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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 10 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: Mr Gormly.

MR GORMLY: Commissioner, we have in the hearing box, the witness box Mr Peter Shmigel to give evidence.

THE COMMISSIONER: Yes. Mr Shmigel.

MR SHMIGEL: Good morning.

10 THE COMMISSIONER: Mr Shmigel, would you like to give your evidence under oath or would you prefer to affirm the truth of your evidence?

MR SHMIGEL: Under oath, Mr Commissioner.

THE COMMISSIONER: Yes, thank you.

20 <PETER ALEXANDER SHMIGEL, sworn [10.02am]

MR GORMLY: Mr Shmigel, can you tell us your full name?---Peter Alexander Shmigel.

And I think you're currently the General Manager of Sustainability and Strategy at Veolia?---That is correct.

Am I pronouncing that correctly Veolia?---Yes, that's right.

30 Can you just give us a thumbnail of Veolia as it stands at the moment?  
---Veolia is a multinational corporation with primarily French ownership listed both in Paris and New York. It has four active divisions here in Australia. Waste management and recycling and facility management services is one division. The second division or under the next division is water treatment. The third division is energy management, renewable energy and the fourth division is public transport and passenger movement.

40 Right. The energy management covers what field?---It's primarily a business that works with industrial customers in terms of air conditioning systems, elevator systems, data centres, it has as parts of its goal the reduction of energy consumption and therefore saving to the building manager to the business itself.

Right. And can I ask which of those various areas you're connected with?  
---My role is primarily in the waste management, recycling and facilities management business. I'm responsible for the environmental sustainability performance of that division. I also have a role across Veolia where I for

example help to coordinate the activities of its, all of corporate advisory board.

Thank you. Now, I think you started with Veolia in 2010 but in the previous two years to that you were the chief of staff to the Leader of the Opposition Mr Barry O'Farrell?---Yes, that's correct.

Correct. And prior to that I think you had been Director, Sustainability, Parker and Partners?---Yes, that is correct.

10

Right. That's Parker and Partners who are the lobbyists?---Parker and Partners are registered on the New South Wales Lobbyist Code and other relative code in other jurisdictions. If you would like me to I can explain what my role at Parker and Partners was.

20

Yes, please do?---It actually speaks to some of the material before the inquiry because whilst I was working in an organisation that is considered by some to be a lobbying firm is on public registers as such. In the time that I was there I don't actually recall ever meeting with a politician. My role was to advise clients of Parker and Partners on sustainability matters both in the technical sense and a public policy sense. So the work had to do with, let's say, advising corporation X or company Y in terms of where it finds itself currently in terms of environmental sustainability and social sustainability performance where it might go and what public policy settings will or won't affect that. So it's an interesting example that whilst, whilst in my case I was working in (not transcribable) lobbying or public affairs firm I didn't actually engage in anything that would be specifically considered lobbying of politicians.

30

Would, would others in, at Parker and Partners in the period have been doing that?---Yes, they certainly would've been. Yep.

Right. All right. It just, it just happened that it was your use of, of government operations in particularly I suppose a policy that would enable you to advise clients on those issues?---Correct.

40

Right. Now prior to that I think you worked as Director for Sustainability and Public Affairs at Hyder Consulting and I think during that period you were also contracting out as CEO to some various bodies including Be-Recycled Business Alliance, Packaging Stewardship Forum and Butt Littering Trust?---Correct. Hyder is an engineering consultancy. It also contains an environmental management and sustainability practice. In fact Hyder purchased my previous business. We were merged into Hyder. In the context of my consulting work, I had specific contracts where I would act as a CEO to the three organisations that you nominated.

Hyder Consulting in addition to being, I think you said an engineering firm did you?---It's primarily an engineering consultancy, yes.

Right. But it, it also has a role at times does it not in advising on government policy and in doing some lobbying work?---Does Hyder Consulting or any other engineering consultancy provide public policy advice from time to time to its clients and indeed to government itself, yes, it does. Whether or not - - -

It's not a primary role?---It's completely ancillary to its technical base.

10 All right. Now before that I think you were the chief executive of the Beverage Industry Environment Council and before that you were with, a period with Telstra in Corporate Affairs and before that, from '92 to '95 you were the chief of staff in the Office of the New South Wales Minister for the Environment. Is that right?---Yes, all correct.

Who was the minister at the time?---Chris Hartcher, MP, the member for Gosford.

20 Thank you. And then prior to that you spent a couple of years in the electoral office for the member for Lowe?---Correct.

Who was?---Bob Woods, MP.

Thank you. Now, Mr Shmigel, so you have a background of effectively in, in government on the political side?---Yes.

30 But you've developed an expertise in sustainability and advising on sustainability of one form or another?---Yes. It's fair to say that. My professional career and my professional development has featured at least those two streams, involvement in public policy as well as specific technical knowledge issues based knowledge in environmental sustainability.

Right. Mr Shmigel, I understand you've prepared some, a preliminary statement?---I have.

40 We'd be grateful to hear from you?---Thank you. I'd like to thank the Commission for this opportunity for, to share my perspectives on the relationship between lobbying and public officials and whether there is a need for public policy reform in this area. The perspective I express today is based on several career roles as Mr Gormly has just outlined. I greatly appreciate the unique opportunity I've had to participate in our democracy and to work in and around our decision making system, particularly someone who is a migrant to this country. My involvements and I'm proud to say they include appointment to policy committees, by both the New South Wales and Commonwealth Labor governments, not just the (not transcribable) politics with which I'm primarily affiliated. My starting point is that democracy is precious and its policies benefit from constant public debate. The Commission's inquiry is therefore very welcome. It is my

view that the lobbying process is not corrupt nor detrimental to decision making. It has been appropriately argued by others who have appeared before the Commission that lobbying provides decision makers with access to data, opinions and interests. Through lobbying decision makers get quality inputs that enable quality decisions for public policy outcomes. In this respect lobbying, together with other inputs can help make a politicians or a senior public servants decision more evidence based, vigorous, objective and directed at a broader public interest. Indeed, the inverse example underscores the value of lobbying. Where there is a lack of diverse high-quality inputs into a decision and haste applies, the greater the probability that the decision will somehow be flawed and more likely to favour now or short-term interests. However, when the lobbying process is not appropriately transparent or if it is exclusionary I believe it can give rise to corruption risks and to a lack of community confidence in decision-making processes. To put it simply, lobbying in and of itself is not the problem, nor per se are professional lobbyists. In fact, it is generally productive. Rather, a problem occurs when, (a) lobbying is not subject to appropriate disclosure, (b) lobbying is linked to political fundraising and (c) the opportunity to lobby is not robustly taken up by the broader community. It's in the above scenario that both the risk of corruption may arise and the perception of lobbying becomes negative. The latter, a negative perception around lobbying, is unfortunate because it can have the self-defeating effect of discouraging rather than encouraging more citizens to engage with decision-makers. Therefore a solution to the problem lies in measures that continue to increase transparency, mitigate corruption risk and foster public participation and I intend to, to visit those topics in my statement. When considering how best to proceed with policy settings for lobbying the critical issue is that of scope. I would suggest that reform will be most effective when it's scope is set in the most practical way. In that regard the choice is to establish the scope for provisions around either a very divergent group of people on the one hand, those who lobby, or around a much more congruent group of people on the other hand, those who are lobbied. In the first group, those who lobby, there is everyone from professional public affairs companies to faith-based groups to NGO advocacy bodies to companies acting on their own behalf to trade unions to private citizens. It's difficult to see how comprehensive and equitable provisions could be established for such divergent organisations, individuals and interests. Moreover, to establish scope around only professional public affairs companies or those who are specifically defined as lobbyists in the Commission's Issues Paper make create an incentive for non-compliance. For lack of a better term I call this lobbyist leakage. It would be an unfortunately, unintended consequence if some looked for ways to mask their activities. It also ignores the reality that not only public affairs professionals can have powerful influence over the decision-making process. The second group, however, is more readily defined. While not without its difficulties, it's actually feasible to identify those who are lobbied and have substantial decision-making powers. They would probably not number in their thousands in New South Wales when one

includes ministers, ministerial advisors and senior agency executives. It's also important to note that they are also ultimately subject to the provisions established by one employer, the New South Wales Public Sector, whereas those who lobby certainly are not. Additionally, if the buck ultimately stops with the decision-maker then too should the responsibility for how that decision was made, including public interest disclosures. Therefore my view is that the focus for policy reform, particularly in terms of providing greater transparency and accountability, should be on the practices and behaviours of decision-makers. It's more achievable and therefore more likely to work. I put forward the following suggestions which I believe are complementary or aligned with recent reform processes here in New South Wales and I have six of them. First, consider the public interest cost benefit of making the annual meeting schedules of ministers, senior agency executives and ministerial staff regularly available to the public. Clearly, if such a concept were to be considered it would need to include reasons for non-disclosure as well, including those that may prejudice an individual's or business's commercial interests or affect public safety as per the Government Information Public Access Act of 2009, the GIPA Act. Two, via implementation of the recently introduced GIPA Act, and the work of the new Information Commissioner, continue to promote an improved information culture across New South Wales government whereby the presumption for agencies is proactive disclosure of information. Three, make access applications under GIPA, previously known as FOI applications, free of charge. The public cost of so doing should be curtailed if more material is disclosed a fortiori and therefore readily available to the public. Four, consider the public interest cost benefit of introducing post separation provisions on lobbying by former ministers and ministerial staffers within their portfolio, within their former portfolio areas. Similar provisions could be considered in terms of their appointments to boards or committees within their former portfolio areas. I'm not necessarily suggesting that there is currently a major problem in this regard but there is likely to be a perception that currently undermines public confidence in decision-making and in participation. Five, establish an omnibus set of ethics, values and conduct for ministers, ministerial staffers and the New South Wales Public Service and annually report against its performance. This is necessary I believe as the current Ministerial Code of Conduct is not a public document nor is the Ministerial Staffers' Code of Conduct as I understand it and there are diverse codes for different agencies. Such an alternative approach could take in aspects with your right to governance, probity and record-keeping around contact with those lobbying. The related guidelines recently introduced by the Department of Planning are one example that could be built on, while they're not perfect, especially as that experience is evaluated. On the model of ICAC, number six, consider the public interest cost benefit of establishing an independent organisation for public sector accountability and transparency, perhaps Integrity New South Wales for lack of a better name. Such an organisation could incorporate the current functions of the Auditor General, several different existing ombudsmen-type agencies, the Information Commissioner and monitoring

of lobbying activity. There could be merit in consolidating these functions of the different players in the overall accountability and transparency space in order to provide a strong focal point and independent champion for continued improvement. Such an organisation could also be better placed to engage in community and education and outreach, the kind of education that ICAC for example engages in with regard to risk, corporate, corruption risk reduction. Also, the New South Wales Lobbyist Code can be built upon. It appears to be taken seriously by those currently within its ambit so it would most likely be beneficial that others be included within that ambit as well.

