Wales law applies to state and local council elections and also bans property developers or their close associates from paying to attend political fundraisers. Professional property developers respect the law and as a result we, our industry no longer has any role in financially supporting political parties in New South Wales. Our main criticism of the New South Wales ban is that it doesn't go far enough, other industries such as hotels, casinos, tobacco companies, environmental organisations continue to make political donations and attend political events. Similarly, property owners seeking to block develop proposals - - -

THE COMMISSIONER: No, I'll ask you later. You just finish your statement?---Property owners seeking to block development proposals and enhance their land values are still free to make political donations. Small scale opportunistic individuals who are not regarded by our industry by professional developers are also likely to be exempt from the new rules. Nonetheless we do think in the medium term the limited ban on political donations already in place will improve public confidence in government decisions affecting property developers. However, we have yet to see the full benefits of that reform in terms of community perception because recent funding disclosures have only covered the period prior to the ban coming in to force and it will take some time before people get used to the idea that property developers are not financially supporting political parties. The public discourse as a result is still full of people attempting to draw links between political donations and decisions effecting developers. In our view we think this will dissipate in time as the community becomes more aware that it is no longer possible for a professional property developer to financially participate in a political process at a state or local level in New South Wales. Secondly, I want to highlight the importance and role of lobbying generally. The definition of lobbying used by the ICAC in its discussion paper is appropriately wide. It recognising that lobbying includes any attempt by any citizen to change the law, change government policy or get a better government decision on a matter of concern to them. When understood in this way lobbying and the right lobby is vital to our democratic society. A democratic government cannot function if it does not listen to people and people, whether they are individuals, non-profit groups or businesses must be entitled to employ others to talk to government on their behalf. While the ICAC is not considering an outright ban on lobbying it is considering new rules to regulate lobbying that may limit free speech and create hurdles for those who want to have their say. If any such rules are to be introduced it must be clearly evident in our view that they will satisfactorily address a public mischief and they are adapted and

proportionate to the problem. We in the development industry would be particularly concerned at any new regulatory regime that gives some members of the community a greater right to lobby than others. A vast number of development proposals are defeated or significantly amended, not because of any intrinsic problems with the idea but because of opposition of existing residents or businesses who have a vested interest in blocking new development. This phenomenon is not unique to New South Wales. It's been documented in the academic literature across the western world. Academic research makes it clear the more affluent a community the more resistant the community will be to having new residents, new housing and new urban development. Affluent communities the world over have been using the planning system to maintain the social and economic exclusivity of their local patch. Perhaps one reason that New South Wales is the worst state in Australia to develop in and has the lowest per capita rate of housing construction is that New South Wales is Australia's most affluent state. The reality of government decision-making in the planning system is that legitimate technical issues favouring an approval are often balanced against political issues favouring a refusal. Often this is not apparent on the face of a decision once it's handed down but there are nonetheless many clear examples of this on the public record. I detailed just some of those examples in our written submission to the Commission. There has been some suggestion that the frequency of complaints about lobbying points to a need for further regulation of lobbying, even in the absence of corruption findings. There is a benefit in extending the existing lobbying regulation to local councils given the frequency of adverse corruption findings against those institutions and given that the ICAC itself has identified there are some particular corporate governance issues about local councils that are not necessarily present in state government agencies. However, we do not believe that the frequency and volume of complaints about, say, urban development decisions will decline merely because new lobbying regulation is introduced. The community is heavily divided on an appropriate policy response to urban development issues. Policy in this area is contentious and consensus is unlikely to be achieved. Our observation is that a very large number of allegations of corruption or poor process are motivated by the complainant's difficulties with the outcome of a decision rather than any significant flaws in the decision-making process itself. Obviously that's not always true but our observation is it's true in the vast majority of cases. Two phenomena are occurring. Firstly, many individuals in our community have what psychologists call self-interest bias or group bias. Such individuals are so caught up with the rightness of their own cause that they have difficulty in accepting a legitimacy of other people's views. In particular, when a public official makes a decision adverse to their perspective they cannot understand how they did not win the debate. Rather than accept that the matter is inherently subjective and that it was open to a reasonable decision-maker to go against them, someone with self-interest bias will conclude that a poor process was followed or there was corruption. When you talk to such individuals there is almost no process that they will accept if the outcome is still adverse to the barrow that they are pushing.

Secondly, there are other individuals who are engaged in an attempt to block a new development by fair or foul means for financial, commercial or ideological reasons. For those individuals making an allegation of corruption, accusing a government of shoddy process is simply one of several standard tools in the toolkit for shooting down new development projects. A significant widening of the existing regulation of lobbying will not stop complaints about process or corruption. Indeed, the net result would be a series of new rules which would be the basis of the next generation of complaints to ICAC, whether those complaints are well-founded or not. Thank you.