10 For example, it's coverage could be broadened to treat all who engage with government equally and I believe this was suggested by a recent Upper House committee. This, however, should be done carefully not to create disincentives to engagement with government and with politicians and not at the exclusion of measures that I would argue are more important, those aimed at greater disclosure by those who are lobbied themselves. Subject to serious understanding of their cost benefit, I think the types of measures I've nominated thus far would be helpful for continuing to increase transparency and accountability around decisions. However, if the broader goal was to mitigate corruption risk and to foster greater public participation, as I

20 believe it should be, further reforms would be worthwhile to consider. Access to decision-makers cannot be premised in real or perceived terms on whether someone has donated to a given political party. Regrettably that perception seems to have taken hold in New South Wales. I believe that this has a truly pernicious effect on our democracy. It contributes to members of the community who are not part of its small political class disengaging from participation. I have heard statements along the following lines, what's the point if the lobbyists have it all stitched up, that these "lobbyists" even exist or that they may have it "all stitched up" is in my experience probably not

30 the case, however, without access to any other information than that lobbyists also feature as political donors it's easy to see why a community member could so conclude. Therefore, I would support campaign finance reform along the following lines. One, establish limits on campaign expenditure. If we limit the demand for political fundraising in the first place then we necessarily curb the need for supply of large-scale donations. Two, cap donations by individuals and organisations, and three, cap spending via third party campaigns. The position I have put has long been advocated by the New South Wales leader of the opposition, the New South Wales government has in its own right moved on campaign finance reform. I note that the former Premier, the Honourable Nathan Rees, MP, will be

40 outlining his views on the topic to this inquiry in the days to come. Indeed, campaign finance reform seems inevitable and perhaps this inquiry will add to the process of delivering it. Finally, there is the need to foster public participation. If the input of lobbyists improves decision making then the corollary is true, namely that other inputs from those not serious lobbyists equally benefits decision making. Therefore the further reform challenge is how do we set up the incentives and systems for more members of our community to take up the opportunity to put forward their views. For example, through the International Association for Public Participation,

IAP2 there has for some time been established best practices for real and substantive engagement by public sector agencies with communities. These practices and getting people affected by decisions involved in decision making itself stand in contrast to the largely formalistic, mostly one way “community” consultation approaches that generally prevail. The fact of the matter is the community spots tokenism where it exists. There is an opportunity to develop better protocols and stronger requirements for public officials and agencies to ensure public participation in decision making processes. Those agencies should equally be held accountable for how often and how well they proactively seek genuine community and interest group involvement. With that I’d like to wrap up my statement and thank the Commission for this opportunity.

THE COMMISSIONER: Thank you very much.

MR GORMLY: Mr Shmigel, you certainly guaranteed that your hour will be filled. Let me start with one proposition. You said that you thought that the opportunity to lobby government was not one well taken up by the community at large. Do you think that the existence of a professional body of third party lobbyists has anything to do with that?---(NO AUDIBLE REPLY)

All the current patterns of lobbying, I’ll withdraw that. The current patterns of lobbying as they exist in New South Wales have anything to do with the wider community not taking up the opportunity to lobby?---Is there a perception in the community that lobbying is a stigmatised activity, I would suggest, yes. Does that perception affect community members’ willingness to engage in the public policy process in the political process, yes. However, I think that there are other reasons why members of the community do not take up the opportunity to put their views forward to either public sector single agency folks or to politicians. And among those reasons is, are systems for actually encouraging that participation are not well developed or well defined. There is no requirement on, for example, an agency other than in the planning, let me be careful here. There are not many requirements on agencies other than in the planning space to actually seek the views of community members on giving decisions.

THE COMMISSIONER: Is there a perception amongst the community that the pathway to ministers is a very difficult one to go through?---That perception may well assist, Mr Commissioner, but I would suggest based on my experience that it is in some respects a misplaced perception.

I understand that?---In my experience whether it is on the receiving end of lobbying or whether it is on behalf of clients, on behalf of employers who seek to put their views forward I’ve actually always found it reasonably easy and accessible to gain audiences and I have been surprised when on the receiving end that some folks don’t take up the opportunity that is there and apparent.



That's interesting. Thank you.

MR GORMLY: So putting aside what's often said to be the apathy of the Australian electorate and putting aside the role of lobbying, organised lobbying as it currently exists you think that there are other explanations that might account for this failure to approach government?---I do. I, I, I don't fault government agencies or a political class I just see it as a next step in our logical evolution as a democracy that we put in place better systems that provide the community with a guarantee that, you know, that someone will as a matter of due process in a decision make sure that they're involved.

All right. Can I just stay with that for a second? On the assumption that government were to adopt a policy of more actively seeking the views of the community do you think that that would have an impact on organised lobbying as it stands at the moment?---It would have the effect of official lobbyist being one of many inputs into a decision. As I say if there is a problem with lobbying it is when it is exclusionary, when the only voices or among the few voices that are getting through to the decision maker are from the official lobbyists themselves. By encouraging public participation we get a much more balanced array of views coming into the decision maker, more quality inputs hence a more quality based decision, more evidence based decision.

Do you think that if the community became used to the idea of having its views sought that it might remove some of the scepticism that you seem to accept surrounds organised lobbying at the moment, that is, that people would become used to the idea that the expression of a view to government is a normal thing?---It needs to be a norm in our society. It should just be the bread and butter, part and parcel of the ongoing and regular activities of public sector agencies that they include in their decision making process the community. And I'm not saying including the community in decisions where we've decided to change the photocopiers at the Department of Public Works and Services.

You're speaking of matters of substance?---You would, you would, you would do it on the basis of complexity and risk. You know, you would have some sort of evaluation that's put in place to trigger the public participation process.

Looking at the other side of that ledger, Mr Shmigel, it's a feature of, may I make the observation for your comment that it is a feature of New South Wales political life that there is a reluctance by government to acknowledge the input of others unless it's statutorily required because it will appear tainted by the lobbying problem, that is, that it's not often that one will hear a minister acknowledge the input of community groups of lobbyists or even of particular interests unless there's a purpose behind it. Would you agree with that?---I'm not sure that I do, Mr Gormly. I think that by and large

members of the political class and I have no hesitation in calling them that, are there for the right reasons. By and large these are folks who are civic minded and in some respects it's, they know that it's good practice on their part to, to try to access community based views as much as possible in their decision making as they can. One of the difficulties that arises, again I return to the point that our systems for doing so aren't necessarily well developed so let's say if a minister or someone else even wants to understand where the community's coming from on a given issue that's not necessarily a piece of advice that he or she can turn to in an official process to receive. The minister has to show some proactivity in terms of making their own inquiries et cetera. I certainly wouldn't want to remove that responsibility from our ministers or our decision makers but there's, there's little downside in, in setting up what you might call failsafe systems to make sure that the community input does arise regardless.

I must say it's been a feature, Mr Shmigel, of the evidence that's been heard in and out of the hearing room from all of the sectors of lobbying both those that are lobbied and those who do the lobbying that the role of the professional capable lobbyist is a useful one. By the same token I can't recall prior to this inquiry having heard that view widely expressed at any government level publicly, that is, that it seems to be relatively unusual to hear a recognition of the role of the professional lobbyist before this. Would you agree with that?---I don't think that view has been widely expressed, no. I, I guess I would also say has the question been asked widely before.

Yes, perhaps not. All right. Now can I take you to the various points that you made concerning codes. As I understand the position, you are saying that first of all codes do serve a value. That is codes of conduct do serve a purpose?---Yes, I do believe they do.

And they have a value?---Yes.

Is that because you would accept the proposition that generally speaking if you impose a code that people will read it and people will tend to follow its principals?---Yes. Where there is an appropriate feedback mechanism, eg, where there is a regular monitoring of compliance or adherence to that code.

Right?---Where the code is given life as opposed to simply being a document that's pronounced once then, then never revisited.

All right. Thank you. Now I think your principal point concerning codes was that there were too many of them. Is that right? Because you've referred to the value of having an omnibus code of ethics?---I think there's two, two aspects to it. On the one hand from my own investigations in preparation for this inquiry, I can't find public evidence of either the ministerial Code of Conduct or the ministerial staffers Code of Conduct, which I believe the inquiry's discussion paper noted as well. So in that

sense there's a lack of codes. On the other hand, however, there are a divergent array of codes for different public sector agencies. Different expectations with regard to the behaviours, ethics, values of folks who are ultimately employees of the New South Wales public sector. So, what I guess I'm advocating is the establishment of an omnibus approach that provides, you know, certainty, clarity, about the expectations for all public servants be they of the political variety or be they of the "normal" public sector variety.

- 10 THE COMMISSIONER: Do you see enforcement of those?--I don't presume to have the definite answers, Mr Commissioner, but I, I would suggest, returning to my previous answer that, that codes work if they are very specific about what's expected and they're very specific about measuring behaviours against those expectations. So for example, if such a code were to include provisions with regard to the disclosure of government information, you would've thought that public sector agencies would then need to report on a regular basis on their performance over a given year, how much information they have disclosed, what type of information they've disclosed, et cetera. And in fact that is starting to occur, I know,  
20 I'm not saying that this is a blank space. I just used that as, as one example.

- MR GORMLY: You're saying reporting on, on the effect of (not transcribable)?--Reporting and, and release of public, release of reports to the public, whether through parliament or other means. Independent oversights is also an effective tool. I'll give you an example from the private sector. A phenomenon in the private sector is that of sustainability reporting, whereby major corporations outline their performance in environmental terms, in social terms, let's say on an annual basis or a regular basis. Put forward data on, you know, whether or not our water  
30 consumption has gone up or down or greenhouse gases have gone up or down. Whether our gender equity policies are working or not working, et cetera. One of the methods that corporations use to build confidence in those reports is the use of independent verifiers of the data. Third parties who are brought in to literally go through the Excel spreadsheets of raw data that then gets converted for, for the actual public report. So again, one of the measures I've advocated here is, is, is there merit, is there a positive cost benefit for the creation of some sort of integrity New South Wales body that might take on that kind of role.

- 40 Mr Shmigel, your, I just want to stay with the codes of conduct for a moment before we move on to the independent verifiers. At present codes of conduct in New South Wales can tend to be isolated to a group. That is one has a Code of Conduct for lobbyists, it's not excuses, but there'll be another Code of Conduct, as you've referred to, for ministers, so that's not public. And there might be another Code of Conduct that's applicable internally to say a peak body when they're dealing with lobbying issues. And we've seen these codes of conduct here and there throughout the system, each applicable to a small group. One of the effects of a code

structure of that type is that while one might understand ones own obligations, one doesn't necessarily see what the other person is expected to do or not do as well. Would you consider that there is a benefit to people bound by a code that they also understand what other persons in the system may have as obligations?---Yes, I would see that there is definitely a benefit, particularly in a broader understanding of individual parts of the system, of what their role and responsibility is vis-à-vis other parts of the system. Hence, my advocacy of an omnibus set of ethics, values, a, a Code of Conduct across government to provide that level of consistency.

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THE COMMISSIONER: And someone to complain to?---Without a doubt. As I, as I have previously indicated, without some form of, of measurement, oversight, feedback on, on the provisions of that code, it's just a document.

And does it need sanctions?---I don't know, is my honest answer. I, I, I think that there is merit in having a discussion about how you make such a code effective. There would be, there would be some incentives created by sanctions and there might be some disincentives created by sanctions. I suppose, Mr Commissioner, it depends on the nature and the level of the sanctions.

20

MR GORMLY: Can I just tease that out a bit further, Mr Shmigel. Familiar components of any code for any subject on any people will be, don't lie, don't exaggerate and don't mislead?---Mmm. We see them very actively, for example, in the legal profession and accounting areas, and there are heavy sanctions one way or another for breaches of those components. There is however, in the public field a degree potentially of self-regulation in the sense that if somebody does lie or exaggerates then that act apparently soon becomes known. In the lobbying field it's said that it will undermine the integrity of the lobbyist?---Yep.

30

Do you think that there is room in a Code of Conduct that is applicable to people in a public role which does not need external sanctions, by which I mean impose penalty sanctions?---I think we should also, I should also be clear here that I believe that there are implicit sanctions that exist, for example, for the political class in the instances that you nominated, lying, misleading the public, et cetera, because it is a public endeavour, political participation, political life, you are unlike many accountants, unlike many members of your own profession, subject to media scrutiny. And certainly -

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THE COMMISSIONER: That means that there has to be some, some method whereby disclosure of breach takes place?---Well, one of those methods in addition to media investigation is the parliament. You know, the ultimate forum in which the statements of individual politicians are tested for veracity and for vigour and certainly to be found to mislead the parliament carries with it very significant sanctions, both in a political sense and in a real sense.

MR GORMLY: You're saying that exposure of a false statement or an exaggerated statement in parliament may in itself be the sanction?---Correct. I mean there are, there are any number of historical instances where - - -

THE COMMISSIONER: You don't need a Code of Conduct for that?---My advocacy of the Code of Conduct is in relation to the entire New South Wales public sector not simply its political class.

10 Quite. So how do you, you have to have, if you want to in some way ensure that the Code of Conduct is being complied with then your answer is that the best way is to make sure that any breach is made public and you're not dealing with ministers but you're dealing with civil servants, how do you make that public?---Yes. And that, and as I said before, I am, I am not certain in terms of the type and level of sanctions at this point in time. I, I don't profess an expertise in that regard and, you know, I think it's a good topic for public debate about what will work or won't work in terms of on the one hand motivating a better behaviour on the part of public servants, on the other hand not stifling government workings.

20 Well - - ?---In general, in general, Mr Commissioner, I, I would concur with the view that's implicitly being put that, that, that a coward without - - -

MR GORMLY: Teeth? - - teeth is less like to be effective.

THE COMMISSIONER: ICAC is the teeth?---Yes.

I mean, there isn't, that was the, the original idea of ICAC?---Mmm.

30 It's true that the Codes of Conduct are diverse in some instances and non-existent in others and a sort of source of mystery and mysticism in another?---Mmm.

40 But if that could be, if there could be a kind of unanimity which you, which you suggest that there would be binding and public codes of conduct on everyone then an organisation such as ICAC is available to ensure that at least from time to time breaches of the Code of Conduct can be made public?---I, I couldn't agree more. You know, the, the role of ICAC is strongly noted by those for example who participate in the political class.

Well, you're really, you're, what you're saying I think in summary is that you just, we just need to make sure that the Codes of Conduct are in a better state than they are now?---I think you've teased it out well, Mr Commissioner, I, I guess what I'm suggesting is there is fuzziness, a lack of clarity, inconsistency, lots of sort of, you know, grey areas if you will and there is the opportunity to, you know, set a bar that all know exists in terms of what they have to clear or else.

MR GORMLY: Right. Let me move to another area, Mr Shmigel, thank you?---Sure.

You referred in the course of your opening to the presence on government boards and committees of people who were registered lobbyists, as I understand it, is that right? Is that what you were referring to?---I referred, yes.

- 10 Yes. You'll appreciate that in New South Wales at the moment there is a, in effect, a ban or a prohibition on persons both being registered and serving on a government board or committee?---Yeah.

Introduced by Mr Rees as Premier. Is that a, a position that you would continue to agree with?---Yes, I would. As I've said in, in, in the statement I'm not sure that there necessarily is a fundamental problem, however, there is a perception of a problem and that perception in and of itself undermines confidence in decision-making.

- 20 THE COMMISSIONER: Is the perception caused by a conflict of interest idea or is it something more than that?---No, I, I think the conflict of interest goes to its very heart.

- And it's not enough to rely on the individual to disclose the conflict of interest and withdraw from decisions where that conflict of interest is in play?---It certainly helps and I, and I, and I would hope that individuals of the stature who are being appointed to boards and committees would, would see that as non-negotiable and, and just normal, normal activity. However, you know, if we go back to the goal of fostering confidence in public decision-making, of promoting greater public participation, of reducing even the perceptions around corruption risk, I would have thought that it's a good thing to be clear that a variety of folks can't end up on, on boards, committees et cetera, et cetera for a given time frame. I believe the Commonwealth has an 18-month period in place. That would seem like it's a reasonable sort of time frame.
- 30

- You would not have a blanket ban forever, you would just have it for a period?---Well, as I said, you know, one of the things that's probably worth keeping in mind in terms of policy design is consistency with other constituencies otherwise you'll get leakage, folks will get appointed to boards and committees perhaps in other constituencies rather than in New South Wales. I don't advocate a permanent ban because ex-ministers, ex-politicians, ex-staffers clearly have something to offer, it's just a question of setting up the, the, the right and appropriate steps to avoid perceptions of conflict and perceptions - - -
- 40

MR GORMLY: Well, we're talking, sorry, there's, we're mingling two things here, Mr Shmigel, it was my fault. The original question was

intended to refer to persons not who had served the government in the past as public officers - - -?---But registered lobbyists.

Registered lobbyists?---My fault, Mr Gormly.

Can we keep those apart from the moment?---Yes.

We'll just deal with the registered lobbyists - - -?---Sure.

10 - - - upon whom there is at present a total ban for any period during which they are registered. So there's no question of a cooling-off period here. If you're registered you can't sit on the board, if you're not registered you can?---Yeah, I mean, I, I, I wouldn't have any issue with, with the government's current approach in terms of registered lobbyists.

Right. Is that because the near appointment to somebody, of somebody to a board is in effect an endorsement of that person because governments don't tend to appoint people to boards or committees that are disreputable or, on the contrary in fact, governments are inclined to appoint people to boards and committees if they are of some standing in the community?---It's 20 certainly a recognition of the skill-sets that they bring to that certain area.

What about the integrity or trustworthiness of the person?---Equally, it would be a foolhardy public sector agency boss or a minister who would appoint someone to a board if they had any doubts about their integrity.

I agree with you but does that mean that by in effect endorsing somebody who's on the register as a person suitable to sit on a board or government committee that they are being given an endorsement that might be thought 30 to flow into their lobbying work? Is that what you have in mind, that's what I'm asking?---In terms of supporting the ban?

Yes?---Partially but I, my support for a registered lobbyist not appearing in appointee roles has, has more to do with preventing any perceptions around conflict of interest whatsoever but professional lobbyists act for any number of different organisations. Many of them do so with the highest possible professional standards, with great integrity. Every once in a while, human nature being what it is, folks will make mistakes in terms of sitting on a board and committee, putting a view there that happens to coincide with the, 40 with the commercial interests of a client, that should be avoided.

Mr Shmigel, let, let me test that with you for a minute. In effect what you're saying is that lobbyists can appear for any one of a diverse range of interests in the community?---That's right.

And that there may therefore be generated a conflict?---Correct.

However disliked lawyers and accountants might be in the community, they are heavily drawn upon by governments to sit on boards and committees because they have a certain skill-set that's usually of value and they are therefore regarded as productive members, they too are in exactly the same role as a representative profession?---They are and certainly no one here is suggesting that lawyers and accountants should be banned in the same way that registered lobbyists are so what's the difference I guess is what you're asking.

- 10 Yes, that's right?---Well, in some respects there is no difference where, for example, lawyers and accountants are acting on behalf of clients who have significant interests before government. They too should not necessarily feature within boards and appointments.

Conflict rules apply?---Correct.

- 20 Right?---Correct. So the point here is not whether they are registered lobbyists or not, the point is whether or not there is, there is the inherent capacity for conflict of interest because you're dealing with public policy issues.

So why treat lobbyists different from lawyers and accountants?---You shouldn't. I mean, as I said, said just now, if a lawyer and accountant is acting on behalf of a client or a series of clients where there is significant public policy issues involved they should not be appointed (not transcribable).

- 30 I see your point. I see your point, I'm sorry?---And I would make the, the further point that that is one of the reasons why the New South Wales Lobbyist Register should be broadened beyond its current ambit because it does not for example necessarily take up a variety of advisory firms and consulting firms who are not professional public affairs companies or lobbyists companies who nevertheless interact with government on public policy issues.

- 40 Let's move to that. So this is the New South Wales Register now. You would support a widening of the category?---The, the Upper House Committee made a recommendation in terms of broadening its ambit, I think that's a sensible recommendation.

To what would you broad its ambit?---Yeah. A difficult question. You would want to necessarily ensure that old folks who are dealing with government on behalf of clients are, are, are treated equitably. Sort of there is no infringement or competitive neutrality let's say between a professional lobbyist company and let's say an esteemed accountancy that happens to be acting on behalf of a client in the public policy space. So, so, so, yeah, so we go to, to those professional services firms for sure, others that would be I



suspect would be eligible would be trade unions, I suspect industry associations, I suspect, that's a good start.