MR GORMLY: Right. Mr Gadiel, can I just start with the proposition that you raised very strongly in your paper at the bottom of page 2 that in effect lobbying is an activity always carried out by someone else, not me so that if I'm doing it it's a righteous or moral or something of the sort and if somebody else does it and I don't agree with them, then they're lobbying. While I think in general terms I might agree with you it does rather suggest that lobbying or the use of the word lobbying carries with it bad connotations and I think you acknowledge that elsewhere in your paper.

20 What, what would you see as being the connotations of lobbying that is bad? Why is there a public perception that there is something wrong with lobbying?---Well, I think it's the, it's the use of the term and I, I think if, if you were to talk about what you mean by lobbying in generic terms, if you say to the community is there anything wrong with speaking out, telling a politician what you think of them or their policies, telling off a public service bureaucracy for being slow or cumbersome, 99.9 per cent of people say absolutely, no, that's your right. I might not agree with you but go ahead and do it but if you put the same statement and substitute the word lobby, is it okay to lobby a public official, is it okay to lobby a minister?

30 People will take a different view.

THE COMMISSIONER: But there's a difference. There's a difference because in the first example you gave the person directly affected is doing the talking and in the second example of the lobbyist you've got somebody who doesn't have a genuine belief and there's no personal interest other than he's being paid to do a job?---Well, Commissioner, I disagree. Under the paper or under the definition and the extension that you're looking at you're not just talking about, when you say lobbyists you're not just talking about third party consultant lobbyists.

40 No, no, I know that but I'm talking about the general perception of, as a (not transcribable) you gave?---Well, people would call me a lobbyist - - -

Yes?--- - - - and I assure you I believe what I say. I wouldn't have taken the job with the Urban Taskforce Australia if I didn't believe that there was far too much red tape.

I, I appreciate that?---So the suggestion that lobbyists don't believe the cause that they are advancing is a mistake and I certainly think it's true - - -

But some do?---And I think you're more likely, a third-party consultant lobbyist is far less likely to believe in what they're advancing - - -

10 Yes?--- - - - than a person who is an "in-house lobbyist", I'll put that in quotation marks, for a large developer. I mean, if you take a job with a large developer to be their government relations person you're hardly likely to be an anti-development Nimbi deep in heart. You're probably someone who thinks there isn't enough urban development going around and, and that people tend to find their employers on that basis.,

You'll forgive me for being cynical but I grew up with my friends who went to work for tobacco companies?---Well, there are some industries such as the sale of a deadly poison where it's hard to be passionate in your defence of. I think property development is very different.

20 Oh, no, they were passionate in their, they were passionate in their defence of smoking, they just happened not to smoke themselves?---I don't put property development in the same category as tobacco companies. Homes are very beneficial to people.

No, it's just a (not transcribable), no, that just explains my cynicism with this.

30 MR GORMLY: Mr Gadiel, I want to suggest to you that, that there's another difference too between the proposal that you're putting, that lobbying is always what somebody else does, is that when people go to government and want something as distinct from contradict them or criticise them, and they want something and they do it behind closed doors that a perception of lack of transparency or a perception of deals inevitably arises, would you agree with that?---Well, I'm not, I'm not sure if I do agree with your basic proposition. So firstly, you'd divide criticism and wanting something and you put them in different categories.

40 Yes?---For instance let's say we're talking about ministers. The reason that proponents often go and see ministers, and I note with interest, I read the transcript of Alex Mitchell's evidence and he commented that he couldn't understand why ministers didn't just sign off on what the director general has put to them.

Mmm?---The reason people see ministers is because people are concerned that career public servants in departments may not fully understand the issues, may not have the expertise to fully understand the issues, may have a bias of their own against the private sector generally or against their particular interests. So to some extent when they see a minister they're either trying to pre-empt what they anticipate for the institutional problems



or they're voicing concerns about the way that an agency is handling the matter. And the reason we have ministers who aren't career public servants and it's been since the American model, is because they are supposed to be more ordinary people from the community who are able to take a broader view of these things outside of perhaps the more narrow focus that a public service culture might take.

10 So in effect what lobbying is doing is, is produce on your argument, is producing that natural debate that occurs which will show up a difference in view between the public service and public interest?---Yes.

20 All right. Nevertheless, would you agree that if somebody goes to government and they want something of benefit to them, perfectly legitimately, but they have to do a deal with government, doing it behind closed doors or where the details or even the fact of a meeting is not known or may not be known until much later is a recipe for producing public scepticism?---Well, again, I suppose I'd question the foundation of your question, because the suggestion is, you use the word, a deal has to be done, in urban development terms - - -

30 We can neutralise that and say a contract has to be arrived at, Mr Gadiel. It's the same effect?---Well, well, I was going to do that. Let's talk about contracts. In urban development terms, which is the area I'm most expert in it's not possible to do a secret, untransparent, opaque deal with government. We have legislation for voluntary planning agreements which is the main vehicle for those kind of contract sort of things to be entered into, which requires those voluntary planning agreements to be publicly exhibited, for submissions to be sought prior to them being executed by the state. So, the fact that a meeting may have taken place prior to the exhibition of the voluntary planning agreement is neither here nor there because no deal can be signed off and agreed upon without there being a transparent process.

At some point?---At some point, yeah.

So that whatever it is that occurs you're saying, is always eventually available on in effect FOI?---Well, no, the voluntary planning agreements, it doesn't depend on FOI. Before that, they have to be publicly, proactively publicly exhibited.

40 Yes, I accept that. But when a company goes to see a minister because they're concerned about what a department might do in advising a minister, say using Section 3(a), Part 3(a), they are in effect engaging in a persuasive process?---That's true.

Right. And they may or may not succeed in that process?---That's true.

Right. If that process occurs behind closed doors, in effect, in a private meeting between the minister and the interest, there is an exercise of

authority or power by the minister in favour of somebody, but nobody sees it until later. And the only way they see it is in the outcome?---Well, you don't see it by sitting at the meeting either. When you're sitting at the meeting and you're trying to make a case for a part 3(a) to a minister, well they won't say you're right and they won't say, I'm going to approve that or I'm going to knock that off. They never do that because they know, every minister knows, particularly if the matter is contentious, there'll be others with different views. So they go through a process of sifting through, talking to a range of stakeholders, those that are in favour and those that are  
10 against. Ultimately, the decision, the reasons for it, the different balancing of views is then documented and it's put on a website. So there's complete transparency about that. But to come in at one stage and infer, well, there was a meeting here, therefore the minister must have, have succumbed at this point, is a grave mistake. It simply never occurs in that way.

All right. Let me take you to another area. It's said of lobbying, it's said that third party professional lobbying that the use of ex-ministers, ex-politicians, ex-directors general and chiefs of staff, that is people who have  
20 been on the other side of the lobbying table, the lobbyists table are people in lobbying because they are able to use their relationships and their in-house knowledge, so to speak, to derive benefits for clients that are not otherwise available. What would you say about that? Particularly relationships, Mr Gadiel, if you wouldn't mind?---Sure. I'm aware that there are people out there who make those sorts of claims in the third party consultant lobbyists game. It's not, I think it's somewhat overblown in terms of practical issues. It would be surprising most of the time that people who have worked in the public sector then would move into a job where they're directly then  
30 lobbying people that they intimately and closely worked with at the same time. That would be unusual. If for no other reason that the public sector is a huge entity. You go work for one company, you don't get to specialise in just the part of the public sector that you used to work in or the team or unit you used to work in, you would be talking across government to a whole range of people. So again, I'm putting third party consultants obviously in a different category, but looking at in-house lobbyists, for example, or industry organisations, you're far more likely to be employed because of your generic skills, because of your understanding of government process, your understanding of what issues the government in the public sector need to address. Frankly, an understanding of the public interest. One of the  
40 things I found when I moved into the private sector is the people in the private sector are very good at focusing on what their accountabilities are, profit and loss, delivering outcomes, delivering products that consumers are happy with, but the broader concept of public interest is something that people who have got experience in the public sector are more skilled to be able to understand.

All right. On those arguments then you would think that there would be little utility in prolonged cooling off periods for ex-public officers. Is that right or not?---Look, I don't have a strong view on it. I would note the

reason our industry does employ people who are former public servants, former administrative advisors and in some small number of cases people who are ex-politicians is because it's embedded in the decision making process in the development industry, is consideration of public opinion. Used legitimate lawfully, I don't know that it should be, but it is. It's a legitimate lawful consideration for a decision maker under the Environmental Planning and Assessment Act to take into account the views of the public as long as those views are based on some rational criteria, but the views of the public in deciding whether to approve or reject something.

10 Now, if, given that's the system we have, it's important to our industry that there are skilled people out there who understand and are able to anticipate shifts in public opinion and understand how government interprets those shifts. So our general view is, look, as long as we still have an ability to employ people with that skill set, we don't have a difficulty with the cooling off period, as long as, you know, it doesn't ultimately depress the labour pool to ridiculously low levels.

So you certainly wouldn't support the view that public officers and particularly former ministers should be kept out of the lobbying field because they use or in effect give unfair access to existing ministers by reason of relationship?---Look, I'd say, I mean, as a general principal we need to have people with the skill sets I'm talking about.

20

Yes?---They're not uniquely available to ministers. Many former public servants would have a similar skill set. Most, most, I mean, most of the people if you look at all the people our industry employs in this area, most of them wouldn't be ex-politicians. So if, if you thought that was very important for some broader public interest issue that, that I'm not privy to, at the end of the day it's, it's not something we get too, we would get too caught up about.

30

All right. You think the skills they can carry outside parliament and back into the community of value?---The generic skills, yes, absolutely.