Now, would you, but what about the in-house lobbyist, large corporation, specialist in-house government relations staff and a tendency within a large organisation to have a need for and to exercise its need for contact with (not transcribable)?---I personally have no difficulty whatsoever in seeing in-house lobbyists on a professional register.

10 Right?---Now, I would like to speak to the other side of this argument however and that is whilst I do see that there are public benefits, public interest benefits in expanding the register, I wouldn't say what I've said if I didn't think so, is not without some risk and some cost.

What would you see the risks as being?---Well, there is this ongoing stigmatised perception of lobbying activities and therefore some organisations and some individuals might choose to try to avert that stigma by not registering et cetera, et cetera for one. Secondly, the more you  
20 broaden the register the more information that you ask to be included in it you create perhaps so much complexity that it no longer provides the transparency that you're setting out to accomplish in the first place. Yeah, I would see those as the primary two arguments against broadening it too far and making it too complex.

You've identified a distinction, Mr Shmigel, that's helpful. What, correct me if I'm wrong here, what you're saying is that there is a difference between letting everybody know who lobbies which is on one view a transparency issue but on the other hand letting the public know that  
30 lobbying is a safe and suitable activity which is not met by simply listing lobbyists?---Correct. And that is why part of any reform process needs not to be just about transparency and accountability but it needs to be about public engagement and it needs to be about public participation. To simply set up the rules for how lobbyists behave and whether or not those who lobby disclose appropriate amounts of information is just one piece of this puzzle.

In effect if I can just follow that, in effect what you're saying is that in the pursuit of transparency by listing everybody you're almost worsening the second problem, you're almost worsening the perception that there's  
40 something wrong with lobbying?---You do unless, as I say, there is some concerted effort put towards community education, a broader public debate about the benefits of engaging with government.

Or perhaps a public endorsement of lobbying as part of the democratic activity?---Correct. You know, if, if there, if there are clear messages and signals from the highest levels of leadership in this state or in any other jurisdiction that lobbying is in fact welcome, that more people should do it

starts to serve the purpose of removing sort of the negative brands that are associated with the simple term lobbyist.

Right. Well, can we move then to the next stage of lobbying and that means moving back to your history as a chief of staff?---Yep.

10 One of the consistent complaints that is made about lobbying is that it is something done behind closed doors, that is, however much you might put people out on a register or however public you might make known the fact that a lobbyist is seeing a government minister if that were to be done  
nobody knows what went on behind the closed doors, that is, that there is a private meeting so to speak. Where there's a private meeting there's always going to be speculation. Do you think firstly that to take the step forward of publishing at least the date and fact of a meeting between the lobbying interest and a minister would help to dispel that problem even though people did not know immediately what occurred in the meeting?---Yes, in my statements I have suggested that one of the possible tools for delivering greater transparency and accountability and therefore public confidence in decision making is the release on some sort of regularised basis of lists of  
20 meeting schedules undertaken by high public officials.

THE COMMISSIONER: So that's not just the minister it's the minister and the chief of staff or the director-general?---Yeah, I, I in testimony indicated ministers, senior agency executives and ministerial staff.

MR GORMLY: Ministerial staff, that's a fairly broad term?---It is a broad term but in terms of actual population it's not a very broad one. I believe for example the current government averages between, you know, ten and twenty people in a ministerial office multiplied across 20-odd ministerial  
30 portfolio that's actually not a lot of people.

Would you miss much if you were to delete say the ministerial advisor on the basis that not much lobbying is going to actively occur at that level, it's more likely to occur with the chief of staff and the minister?---I think the reality of ministerial officers in my experience of having been in them but also interacting with them more importantly is that the chief of staff plays a significant role but there are other members of staff who also play significant roles. So for example senior policy advisors within ministerial offices often have the critical job of liaison and interaction with director-  
40 generals of given agencies. For example in an agency, in a ministerial portfolio where the minister may have four or five agencies reporting to him or her it's a usual practice that a senior policy advisor will have responsibility for at least one or two of those agencies so their advice and their role in the office can be critical.

THE COMMISSIONER: Mr Shmigel, if you've got 400 people and on a conservative estimate they see three people a day, each sees three people a

day?---On a sliding scale depending on their role in the office. The chief of staff might, yes.

Is that more or less than three?---On a, on a, on a busy and hectic day a chief of staff might see four and five.

Let's say two?---Okay.

10 So that's 800 a day, 200 days a year so you've got 200 times 800 meetings on the schedule?---Yes, that's right. I think - - -

20 What does that do for transparency?---That's right, Mr Commissioner. I mean your point is well taken and I've made it here myself before that, you know, the more sometimes you, you befuddle the community or the public by, by masses and masses of information that may not necessarily be meaningful or pertinent in terms of the goal of achieving transparency so yes, it would be a process of some careful deliberation to decide how many folks, which meetings, what exclusions. I was careful in my statement to say that, you know, that I think that we need to consider the public interest cost benefit and not necessarily advocate.

30 It's really some form of, well, I presume you would agree that any, any greater degree of, of disclosure than what we have today would be an improvement?---Without a doubt. As I said, the, the focus of current public debate seems to be on how do we get those who lobby to disclose more and to be held more accountable. We need to also, and I don't pretend to have the magic bullet here, also talk about the mechanisms and measures that would apply to those who are lobbied and that's why I said let's, let's at least put this one on the agenda to work it through in terms of its pros and its cons.

MR GORMLY: Mr Shmigel, I want to take you away from that if I may. At the present time in the position you're in, and I gather from some of your past positions you have gone from the position of hearing lobbyists to actually lobbying yourself. Is that right?---That is correct.

40 Right. Is there any observation that you made to yourself after the experience of having to go and lobby rather than simply receive lobbying? ---I would certainly have a greater appreciation now having been lobbied of what constitutes helpful lobbying from a variety of, of external parties, be they professional public affairs companies or companies representing their won interest or trade unions or, or charities or private individuals. One of those things that are particularly helpful data, evidence, fact. In order to enable a good decision on my own part, on the part of the folks that I have, that I'd be working for, it's all about the rigour that, that external parties present. So in terms of my own involvement in now making representations in the public policy process, without a doubt the premium vibe put on my own work is to make sure that it is fact based, that it is verifiable, that it also

serves an interest that is broader than simply the commercial one that I may or may not be associated with at the time. One of the key things about talking to public policy folks, be they ministers, public sector executives, is to understand their drivers and to meet their drivers with your own drivers, eg, no lobbyist is successful if all they're doing is simply pushing their own pecuniary agenda. There has to be some benefit, public benefit from that engagement and that interaction.

10 Did it increase, that is moving to a business like Veolia or any of the others that you've worked with, did it increase or alter your perception of the need of private interest to engage in lobbying?---Oh, without a doubt. It particularly, Mr Gormly, areas that, that are non-glamorous if I could call them that. There's a raft of regulatory traffic that takes place in and out of and around government that has really significant implications for the day to day operations of a business. And indeed, you know, in my current job on its capacity to perform environmentally, now it's, I suppose you could call it lobbying, but a lot of time is spent by people like me working with, with middle managers within the public sector to ensure that the regulatory frameworks that they are either developing or managing or implementing, 20 have a semblance of reality. That they actually reflect the real world operating conditions of, of a business. That interaction is vital. I mean it's, otherwise, you know, you get a whole, you may get a whole series of unintended consequences from irregularity direction. Now including in, in the example, in the examples that I'm currently working on, unintended environmental harm. That's the intentions in terms of the regulations that have been put forward, but not necessarily enough technical expertise to know whether there are flow on effects that weren't anticipated.

30 And have you found that lobbying to mitigate perhaps a misunderstanding or excessive zeal or whatever it might be on the part of the public sector has been productive? That is if you go along and express a view about how some regulatory structure is being actually managed or implemented, that there will be a response?---Yes. And I, and I come back to a point I made earlier, and that is I am always surprised about the fact that more people don't take up the opportunity to engage with the public sector on issues that are of interest to them and potentially of benefit to the public realm.

40 Just, just looking back then, I'm reminded to ask you, when you do do that would you regard that as being in any way different from lobbying or would you say that that is lobbying?---If I accept that lobbying is not a stigmatised term, that it's not a negative brand, I have no problem calling it lobbying. We're getting into a, into a different issue on semantic area.

What you're essentially trying to do as a, as a part of a private entity, a non-government entity is to change the behaviour, the intention or the actions of government?---I don't know that that's my primary motivation as for example, I - - -

I'm not suggesting there's anything wrong with that, to, let's use moderate, to moderate the behaviour actions or intentions of government?---Mr Gormly, what I'm actually attempting to do in my role is to make sure that, you know, that the regulatory framework in these instances that I've talked about is delivering in our combat that sees an environmental benefit.

All right?---You know, my company, my current employer, for example, benefits from environmental benefits.

10 All right?---There is no, there is not necessarily a conflict there.

THE COMMISSIONER: You're saying that the minister and the people would benefit by all sides of a particular problem, putting your case as forcefully as possible to the minister, so, with as much data as possible, so the minister can decide?---Absolutely, Mr Commissioner. And that is, for example, in relationship to the, the release of schedules of meetings perhaps, whilst again I'm not advocating, I would see that one of the positives or one of the benefits from such a schedule is it would create an onus and an impetus on a minister or a senior public policy decision maker to ensure that they've actually consulted with the widest range of opinions in making their decision. Like if they, if he or she knows that that list will be released in a year's time or two years time and they will be held accountable for everyone that they have met with, it makes sense for them prior to the release of such a list, to make sure that they have met with, you know, all sides of a given issue. Where I see the benefit, it's not just in the transparency, but in the effectiveness of the actual decision makers, they'll be vigorous.

20  
30 The theory of that is the same theory as that which applies to courts of law. The judge has to hear all sides of the story from those who are interested in it?---Yeah.

You want to encourage ministers to behave in the same way?---Yeah, it's, I'll, I'll be a little bit colourful in the conflicts of my current employer, and that is garbage in, garbage out. When there's a limited number of inputs into a decision and they are hasty and they are not fact based, the ultimate decision reflects that. And the (not transcribable) applies. If there is, if there is a process that is robust, evidenced based, widely consultative, taking into account the whole range of interest, you're more likely to get a decision on the part of a minister or other senior decision maker that is much more sustainable.

40 I certainly see the course of what you're saying, but I have not previously seen or heard criticism of a minister for making a decision without consulting widely enough. Or is that something, is that just a limitation on my reading? Is that something that, that happens?---Ministers being criticised for not consulting?

Yes?---I, I, in my own experience have, have worked for ministers who have been very publicly condemned for not taking proper consultations.

Yes, thank you.

MR GORMLY: All right. Now I just want to, two, two last things. First of all, just so I can be clear about your preliminary comments. You, you are someone who agrees with and supports the amendments and the changes brought about the GIPA Act to Freedom of Information. Is that right?---  
10 Yes. It's a very significant and worthwhile form.

Right. And that's because not only does it make getting information easier but it actually positively requires the production of certain information?  
---The, the critical element of the new GIPA Act and the debate that proceeded it is the presumption for the release of government information. As opposed to the (not transcribable) system that existed previously where essentially the onus was on the individual citizen or the individual interested party to go - - -

20 And extract?--- - - - extract or seek that information.

All right. Now, lastly, just taking you back to your role as a chief of staff, you will have seen both persons represented by lobbyists and persons who were not represented by lobbyists endeavouring to put a case or an argument to a minister or to you for that matter - - -?---Yep.

- - - endeavouring to achieve something they want. Did you, would you yourself make an observation that lobbyists did help or did not help in, that is professional lobbyists did help or did not help ministers in the making of  
30 their decisions?---I'll only speak for myself and I would suggest that the interaction that I had with "professional lobbyists" was in the main useful but I think we need to be reasonably sophisticated in, in our thinking here and that is I'm not sure as with lawyers or accountants we can, we can make a blanket rule that professional lobbyists are useful or not useful. It really depends on the individual, his or her skill-set, what they bring to the table in way of evidence, in the way of factuality, in the way of data that I for example wouldn't have necessarily had from public sources.

40 Well, that, that would suggest that professional third-party lobbying would inevitably benefit not just from the deployment of native intuition but training and standards and ongoing education and so forth?---It would and one of the interesting developments of the recent era, and I would say that's five to 10 years, is the development of, for example, professional associations around the lobbyist space, the development of university based education in terms of public policy and, and engagement with, with government. All of those things will serve to, to raise the standard and make sure that it's not just the, the one individual who might be effective

and put forward fact based arguments but that it is a general expectation of the profession.

Well, we've heard a degree of scorn heaped on the lobbyist who is no more than what is described as a door-opener?---Yeah.

10 Compared with lobbyists who do provide data or do, who do participate in the process of persuasion. From your experience and what you saw as a chief of staff where would you say the predominance lay, in door opening or in actual provision of assistance or something else?---Not only in relation to my experience as a chief of staff but, you know, in, in working in the consulting sector and, and in other areas I, I'd almost be tempted to say that the door opener is dead. I'd be hard-pressed to nominate individuals that currently operate primarily using that mode at the moment on the national scene.

20 To what do you put that? Is that because access is easier or because there's no regard for the door opener?---I'd put it to exactly what is the goal of our discussion and that is provisions for transparency and accountability have increased over time, (a), (b) the complexity of government decisions has definitely increased over time and therefore those who are making decisions are more conscious of, you know, essentially not wasting their time with door openers and of seeking out those who can give them some quality inputs for what they need to accomplish.

30 So there's some self-selection going on, the successful lobbyist is the one who is helpful?---Yeah. I mean, I suppose the, the best indicator of that would be the, the comparative profit and loss statements of different outfits around town.

And that would also support the view that lobbying is an activity that would benefit from education, training?---Without a doubt.

THE COMMISSIONER: Of what, some form of professionalization, if that is a word?---Yes, and it would have the dual benefit of removing what we have talked about and that's some of the stigmas associated with the process as well and therefore, the flow-on effect of that is, is that it encourages more and more citizens to actually engage in and participate.

40 MR GORMLY: I'm close to, close to the end here, Mr Shmigel, but firstly, you referred in your opening statement to the Department of Planning Protocol and you appeared to substantially adopt that protocol although you appeared to have a reservation about it, would you accept, and just so that we're clear about that, that is Mr Haddad's requirements the Department of Planning that an officer meet in particular venues, keep notes for a record and always have someone present, that's essentially yet?---It is and I should, for the purpose of this answer also be clear that my current employer does have applications before the Department of Planning.

All right, thank you. I don't see that that creates any conflict but thank you for telling us?---Okay.

10 Would you adopt the view that that kind of protocol is one that could be replicated across the public sector?---I'm not completely expert on the current contents the DOP Protocol but I would have thought that it should just be a norm across all public sector agencies that there are, that there are pretty specific rules in place in terms of saying who you've taken phone  
10 calls from, what the content of conversations was, who the third party witnesses may have been to those, to those conversations, it's just good solid practice and I'm actually kind of surprised that we're even having a discussion around it. I would have thought that it's just a no-brainer in terms of public sector practice.

20 Mr Shmigel, one of, one of the areas that we've heard where it most falls down, if you don't mind my saying, I'm sure it didn't apply to you, is with the chief of staff. We, we have heard that at least in the past the frequency with which lobbyists met ministers and notes were not taken was high,  
20 would you agree with that?---I can't speak for others. Certainly it has always been my practice in any of the roles that I've, that I've occupied in the political advisory ranks to keep records of every meeting where the minister was present.

30 Just normal good business practice?---Yeah. May I say, I think what you touch on is, is why I am, I'm in the position of saying that I think it may well be a good idea to have a uniform sort of values, ethics, code of conduct across government. There, there, there may be, there may be a situation where even though ministerial staffers are formally members of the public  
30 sector, for example, the employees of the Department of Premiers and Cabinet in my case when I was Mr O'Farrell's chief of staff, however, they don't necessarily get to those roles through the normal processes of public service hiring and promotion therefore they have not had the opportunity to be exposed to the values, norms, morals, protocols of "normal" public service. One of the ways to address that is to, you know, have a code that clearly stipulates that whether you are a, a member of a minister's office or whether you are a clerk at the local motor registry, there is a uniform expectation towards you in terms of integrity, honesty and, and procedures,  
40 whether it be record-keeping or anything else.

All right. Now, one last matter. Just back on the Department of Planning Protocol, in your opening statement you endorsed it but said it's not perfect? ---Yeah, I, I, I have had folks comment to me and I accept their commentary that for example, as I understand it, the DOP guidelines don't for example put requirements on agency officers with regard to all meetings but only with those who are considered lobbyists.

Right. Those on the register?---Correct.



So you, you would in fact extend it further to any, any lobbying entity?---In line with my comments about broadening the lobbyist register to, to incorporate all those who may be engaging with government and have a conflict of interest in doing so, potential conflict or a perception of conflict of interest, equally with agency codes. I mean, technical consultancies that engage with the Department of Planning are also seeking to put forward views, evidence, to shape outcomes and policy. So whether you are from URS, an eminent technical consultancy, or, or you are from Parker and  
10 Partners is the one brand name that's come up here, you're still talking to the Department of Planning.

And they're both lobbying?---Indeed they are.

Carrying out exactly the same activity?---Indeed they are.

Indeed potentially you could have a development expert with a registered lobbyist providing technical information, data and views to the Department of Planning and he must disclose himself but an equally qualified person  
20 from a large development company who goes and sees the Department of Planning doesn't become subject to the protocol?---Absolutely. For example there is, there is, there are situations where people who have been members of the political class, former ministers, former ministerial advisors find themselves in the employ of technical consultancies. They ostensibly in their interaction with the Department of Planning or presumably some other agency that has similar codes that use that model will not find themselves swept up.

Thank you very much, Mr Shmigel.  
30

THE COMMISSIONER: You've applied this to large companies which have got in-house departments of what, people who would otherwise be called lobbyists?---As I said earlier I, I personally have no problem at all in in-house lobbyists appearing on whether it's the lobbyists Register or, or within the ambit of agency covers.

Yes, thank you.

MR GORMLY: Do you think it matters, Mr Shmigel, whether the  
40 individual names go on given corporate responsibility and, let's just leave it at that, corporate responsibility. Do you think it really matters which particular employees of that company actually do the lobbying?---It's an interesting question, Mr Gormly.

You understand the reason I'm asking is for practicality on a public register?---Yeah. I, without, without wishing to feel like I'm evading your question I actually think it's one left to the lawyers in terms of who is

ultimately liable for the representations made on behalf of a company, the individual - - -

THE COMMISSIONER: We're not talking about liability so much here as transparency?---I can see that there is benefit from individual names appearing in public disclosures in terms of transparency and accountability. I can see disbenefit in the sense that it may provide a disincentive for certain individuals to take employment with certain companies.

10 MR GORMLY: Do you think it's an essential component of transparency that not only would you name a company X Limited but that you will also put in the staff that are going to be making the contact?---Yeah, what's good for the goose is good for the gander. If we require professional public, professional lobbyist organisations to list their individual employees as part of disclosure protocols you would've thought that the same rule applies to, to major corporations.

20 On one view if you have registered lobbyists that are in a corporate form and they can be identifiable, tracked down and contact details provided you may not need the names of the individual lobbyists with the lobbying company either. Do you agree?---Yeah, you could argue it the other way as well.

Thank you, Commissioner.

THE COMMISSIONER: Mr Shmigel, thank you so much for coming and giving us the benefit of your experience, it's been very stimulating and helpful?---Thank you, Mr Commissioner, and all the best for the inquiry.

30

**THE WITNESS EXCUSED**

**[11.24am]**

THE COMMISSIONER: Mr Gormly, it's up to you whether you want to call the next witness or you want to - - -

MR GORMLY: Can I just check with Mr McKibbin? Commissioner, I'd be grateful for a short break.

40 THE COMMISSIONER: Yes. Ten minutes?

MR GORMLY: Yes, thank you.

THE COMMISSIONER: Very well.

**SHORT ADJOURNMENT**

**[11.24am]**

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

MR McKIBBIN: Commissioner, under oath, if that pleases the court.

THE COMMISSIONER: Can you swear in Mr McKibbin in, please.

MR GORMLY: Mr McKibbin your full name is?---Timothy Patrick McKibbin.

Right. You're currently the Chief Executive Officer of the Real Estate Institute of New South Wales. Is that right?---That's correct.

- 10 I think you were a lawyer originally by training and I think many years having worked in a multi-disciplinary accounting and law firm in Broken Hill for a long time . Is that right?---That's correct.

That's where you were born?---That's correct.