All right. Now, so would it be true to say that periods of say 12 months or two years as cooling off periods, you'd be largely indifferent to the period? ---For politicians?

Yes?---Yeah, indifferent. Yeah.

40

What about for public officers, departmental officers, directors general and others?---Well, it's a question of fact and degree. If for instance you were, I mean, most for instance town planners or many town planners start out in life as graduate trainees either with the local council or a department of planning. And they may work doing quite low level jobs in those agencies for five, six years, build up experience and then perhaps move into the private sector. It would be for example, it would be an unfair burden on those individuals and damage the labour pool if you were to say, no, you

can't work for the private sector in planning two years after leaving the department of planning or a local council because they would be deprived of a livelihood.

10 All right. I want to take you to the register in a moment but just before we do, can we pass through this topic. You've pointed out and we've heard some evidence that the development industry is now precluded from making political donations. Do you, put aside whether that's fair or not and whether that should be extended to other areas, have you noticed or have you heard from your membership whether that ban has reduced or impaired its access to ministers or other government officers by reason of their inability to attend those functions?---No, I haven't had that feedback.

20 Right. Do you think there is any disadvantage to the development industry because they can't make donations other than, I'm not suggesting any benefit arising from the donation itself but because of their inability to go to those sort of fundraising events?---Well, I, it's an annoyance I think, no more than that, that there are events where the business community is briefed about things like the state budget and so forth which are not held as government events but held as party political fundraisers and if you want to benefit from that briefing you are now prohibited by law from attending. Our preference would be that those events still take place but if it's the state government briefing the business community on its budget that that be a government event or an industry event so, but I would only rate that as a minor annoyance. It doesn't affect the way our industry works.

30 THE COMMISSIONER: What law, what is the law that prohibits you from attending?---Oh, the Act I've cited in my submission, I think it's called something to the effect of the Political Donations and Disclosure Act, something similar to that.

MR GORMLY: It's an amendment to the Land and Environment, to the, the Election Funding and Disclosure Act I'm told?---Yes, that commenced in mid-December last year.

40 THE COMMISSIONER: That you can't engage in political meetings? ---Sorry? No, we, we can't attend, well, our industry, property, professional property developers or their close associates are prohibited to attend a political event where there is an entry fee.

Right.

MR GORMLY: Because it amounts to a donation in effect?---That's the logic, yes.

Yes?---Yes.

So although the intention is not to stop you going to the meeting, the intention's to stop you making the payment of money but it also has the effect of stopping you being present at meetings?---Yes, unless you are, that's right, so that's right, it stops you being present at any meeting where there's an entry or an attendance fee.

THE COMMISSIONER: You said that you, you would be, you could be prejudiced if others could make donations while developers could not?  
---No, I didn't say that.

10

In your opening statement, I wrote that down?---What I said is we've always been of the view that developers should have the same rights to participate in the political process as everyone else.

That's all you need?---Yes. I mean, essential - - -

20

In other words, in other words if others make donations you want to be able to make donations?---Well, not the Urban Taskforce personally but the members I present are, look, some of them, some of them are actually quite passionate people who believe, who do support particular political causes and have done so all their life, others support both major political parties but not for instance some of the minor parties and they're, and they're concerned about the rise of some of the minor parties and I suppose some people subscribe to the view you should put your money where your mouth is. If you go out and bag out a political party and support another one maybe you should do something about it. Now, I have to say the ones I've spoken to are not emotional about not donating anymore, it doesn't stress them too much.

30

But the point you're making is that others, there's no reason to apply this to developers alone and, and it's unfair to single out developers as being some special body that's not allowed to do it while others are?---Well, that's right. The controversy that prompted the prohibition on developers I could point to equal controversies in a range of whole other industry sectors and equal corruption or whatever risks, perception risks.

40

I understand that. One other question arising out of your opening remarks that's relevant to this, you said that no one should have a greater right to lobby than others and you didn't want any rules to come in that would give other people the right to lobby more than what developers had, I'm paraphrasing it, I think that's what you were saying. Do you, are you suggesting that that occurs or do you think - - -?---Not at the moment.

It doesn't occur at the moment and what, what could give rise to that?  
---Sure, I'm happy to talk about that. Going by the discussion paper and some of the comments, I've read some of the transcript from last week, if for example you took the view that in-house lobbyists or the companies that they work for needed to be registered in order to undertake lobbying activity

then what you're saying to companies is that if you want to talk to government about your views about government policy, government administration, then you must ask permission first, be registered and then comply with whatever registration it comes with before you can have a dialogue with us. And bear in mind lobbying, for instance under both the Queensland legislation and the New South Wales Code of Conduct includes not only face to face meetings, it includes phone conversations, emails and letter-writing. So essentially what is currently a right, and at the moment most people would perceive it as a right to be able to voice their concerns to a public official, the public official doesn't have to listen but people have a right, if they see one, to go up to the public official and say this is what I think. If say the Queensland legislation were brought into New South Wales and then you would extend it to cover in-house lobbyists, companies would lose that right because they would have to get permission, it would be a privilege - - -