And I think you've been with the Real Estate Institute since 2004, first as legal counsel and, and now in your current position as Chief Executive? ---That's correct.

- 20 Right. Can you just give us a slight indication first of the size of the Real Estate Institute, the number of members?---The membership is a little different to, I suppose standard organisations. We, the Law Society by way of comparison has individual membership, we have firms. So typically a firm in, in High Street of a suburb would be the member. So we have - - -

THE COMMISSIONER: A firm of what?---I'm sorry?

A firm of what?---A firm, the, sorry, for example - - -

- 30 MR GORMLY: Of real estate agents?---Yes.

THE COMMISSIONER: Of real estate agents?---Yeah. The agency itself, Commissioner, would, would be the, would be the member. So ABC Pty Limited trading as - - -

Right?---LJ Hooker in High Street of a suburb would be the member. And then underneath that there would be a number of employees which we also have a relationship with.

- 40 MR GORMLY: All right. So you list, you list the company but you also list the registered real estate agents. Is that right?---That's correct. So, so I guess for those who are a bit more familiar with the legal environment, if the Law Society was to say that Allens would be the member and then all the employees would hang underneath that.

Right?---So just a different membership structure. See we have about 80 per cent of the agencies in New South Wales as members. And then

obviously, you know, we have a relationship with all of the people who are associated with those agencies.

Right?—The balance, the remaining 20 per cent, and Mr Gormly, they're obviously rough numbers, we have a relationship with through a variety of services we provide, training and other products and services.

Right. So do you run the registration courses?---Yes, we do.

10 Right. Now franchising is a very big component of the real estate industry. Do you have as members an entire franchise like LJ Hooker or do you have the individual offices?---The individual offices.

Right?---Each decision is made to be a member or to decline that, the opportunities made by the office itself.

Right. Thank you. So are you able to say how many members there are, member firms?---As I said to you, it's approximately 80 per cent of the total market. There are around about 25 to 30,000 real estate agents in New  
20 South Wales, registered with the Office of Fair Trading. So again, we, we would impact directly with about 80 per cent of those agents.

So probably about 18 or 20, 000 members?---Yeah, yeah, around - - -

In that area?---Again, membership, as I said to you at the outset is a little, is a little difficult to, to deal with.

I'm not, I'm not seeking a precise number, Mr McKibbin. You've got a very large number of members, in the tens of thousands?---Yeah. Yeah.  
30

Yes. All right. Now I think the Real Estate Institute is a body quite apart from its educational role, it's also a lobbying body. Is that correct?---That's correct.

Right. And the Institute is in, would it be fair to say, regular contact with government?---Continuous, I think is probably - - -

Continuous. Right?---Yeah. I mean there are always issues that, that arise, that we are in, I suppose, in lobbying mode, if I can be excused for that  
40 expression. As late as yesterday I was expressing a view in the, in the Financial Review. I had a letter published there, so I don't need to look any further back over my shoulder in the one day.

THE COMMISSIONER: There's a difference of course between expressing your views to the media and expressing your views directly to government or the bureaucracy?---I think the media is probably a tool that we use to express those views.

Yes. I have, I have learnt that in this, in this inquiry, that, that the media is a tool that many organisations use for their purpose. But how often do you speak to the government or to the bureaucracy?---Regularly, I think. I mean it would be, I've had a meeting last week with the Office of Fair Trading, for example.

10 On a weekly basis?---Probably not weekly, but I don't think there would be a month go by where we wouldn't have some meeting. I think, I think it would be greater than monthly. And that, and that would include obviously either the minister at the ministers office or the regulator.

Right.

MR GORMLY: And I think you're also regularly in touch with other bodies, for example, the Law Society, I think that the Real Estate Institute and the Law Society are the joint owners of the copyright of the standard Forms of Property and Business Contract. Is that correct?---That's correct.

20 Right. Now Mr McKibbin, is there some preliminary statement that you wish to make?---Only in relation to my appearance here today, Mr Gormly. I, that's as a result of an informal conversation that you and I had in my office. Following that, I think you determined I could be of some assistance to, to this inquiry and to the Commission, I appear here today voluntarily and by way of assistance.

Good. All right.

30 THE COMMISSIONER: So has everyone else, Mr McKibbin. No one has come here under summons?---Thank you.

MR GORMLY: Mr McKibbin, can you tell us prior to becoming the Chief Executive Officer when you were in your legal counsel role for the Institute, did you have any lobbying role?---No. No, I came to I guess the CEO's position and to a lesser extent when I was legal counsel without any experience whatsoever in guess influencing legislative outcomes.

So it's been a new task?---A steep learning curve I might - - -

40 All right. So how long have you been doing it now, when did you start? ---I've been, I suppose I, I had something of an introduction into, into this area as legal counsel so I was involved in looking at bills and then looking at what the, say a redraft might look like to bring about what we would've considered a more favourable outcome for the industry, the profession, the consumers and then - - -

You saw it happening but you weren't taking part in it?---I was, I was supportive of the then CEO so I would attend some meetings and add some

value to representations that was being made on those occasions. So I did have I suppose fortunately something of an apprenticeship.

Right. And was your previous CEO an active lobbyist?---I think - - -

I should say experienced in the field of putting the views of the institute to government?---I, I don't think that his experience was any greater than my own, I suppose it might be a better question put to him but I think he came through the ranks as I did as far as on the job learning in, in, in respect of  
10 getting a position across to government.

And is it something you can learn?---I think we could all learn, we can learn anything really I suppose, there must be some exceptions but it is, it is an area that I think is becoming an area for experts, I think I'm learning that. Like so many other things in our life now we, we just can't be a generalist in these things and we're certainly looking at that aspect as well, whether or not it is, I'm doing justice to the lobbying function as CEO and whether or not what I should be doing is looking to outsource that or bring it under roof as a, as a function of the, of the institute. And that's, that's the investigation  
20 we're undertaking as we speak.

All right. So over the period that you have been CEO now how many years, sorry, I just need to get that?---Bordering on three.

Three years. All right. Over that period of three years how have you undertaken or how have you investigated what you do to lobby and what assistance have you drawn on to do the lobbying?---Again as I suppose I alluded to earlier I came to the lobbying side of it I guess as something of a  
30 novice or as a complete novice. I had a legal background so I had some knowledge or formulating argument but it was the, I think where my early attempts to do this fell down was in knowing how to get the information onto the desk of the right person who, the decision maker if you will and who the decision maker was. In our earlier days with press releases we would spend a lot of time making sure that the commas were in the right spot and the spelling was correct as all lawyers would do and had that eye for detail only to put the document into the, into the public domain to find that no one picked it up. So we ultimately outsourced that to a professional body who continues to service those needs and that particular body has  
40 relationships with the various media outlets so therefore our, our media, our press releases are able to get onto the desk of those people who will, will at least read them now and they may not take them up.

Can you tell us a bit more about the detail of that? You can use names so far as, I know I've warned you about not using names, that's in adverse circumstances but don't hesitate to use names if it assists you in telling us the story of using external assistance?---The organisation we currently use is Perception Partners and the gentleman that I directly interact there is Julian Brophy. Now, he joined, worked for Mr Refshauge, at least one of his roles

I think he's also had some media experience with some, I think it may have been radio and/or television.

10 He's been a radio personality at some stage?---Yeah, yeah. So he, and as I said to you earlier I think this was something that I discovered, it was an area for experts so our attempts to get our message into the public domain to have, I guess the broader community, the public to consider our views was failing because even though we would put it out on what is termed the wire nobody read it. So what we discovered was that to get our message out there we had to be in, in that, that, dealing with that group of people whose message get through.

Right?---Otherwise you get - - -

20 So once you started to use this, this service, what was, anyway Mr Brophy's service, was there a change in the ability of the Institute to get its message out?---Immediately, yes. They, our documents would or our press releases would get onto the desk of the various news offices, radio in particular and then, and then television and the newspapers. They would all, they were picking our stories up and it was a, the transformation was overnight so it demonstrated very clearly to us is that unless you have somebody who has those relationships and it's no different to any other facet of business, I suppose, is that you spend a lot of time forging business relationships and this I don't think is any different. Mr Brophy's business is having a relationship with the media and our message through Mr Brophy was going out far more effectively.

30 Yes. Well, what would you say to the proposition that, that's the message that needs to get out and if you put it out so to speak on the wires what, and you can't get the message read but Mr Brophy can, that it's not the message that's going out, it's Mr Brophy's relationship that's making the difference. Well, what do you say to that?---The message, the message, I don't think changed markedly. We had, I've, we initially also employed another organisation to provide us with some media training prior to Mr Brophy so to try and I guess make our, our message a little, into bite-sizes so that the, it had some more appeal. I mean, I think there's a bit of skill in that as well.

40 All right?---And, and one of the things I think we also learnt was writing dissertations, it wasn't, it wasn't of interest to, to the media outlets.

You mean a long, well-reasoned document is not of interest?---Exactly, which, which I think is always something that lawyers will retreat into doing but, so we had to learn how to get our message into, into bite-sizes, I think the, I think the media refer to them as grabs so that you can get these grabs into your media release so we, we took some, some education on that.

Right. So it was wasn't just a question of relationship, it was a question of the way the message was framed as well?---Yes, very much so, to, to make



sure that it was, it was, you know, I don't really want to call it headlines but to make sure that the message was succinct and relevant.

And did, did Mr Brophy assist with that process as well or was that all the price of - - -?---No, he certainly has added some value to, to the message in that respect as well.

10 Is it your understanding that that kind of service is easily available?---We, we put the, we put it out to, to tend for the contract and we interviewed a couple of people. I think so, I think there are, there are a variety of, of organisations out there that provide that service, yeah.

And has your use of that service then expanded beyond just putting out media releases or things to the media?---Yes, I suppose (not transcribable) the media's a complex area and there's sometimes, and it is, as I said to the Commissioner, it is something that I think is a tool to, to get your message out there and there are times when you use that tool and there are times when I suppose you don't wish to participate in a particular discussion, we take advice on that.

20

Right. Take advice from?---I take advice internally, I take advice is what I'm saying, is this an issue that is in our, in our interest to participate in, in our greater strategy or, or not.