Individuals would have the right, that's not intended to affect individuals, it's intended to affect, as I understand it, persons who get paid to go and do this, whether by way of a lump sum or a salary?---And I would raise the point what is the difference, if, if I'm lobbying for myself against an urban development because I've got advice from a real estate agent that if that block of apartments goes up and it's going to devalue or reduce future increases in your land value to the order of say \$50,000 over three years and I'm then for lobbying against that apartment development going up, now I'm not drawing a salary for it but I'm going to be better off if I'm successful to the tune of \$50,000, what makes that morally or in a corruption risk sense any different from the proponent who might be lobbying for approval?

Well, because usually people who are employed by large companies have access to funds that individuals don't?---Well - - -

There's a perception that those funds are used to affect the decision?---Well, this regime would also apply to people working for small companies and many of the - - -

Well, it's just a matter of definition really?---Well - - -

You're talking about peak, peak bodies for example?---Well, I - - -

You can, you can, public companies. There are, there any many, there are many options available to, to limit or extend the definition of lobbying?--- Well, there are and I suppose by extending it in that way, and I think there's a very clear demarcation at the moment with the current regulation focussed on third party consultant lobbies.

Why should third party lobbyists register and, why should they register?---I think for some very good reasons.

What are they?---Firstly for transparency and I think it's been covered?---  
Why, what's transparent and what's not transparent?

Well, because, well, because when a public official, when a former minister who's a third party consultant lobbying rings a public official and says you should change the law on A, B, C because it's bad, prior to the registration regime it was not possible for that minister to know who that consultant lobbyist was working for.

10

Well, we, we have evidence that lobbyists never lobby without telling the minister who their clients are?---I wouldn't know about that but that was the justification, the scheme - - -

But it does make, isn't that commonsense?---The scheme was introduced I understand it because of problems in Western Australia and then it was, it's rolled into other states. I don't pretend to understand what happened in Western Australia but apparently, I don't have this firsthand so I can be corrected, apparently there was a suggestion that public officials did not know who some lobbyists in that state were, were speaking on behalf, I don't know that it's ever occurred in New South Wales.

20

If one rectifies that and makes sure that the minister knows whether by requiring the individual to provide a letter or a statutory declaration or whatever, then what's the justification for a register?---Oh, well, there's a second justification which is by registering people who are third party lobbyists who are not otherwise members of a recognised profession, you require them to subscribe to a Code of Conduct so a lawyer, as you know, a town planner, an architect all are governed by Codes of Conduct on ethics.

30

And what have those ethics got to do with lobbying?---Well, effectively you're acting as an agent, as a sort of agent for someone.

Do those Codes of Conduct are they directed at lobbying?---Certainly.

The activity of lobbying?---Certainly.

(not transcribable) lawyers?---Absolutely, absolutely, I mean it's the routine business of many lawyers to meet with government officials and represent their clients. Certainly in our industry lawyers do do that.

40

Mr Gadiel, do you know of the existence of these Codes of Conduct or you're just imagining them?---I know of the existence of them.

And do you know their content?---I do. Sorry, I'm a member of the Law Society and I'm, I hold a practising certificate as a solicitor. I'm a member of the Law Society's Environment, Development and Planning Committee

although I wouldn't assert that I'm speaking on behalf of the Law Society today but - - -

What particular provision of, what is the Code of Conduct that you say applies to lawyers?---Well, there's the Statement of Ethics produced by the Law Society and then there are the Solicitor's Rules.

And which do you know are any that - - -?---I couldn't - - -

10 - - - (not transcribable) are the lawyer must behave when lobbying?---Yes, well, firstly the Statement of Ethics makes it clear that the lawyer must act with integrity, it must avoid conflicts of interest and so forth and the Solicitor's Rules have a section dealing with third parties, dealing between, there's a section dealing with the court, there's a section dealing with other practitioners and there's a section dealing with third parties. In the case of the Planning Institute of Australia I did take the opportunity to familiarise myself with their Code of Conduct before coming here, that certainly deals with the town planners, how they are to approach conflict of interest  
20 situation, how the public interest is always paramount notwithstanding the fact that they're working for individual clients, that they're to, they strive for the highest ethical standards in what they're dealing with. So I haven't look at the architects one - - -

What about the people who work in your organisation do they have a code of conduct?---Well, we have a very small employment base there are actually only two employees in my organisation so - - -

30 What about the employees who work for a large public company that has got a big government relations department, what code of conduct would apply to them?---Well, certainly the corporate value statement of that organisation would deal with these things.

How effective is that?---Well, - - -

40 Sanctions from non-compliance?---I, I cited it in my submission but there's been a study about the effectiveness of corporate statements and ethics and there was an academic, piece of academic published peer reviewed research which suggests that in fact that they are effective and improving standards of behaviour. I've got a comment. If you're a large company you do really value your brand name and there is a reason I believe why you don't have large corporate brands guilty of the sort of wrongdoing that this Commission exposed in Wollongong and Rockdale and Strathfield because that kind of thing would be insanity for the business. Now, that doesn't mean that they're foolproof and things don't go wrong from time to time and they should be scrutinised, they should be but - - -

Like James Hardie?---Well, that's right. James, and that was - - -



(not transcribable) code of conduct?---Well, yeah, but their wrongdoing goes back to the 1930s and that's an absolute disgrace so gosh you need to scrutinise these organisations but we shouldn't assume that the corruptions risks are the same for that kind of operation as they are for Dodgy Brothers in Wollongong.

MR GORMLY: Mr Gadiel, can I just, thank you for that. Can I just take you to the existing New South Wales register. Have you had a chance to look at that register at any stage?---Yes, I have.

10

Right. Do you, apart from the two matters that you've put so far do you think that the register does serve a useful public purpose?---Yes, I do.

Would you consider that it's an act of transparency?---Is it.

Right. Would you accept that it doesn't let you know what the lobbyists do on behalf of their clients?---That's true.

If you were pursuing greater transparency would you agree that the register really would need expansion?---Can you say that again?

20

That if you wanted to pursue further transparency in the lobbying process that you would expand the register?---Well, I don't think that's the only way to seek greater transparency and I think that's the danger of doing these things in isolation. For instance in urban development there's a vast quantity of transparency injected in the process because of the provisions of the Environment Planning and Assessment Act, we're talking about part 3A. Just about every single document including letters from proponents to the government are on the public record as a routine part of the part 3A process.

30

Well, I do want to go to local government with you in a moment but just sticking to state government for the moment. Would you accept that the register would need expansion if it were truly to pursue or provide transparency?---Well, are you asking me to accept a proposition that the only way to pursue transparency is through that register?

No, just a good way?---Well, I'm not sure that it is. You probably need to give me something more specific.

All right. Let me suggest to you that it would be of benefit to put in to the register not only the third party lobbyists but also those corporations that conduct lobbying for their own interests?---Well, I wouldn't think that would be of value because one, if a company X goes in to see a minister the minister clearly knows who they're lobbying for, they're lobbying for company X.

40

I accept that argument. When I say I accept it I mean for the purposes of this debate, Mr Gadiel?---Of course.

On that view though would you agree that other representative professions apart from the third party lobbyist such as lawyers and accountants and perhaps planners still talking about statement government logically ought also be on the register if they lobby?---No, because, let's take town planners. The fact that the town planner is representing client X is readily apparent, normally they've been handling the correspondence on behalf of client X, they've come in with client X and they're representing client X. Town planners wouldn't be talking to a public official without identifying as a matter of routine who their client is. It's almost inconceivable. And I'd say the same for an architect and I'd say the same for a solicitor.

Well, if a solicitor has his name on the register as a, I withdraw that, I'm sorry. If a solicitor goes along to see a minister the minister will find out who the solicitor is doing the work for presumably because the solicitor will tell him?---Yes, and normally the client would be sitting there with the solicitor.

Yes. But the same could be true of a third party lobbyist when they go along to see a minister on behalf of one of your members?---It could be, I understand the reason this was introduced as I said originally in Western Australia because apparently in that state there were some instances where some ex-politicians or ex-party political people were making approaches to public officials without identifying where they were from. I would suggest in that instance to the extent if it did occur in Western Australia it's inconceivable that it could occur in New South Wales in regard to, not inconceivable but highly unlikely it will occur in New South Wales in regard to a member of the legal professional, an architect or a town planner.

All right. Well, I'm just caught here, Mr Gadiel, on the one hand you're accepting that the register does provide some transparency and has some social utility on the one hand but the reasons that you say it has value, that is, it lets you know who the lobbyist is acting for and it exposes who the lobbyist is are principles that would apply equally to lawyers, accountants and planners. So it would seem really that it's logical if the register could be complete that you would include all representative professions except of course for your argument about the, about the codes of conduct?---Well, in terms of lawyers you can go to the Law Society database and find out any lawyer who holds a practising certificate with a quick search utility. So every lawyer with a valid practising certificate at the moment is on a database as is their firm. I'm unconvinced that there are any probity issues or any need to be honest for the wider public to understand who someone's lawyers are. I do accept that there have been some limited instances where third party consultant lobbyists who aren't members of a recognised profession have gone into some probity issues in Western Australia and that's the reason we have this regime in New South Wales. I'm not aware of it occurring in New South Wales but I don't see any harm in it going forward. But we can't ignore the fact that the profession's already highly

regulated, architects have to be registered, overseen by an architect's board. I'm sure the Commission is familiar with what happens with lawyers. The Planning Institute of Australia has a very strong code of ethics that they subscribe to. I, I have trouble understanding what additional benefit there would be from extending the lobbyist register to those professions other than to devalue the lobbyist register because then there would be thousands of people on the list and you would actually have trouble identifying the third party consultant lobbyists.