Now, are you putting those things out there in the media with a view to them going to the public or with a view to them going to government or to government via the public or what do you have in mind there?---I, I suppose the, the answer to that is, is on some occasions, all of the above on other occasions. We have adopted a far more structured approach to, to our media. As I said, we've, we've evolved as an organisation in this area. Very recently we released a tax policy and that took quite a lot of development, that, that was conducted in-house and with some external experts in that particular so we, so that the tax policy now has been developed, that tax policy is, is about two and a bit pages long, now, that's quite succinct but it's supported with some annexures so when you read the tax policy if you are minded to, to question the, the position taken within the policy then there are supporting documents that come underneath it. So the various - - -

30

40 This is about the taxation of real estate I take it?---Yeah, across, across the three areas of government so that it, it impacts on all of it. Now, we advanced that particular policy development because of the current state of the, the election, the federal election so that we could be heard on that issue and, and from that particular policy now, that particular policy document, our press release has come out so it's a consistent, a consistent approach through that.

Right?---And, and we have, we have served copies of, of that particular policy on I think Mr Hockey's office and Ms Plibersek's office.

Right. All right. Now, what, what about direct approaches to government. I, I take it that you or your office will, well, you've said you periodically see the minister. Do you see other levels of government as well?---Since I've been CEO I've met with the Premier I think on one or two occasions, not the current premier but previous premier, the, and also the, Mr O'Farrell on a couple of occasions, his chief of staff, a variety of ministers and also  
10 shadow ministers, senior officials in the Office of Fair Trading. I have had one invitation to go down to Canberra and meet with Mr Turnbull when he was then the leader of the opposition, that's probably the highlights I think.

What about contact say with directors general of departments other than Fair Trading?---No, Fair Trading is our, is our main one. I wouldn't say it's exclusive but - - -

It's the principal department you're in touch with?---Yeah, it'd be the principal department but we do have some interaction with the Department  
20 of Lands as well.

What, what about chiefs of staff of ministers? Have you had many dealings with them?---Yeah. We would normally, if we, if we want to I guess instigate a meeting with the minister then we would go through the chief of staff, we'd make contact with the chief of staff and the chief of staff would typically ask us to give some details of it, agendas would be set so it would be, it would be, there'd be full understanding what the minister was going to be asked on the day.

30 Would there be an exchange of letters beforehand?---Not always but regularly there would be, it would be quite common for us to have an agenda and to set out exactly what it is. You know, it could be the case that we would send our, our media release that we, we have released or intend to release on a particular issue down to, down to the chief of staff and/or, and/or the minister but I don't, I don't think there's any, from our point of view it's not, it's not completely locked in stone about how we go about these things, it really is an issue by issue basis.

40 And do you go alone or do you take a lobbyist with you?---There is no lobbyist in, in the Institute other than myself. If I meet with them I can sometimes go alone, sometimes I go, by way of example, with the Institute's legal counsel. It could also be the case that we would take with us experts from that particular facet of practice, again by way of some example, the Residential Tenancies Act was only just legislated back in June of this year and now there's the development of the regulation which will sit underneath that and we've been heavily involved in, in, in that particular document. We'd like to think that we influenced the outcome of, and might I say positively influenced the outcome of that particular legislative instrument

and are currently involved in providing value, again I'd like to think it's value, into the development of the regulation.

Right. Would you consider using an external professional lobbyist for your contact with government? Have you considered it?---As I said, I think earlier in the, in the discussion we, we are in the process now of considering the value of that. We've learned I suppose in the media area that, that the media, that an expert in that area can deliver our message more effectively into, into the media market and therefore into the public domain for discussion and a professional lobbyist again, it's, I guess we're living in a more and more complex world, it's maybe something that my skill-set, my training doesn't respond to and in properly, properly representing the members I think it's something we have to consider.

But just - - -

THE COMMISSIONER: Sorry, Mr Gormly, when you said you went with legal counsel, you mean in-house legal counsel?---Yes.

20 MR GORMLY: It doesn't sound as though you have trouble getting access to ministers when you want it, is that correct?---I've been, we've been refused, I've, I mean, again, it's a variety of, if you'll excuse a colloquial expression, a variety of war stories. I mean, sometimes they've said it's, it's not on our agenda, we, we don't wish to speak to you on the issue, sometimes we don't even get a response, other times, you know, to letters, I've had just silence. So I don't think it's, I can say to you it's always been a two-lane highway into the minister's office.

30 Sure?---It's never been that easy.

All right. But, so, so to some extent they're picking and choosing the issues about which they will see you?---Yes, very much so.

Do you think - - -?---And, and, and Mr Gormly, I suppose and we, you know, we, we, we certainly would be told when, when the minister would be free.

40 Right. So it's not a question of, of the coordination of diary convenience. You're, you're told are you?---The minister, the ministers are not surprisingly far busier than we are.

Sure?---And their officers are far busier so we, we would always move our diaries around to fit in with the ministers.

Right. And when you do meet how long will the meetings last? Is there a typical period?---No. No, I don't really think I can give a general answer to that. I mean, depending on the issues, we've had, the number of people that could be there could be, could be many. In the last meeting I had with the

Minister for Fair Trading leading into the development of the, the Residential Tenancies Act, there was, you know, a cast of thousands there, if I (not transcribable) that. Each person bringing a variety of expertise and, and had obviously been involved in the development of, of that document.

Right. We've heard that sometimes a minister will come in, meet the people involved and then leave, leaving the balance of the meeting to a chief of staff or to someone else, a department officer. Has that occurred with you?  
---Yes, quite regularly.

10

Right. Do you have any problem with that?---No, I mean, I again, I think the, you know, the minister is, is probably charged with overseeing an outcome of policy direction and they have tools to achieve that outcome. Now, some of those tools they, they bring in on the day. I don't, I don't have a problem with that. I think the minister, the minister sits above all of that. And like all of us, the minister, various ministers accept they don't have the skill set right across the board, so they employ people to, to achieve those outcomes.

20 Right. All right. Have you been contacted by ministerial officers to come to meetings uninitiated by you?---Oh, yes, regularly.

Right. They ring you up and ask you to come in?---Yeah, yeah. That, that happens quite regularly. If there is to be an announcement on a particular area, we would regularly be briefed about it because the reality of it is that following the announcement, there would be a meeting and I think that the minister's office wants to give this opportunity to be able to respond. So we would be confidentially briefed on, on an announcement that's, that's - - -

30 By the minister or by someone on his or her (not transcribable)?---Oh, both. It could be both.

Right?---And I mean and that, and that can be via way of meeting, it could be via way of a document that's provided to us, by way of a press release or something like that that is embargoed, just letting us know that this is coming out.

40 Right. When you do meet with ministers or senior, let's start with ministers, at your request. Have you noticed whether notes are taken by anyone on the ministerial side?---Always. Yeah, always. It would always be the case that somebody in the ministers office would be taking notes, either the Chief of Staff or somebody brought along specifically to, to take notes for that, that meeting.

Does your side take notes?---Yes.

Right. So would you attend a meeting alone or would you generally take someone with you?---Generally I'd have somebody with me. But I have, I have attended them on my own.

Okay. Now, Mr McKibbin, at the moment your body and bodies like yours, that is in effect a peak body. Would you accept that as a description, a peak body?---Yes, I think that's accurate.

10 Do not have to be registered on the register of lobbyists for New South Wales. Would you think that your body would have any objection to being listed on a register of interests that meet with and lobby government with a view to influencing decisions of legislation?---I suppose it's a question for my board. It's not one that I can, I can answer. I'd only be second guessing them, but from what I have seen and heard of this inquiry and from what I can gain as to the direction of what's going, where it's heading, I don't think we'll be - - -

THE COMMISSIONER: I wish you'd tell me what the direction is?

20 MR GORMLY: And some (not transcribable) questions, yes?---At the risk of writing your conclusions, Commissioner, I suppose, I suppose from what I can, as a, as a, just a member of society looking at the various media on, on this Commission to date, it appears that, to respond to consumer concerns about lobbying that you are looking to be, to have a mechanism for transparency, unless I misunderstand - - -

THE COMMISSIONER: Well, that's clear. That is so?---Yeah. So - - -

30 If you put it that way, that's in general terms, that's correct?---We are, we are a non-profit organisation, the Institute itself, so whatever gains that we achieve we achieve for our membership as a whole. And I think we're different to some other bodies who may be lobbying for their own financial gain personally. So I think there probably can be a distinction drawn between those bodies who lobby for themselves to those bodies who lobby for a greater group. It's a question for yourself, obviously but - - -

Sure?---I can draw that distinction.

40 THE COMMISSIONER: What, what is the distinction?---Well I think if I, if I appear and I lobby for my own personal gain, then, then there's something in it for me. Whereas if I lobby on behalf of a series of external bodies as I do, some 2,400 real estate agents and all the people that are employed there, then there's nothing in it specifically or directly for my organisation, other than the, the dying gratitude of all the people I represent.

Well, the cynic in me will tell me that's a powerful incentive?---It's a powerful incentive, but somewhat indirect, Commissioner. I suppose powerful incentive to, to support my organisation if I am successful.

To do a good job at the very least?---Mmm. If, if we are successful and that then it adds value to our membership proposition. But I think it is a personal view.

And to your CV?---To my personal CV?

Yes?---Yes, yeah. There's nothing wrong with being attached with successes, no.

10

No. So what's the difference?---Well - - -

Is it the money?---Well, I suppose one is, one is - - -

Ones personal acquisition of wealth?---One is direct, one is indirect. That's the distinction I draw.

20

And, and, and what follows from that distinction do you say?---Well, I guess, as I said to you, one is direct, so if you, if you lobby on, on behalf of yourself or your entity, specifically, and that entity then as a consequence of successful lobbying receives financial gain from that, then that's a direct benefit. Whereas our, our organisation - - -

30

I understand that Mr McKibbin, I'm sorry, what I'm really asking is accepting that distinction, what do you say follows from that from a point of view of registration as a lobbyist?---I don't know that I'm making that point. I guess the point that I'm making is the distinction, that I can see a distinction between whether or not there is a requirement to capture both of those bodies in a registration scheme is a, is a question I suppose yet to be answers. But from my point of view I can see a distinction between those two bodies.

40

(not transcribable) accepting that distinction, what do you say is the relevance of that distinction for this Commission?---I suppose the relevance of it is that a body that, that represents a far broader range of, of people rather than just themselves lobbies for a change of an environment that will enable that broader group to prosper. So if I am successful in my lobbying functions all I can say to my members is, I have improved the regulatory environment in which you operate. Now that does not guarantee you prosperity, it just means that you have a better environment to operate in. And I have to say to them, well from then on, best of luck to you.

Yes. And therefore what's that relevance to the Commission?---I'm sorry, I'm not sure I'm following your question.