10 Well, is this then a fair summary of your position, that, sorry I'll withdraw that. I just want another step. The, the idea then, Mr Gadiel, that you would in effect draw a cultural line in the sand between government and non-government and say that if, if non-government wants to see government, they ought to publicly declare themselves. You would be against that?--- Well, I think non-government sees government all the time.

Yes?---And the purpose of (not transcribable) government is - - -

20 MR GORMLY: Sections, sections of non-government see government all the time.

THE COMMISSIONER: Until I came to this job I never saw government? ---Really, you never rang the Office of Fair Trading line and complained about a business?

No, never.

30 MR GORMLY: Neither did I, Mr Gadiel?---Look, I suppose my experience and, and I include my time in the public sector is that a minister can't walk down the street if their face is well known without any number of people approaching them and talking about, you should change this law, you should do this differently, what are you guys up to with that? All of that, all of that conduct fits the description of lobbying.

THE COMMISSIONER: Well, I think you're talking about Athens in about 5,000BC. That doesn't happen today?---Well, I'm, I was a chief of staff for three different ministers and, and I did many street walks with ministers.

40 Do they walk down the streets on their own?---Do they walk down the street on their own?

Yes?---Oh occasion. And other occasions I walk down the street with them. For instance, it would not be uncommon practice if a minister was visiting a country town for the local MP to accompany that minister and do what's called a street walk down through all the local businesses in the main street. And it would not be uncommon for those local businesses to complain about the Food Authority, to complain about the local council, to complain about the Department of Planning and the Roads and Traffic Authority.

MR GORMLY: I understand that. All right. Let me put it in a slightly different way. Most of the business community, small business community, for example, never goes near a minister or a government office except to meet the regulatory requirements. Do you agree with that?---To meet them or complain about them?

To, yes, all right. Neither of which fit a definition of lobbying. Would you agree?---No, no. Complaining about, complaining about a government decision that's been made, ie, seeking to reverse it or seeking to change it is lobbying under the ICAC discussion paper, the issues paper.

All right. I'm not going to pursue that with you. I understand your position. Essentially you're saying that any, any interaction with government could amount to lobbying?---Yes. Can I just further expand on that? Because there's no difference other than quantum between a café complaining about a determination the Food Authority has made concerning their premises and seeking to have it changed or done differently and a developer doing the same thing in regard to an impending development approval. The only difference is quantum, otherwise it's the same. And of course your definition of lobbying does not go to quantum, it just goes to the conduct.

All right. But one point you did make in your paper about the existing register is that you thought that the absence of any form of writer review or appeal from a decision to exclude someone from the register was potentially unfair. Is that a view you'd still hold if the, if the register were to remain as it is now, that is limited to third party lobbyists?---Well, it's (not transcribable) a direct interest to, to the urban taskforce or our industry if it's limited to the third party lobbyists. As a matter of principal it does seem to me potentially unfair to them. But I think they're, I mean, no one, when public officials meet third party lobbyists, they're unlikely to ascribe the conduct of their client to the lobbyist. So I think they are less at risk. And the reason I raise that is because if you're extending the lobbyist regime to in-house lobbyists of companies or non-profits, trade unions or industry organisations, all of us are actors in our own right, so from time to time we may professionally go out and say, this government is bad. This department is incompetent. And we therefore make enemies when we do that. And people seek vengeance. So, a third party lobbyist would never do that because that kills their business, but the rest of us are meant to have that ability to criticise government. And it certainly would make us very vulnerable to punitive action if we lost our registration because the government was unhappy with us.

Sure. All right. Well, so, in effect, and I think your submission does put it this way, that if there were to be a wider register than there is now, that is if it were to expand to peak lobby groups and in-house and so forth, if there were to be some expansion of it, you would prefer to see people have a right of review or, right of review or appeal?---Yes.

Yes?---Can I also add something though? It's very important that there is, if that's to be meaningful, that what is being, the criteria what's being reviewed upon are relevant and measurable. So for example, the current code of conduct, which is designed for third party lobbyists says that a lobbyist should not cause detriment to a public official or foreshadow detriment to a public official. I have to say, Commissioner, whenever I put out a press release criticising a government policy, a government decision or a government proposal, the public officials involved in preparing that policy or releasing it very much feel that I'm causing them detriment. Similarly, in  
10 Queensland, their code of conduct says that a lobbyist must not engage in conduct that brings discredit on themselves. Well, if I were to apply that in the New South Wales context, for instance my own work, Elizabeth Farrelly, an opinion writer for, an architect opinion writer for the Sydney Morning Herald describes what I say as rabid. If someone like Elizabeth Farrelly were to be appointed a lobbying commissioner or the reviewer, then she might have a very different view about what kind of conduct brings discredit on a lobbyist then perhaps me. I don't think it arises in the context of third party consultant lobbyists because I mean their job very much is to  
20 be nice to everyone. My job and the jobs of many other people often involve something other than being, you know, we've got someone that goes, call it as we see it.

All right. Now let me take you to, sorry, just one finally on that then, you certainly would not oppose the imposition of a code of conduct on third party lobbyists?---The current code of conduct on consultant third party lobbyists?

Yes. Yes?---I certainly don't oppose that. No.

30 All right. If - - -?---I think there's a gap there that has been addressed by that imposition, and it should have been.

All right. If, if other lobbyists were to be required to be registered I take it that you wouldn't oppose, indeed you would endorse the imposition of a code of conduct that covered matters such as the current code does, no exaggeration, no lying, I can't remember the other components of it. But essentially there's no misleading, no lying and no exaggeration in most codes of conduct that apply to lobbyists. You wouldn't have any difficulty with the imposition of a code like that?---To in-house lobbyists is it?

40 Yes?---Well, the exaggeration wording of the current lobbyist code in New South Wales is to quote it more or less, is says that a lobbyist can't exaggerate to others their level of access to government. It's a little bit irrelevant, that's a little bit irrelevant for an in-house counsel. Obviously no one should be lying. I agree. I always think problem is, why don't we have a law that says politicians lying is an offence or illegal. And there is always an issue about what's a lie and what's a legitimately different view. But as a matter of principal, certainly I don't think anyone should be talking to

government other than with a sense of integrity about them and an ability to back up what they say.

All right. Now can I take you to local government, Mr Gadiel?---Certainly.

I don't need to ask you too many questions about this area. But there are some that matter. Firstly, I think in your paper you've very helpfully identified areas in local government that are a difficulty. And I think you have referred in particular to the small to medium developing interest as a cause of local government problems. Now, do you adopt the view that the greater the transparency in local government level, the less likely there will be of corrupt conduct?---I take the view that the decisions by local government need to be completely above board. If a decision is being made to apply a level of regulation to state government agencies, but local councils certainly should not be subject to any lesser standard of regulation and it appears to be to me to be the case that they are given, in my view, they clearly present a greater corruption risk.

All right?---As a general rule, transparency around planning decisions is important and is good. We can always debate which particular measures are positive and which ones aren't. But certainly the movement in the planning jurisdiction has been to promote transparency.

You're familiar with Mr Haddad's protocol for contact with lobbyists for Department of Planning departmental officers?---Yes.

Do you consider that that is a protocol that could be applied at local government level, that is, meet only in council offices or departmental offices or onsite, always someone present and always taking notes?---Those propositions that you've put I have no difficulty with and yes, I think they should apply to council level. In practice they largely do so I don't think, there's no reason why you shouldn't formalise it. The only comment I'd make about that, that code of practice is that some aspects of it are a little bit cumbersome and the experience of feedback that I've had is that because for example if an official takes a phone call, even a brief phone call they're supposed to log it, detail it, summarise it. Some public officials have been even reluctant to take phone calls because just of the workload that then arises, you know, take a three minute phone call then you spend ten minutes writing a file note. And I don't know that there's an easy solution to that but I think those sorts of issues probably should be reviewed before it's given wider application. But in terms of propositions you're put in no difficulty.

All right. Well, at local government level if you were to prohibit local government officers from discussions with developers about their proposals outside control mechanisms of the type that Mr Haddad has proposed for his department and take into account smaller communities, inland towns, shires do you think that there is anything unworkable about a prohibition of that

type?---Well, the only thing I would add, in principle, no, but the only thing I'd add is that of course there are site visits so, and you need to make provision for that. So (not transcribable) for a public servant who accompany the developer to a particular piece of land and effectively they're having a meeting as they walk around the land, as long as there was a provision for that perhaps there needs, and I suppose the issue then can be does the council have the resources to have two people off site and so forth. So provided, it would be difficult if there was a rule put in place that said yes, you have the site inspection but you can't talk and then you get back to the office and have another meeting it would rather defeat the purpose of the site inspection.

Thank you, Commissioner. Thank you, Mr Gadiel.

THE COMMISSIONER: Thank you, Mr Gadiel, thank you for your helpful contribution and thought-provoking comments?---Thank you, Commissioner.

20 **THE WITNESS EXCUSED** **[12.23pm]**

MR GORMLY: Commissioner, just for reasons of practicality could we adjourn? I thought we might be a little bit longer and if we could adjourn that would be helpful.

THE COMMISSIONER: When do we start?

MR GORMLY: Probably 2 o'clock, Commissioner.

30 THE COMMISSIONER: Adjourned until 2 o'clock.

LUNCHEON ADJOURNMENT [12.23pm]