Well, we're asking, we're interested in, obviously we're interested in whether there should be some form of registration applicable to people who lobby but who are not registered lobbyists, including people who, who are

or including corporate entities such as yours. And the question you're being asked whether you have any objection to being, for your organisation to be required to be registered?---I, I guess the answer to your question, I think I said that it wasn't, it wasn't an answer I could give, it would be a question for my board, whether there would be an objection.

In my (not transcribable) whenever you ask counsel a difficult question he says I need instructions?---I really don't, possibly.

10 I think that you know probably, what is your personal opinion?---My personal view, I don't have any problem with being, being on a register at all. But, but I just don't think it's appropriate that I would commit, commit  
- - -

I understand - - ?---my organisation. But my personal view is I have no problem.

20 I'm not asking you to?---I don't know whether I've made my, made my point clearly, but I, I personally can see a distinction between somebody who puts their hand up for themselves. Maybe if I do this by way of example. I'm currently lobbying for a reduction in Section 94 contributions that are, that are put out - - -

This is infrastructure payments?---Infrastructure. Now, if I'm successful the institute itself, my body won't benefit at all, my members on the other hand will enjoy I guess a relaxation of the costs associated with that which will make the property industry more vibrant which will improve their life. And that's essentially - - -

30 THE COMMISSIONER: They might get more money, they'll sell more and make higher commissions?---They will be able to respond to the housing crisis.

Yes.

MR GORMLY: All right?---If the, if the suggestion is that real estate agents wish to live in a vibrant and prosperous community then you (not transcribable) into a corner we do.

40 All right. Now, Mr McKibbin, does your institute, and if you find this question embarrassing in some way please say so but does your institute have a view or a policy about the making of political donations by the institute itself?---We, we have, to the best of my knowledge, certainly in my time there and to, all history that I've ever been involved we have never made a political donation at all. We are an apolitical organisation, we make that, that position continuously public. The closest we would've ever come to doing, making a political donation may have been to attend a dinner or something along those lines where it would've cost us a ticket to attend a,

function. We more than likely would have attended that because of the particular topic that would've been involved I would've thought. So I suppose the short answer to your question is we don't have a policy and we don't make political donations.

Have you felt disadvantaged by not making political donations?---No.

10 All right. Have you felt as though you've ever needed to make a donation or order to attract attention or to get the attention of government to a problem that you might have?---No, I've never, I've never felt that.

All right. Now, as to the fundraising functions that you've attended have you found them of value?---I, I, I've never attended one, a fundraising function I, I, I, I said that the closest we would've ever come would've been to have attended something along those lines. I can't think in my three years that I've ever attended a function for a political party specifically.

20 There's a practice that you will not doubt know about in New South Wales and perhaps, well, obviously elsewhere where ministers will make themselves available for a lunch or a dinner so that people can talk to them, have firsthand contact but there may be a fee greater than the cost of the meal which is understood by everyone to be in effect a donation to the party. If a function of that type were to be offered to you or to other executive members of your body and the topic that the minister may be addressing at the lunch meeting was one of connection with your members of use or of value to your institute would you hesitate to attend because there was a donation attached to the event or not?---I suppose it would all depend on the price of the dinner or the lunch as the case may be and my likelihood of being able to speak to the person involved. I mean it would have to be something I'd assess on the day. We typically don't do that and haven't. I suggested to you in earlier discussion that that would be the only time that we would ever have done that, certainly in my tenure there that hasn't been the case. I have attended functions run by other organisations where ministers have spoken. So CEDA would be a good example where I've gone along to one of their functions when - - -

30 CEDA?---I think it would be CEDA isn't it? I think that's the organisation.

40 What do they do?---They hold various functions like this. If I've got the wrong - - -

I understand?---If I've got the wrong acronym I'll track it down.

All right?---I have attended, I have attended their functions and when there's been a minister or some other senior bureaucrat speaking on a topic that relates to my organisation.



Right. Okay. I think the essential point I'm trying to get at is do you think that your organisation would object to your attendance if there was a fee attached which was a party donation? I know you can't speak for the organisation at the moment so I suppose I'm asking for your opinion about that. I'd second-guessing, I mean I think they would have a major problem if there was thousands of dollars attached to it. Normally these things are not transparent, the lunch would be in the, in the, in, or the dinner would be in the vicinity of the hundreds of dollars and I suppose you have to assess that against what sort of outcomes you would get. It's not a problem we've ever, or an issue, I'm saying it's a problem, it's not an issue we've ever faced or that I haven't faced in my time there but all of our lobbying, all of our representations have been done in the minister's office or in the bureaucrat's office. We, we haven't had any, any lobbying in that social environment.

All right. Do you think, just moving to another area now, Mr McKibbin. Do you think that your body would be disadvantaged if access to a minister were to be cut off or limited in some way? Do you regard access to ministers as a value?---Very much so, yes, yes. Being able to put a case to, to the person who will make the decision as to what the particular regulatory environment will look like I think it's essential for the community.

Do you regard oral access to the minister as important as distinct from perhaps putting a written case, that is, meeting and talking?---I think, I think there's a combination of the two. I mean typically what we would do is put, as I said to you earlier, we would send something through to the minister and then, and then meet with the minister or the senior bureaucrat and speak to the document. These things often require a lot of discussion because they are complex and it is very difficult to I guess go through, you know, the, the recently Residential Tenancies Act was, was wide sweeping changes in there and that particular document was drafted by parliamentary council not surprisingly at a direction of the minister in the senior bureaucrat's office. Now, that's, that's carrying out a policy outcome. Now, the value I think we add to this is to be able to say to those involved in the development of that document this will be repercussions of that at the coalface. So if you do that have you thought about this. And then that doesn't change I suppose, in some respects doesn't change the policy outcome what they're trying to achieve but it may change the way in which they go about it because that will better achieve their outcome.

But being able to speak to the minister, face to face contact is, you would regard as a critical part?---I think it's valuable, yes.

Yes. All right. Do you regard having a personal relationship, that is, to be recognised by the minister as a value to your organisation having met him or her?---I don't think that our, again in my experience I haven't actually had interaction with ministers or again senior bureaucrats to the extent that I

would count them amongst personal friends, we just haven't had that interaction. So I really, I don't know that I can answer that question.

10 All right. When I say relationship I'm not so much speaking of friendship as simply that the minister will know who you are when he or she comes into the room?---I, I don't know, I don't know if this answers your question but certainly being, being a credible individual in the eyes of the minister or the senior bureaucrat is something that we would always aspire to being somebody who adds value to the discussion, someone who adds data and knowledge to the, to the discussion is something that we would aspire to and being regarded as an organisation that does that.

All right. Your view about that wouldn't differ depending on whether you were talking to the minister or a director-general of the department?---No, no, if I understand your question correctly it wouldn't differ. I mean we, we, we would like to be considered as an organisation that adds value to the discussion and that's the reason that we are invited to participate in these discussions because we do have that expertise in the field.

20 Two other matters, Mr McKibbin. Firstly, you've told us how your organisation is giving some thought to whether or not it might use the expertise of a professional lobbyist as needs arise. Are you able to tell us anything, well, so far the way you've put that is to say that government is complex, they have areas of expertise that would be of assistance to you and it's difficult for someone in, in the position of your body to maintain that level of expertise? Do you take the view that the relationships that a professional third party lobbyist might have by reason of their work or prior political associations is something that would be of value to your organisation?---Yeah, yes, I think so. I think that, I think that's, that's the answer to your question, actually. I think you probably answered your own question. I think that you, somebody who has those, has built those relationships into, into the various bodies, have built those relationships through credibility, through representing issues that have merit, can then pick up an issue that we have. And I guess I'd be looking for that organisation to say well maybe, maybe we wouldn't pick your issue up or we wouldn't pick this issue up because we don't think it adds to the relationship we have.

40 They're two different things aren't they? There's the, the body of knowledge and expertise about policy and government processes on the one hand and relationships on the other. You're saying that you would value both?---Yes.

All right?---It, it, there's seems to be little point in developing a, a very good message if that message doesn't get through to the decision maker. So I mean, you, you play in the game that where the rules are so if we do need to get through to those people and, and as I said, I'm considering whether or not we are as effective as we could be and whether or not a professional

lobbyist is something that we need to, to employ. We continually day by day - - -

All right?---live in a more specialised field.

10 I understand. I understand that. So the last thing is, back to the register, Mr McKibbin, just briefly. Let's assume that your institute as a regular lobbyist of government is required to go on a register, a public register so that the public can know who was stepping over the line from non-government to government, that is that those who approach government must declare themselves. Let's assume we have a register for that purpose. If the register were one that was a self-registration system, by which I mean you have, for example, a password that enables you to access the register in the interest of your body to enter or correct details on the register, would you consider it to be likely to be onerous or difficult if you had to insert in the register, as a self-registration act, not just the entity, the Real Estate Institute of New South Wales and contact details perhaps, but also firstly the names of the personnel in your organisation who made contact with government officers, by which I mean ministers, ministerial staff or perhaps a designated rank of departmental staff, Director General or someone close to him or her? And secondly, the date of meetings and the identity of the meetings that your body had with government representatives? I know I've put a complex question there, can we deal with the first category first. If there's self-registration online would you consider that it was likely to be onerous for you to have to insert the names of personnel?---I suppose it's another way of bureaucracy and obviously we would, like so many other organisations, look to avoid any additional bureaucracy in our life.

30 Of course?---It's something we're doing when we're not doing other, other tasks. So if we can avoid that we would. However, as far as, and I'm not sure if this goes to the heart of your question, as far as transparency as to who is making representations, what those representations are, the content of the meetings, we wouldn't raise any objection to that. We, our process is, is very transparent now, our, as I said to you about our tax policies I spoke to you earlier. It's released its public document, that's where we stand. That's the, that's the position we, we take to the public. That's the position we'll take to the minister.

40 What is your opinion about whether putting staff members on as well as the name of the overriding entity, Real Estate Institute of New South Wales adds to transparency? Do you think it does or does not? You've got the name of the institute, do you need the names of the staff members?---I'm struggling to see in our, in our organisation circumstances where, where there'd be anything achieved, but I wouldn't resist it. The, the, I guess I'm looking, I'm more concerned about the, the hours and the time associated with compliance with another layer of regulatory - - -

Sure?---That, that would trouble me. And, and also the potential for

somebody to fail to dot an I and cross a T in that and then, and then there'd be some, some inference drawn from that failure. That, again, that would trouble me as well.

Of course. So if a meeting was overlooked, it becomes a secret meeting? ---Exactly, and then one inference should be drawn from that and then where are we and I mean that, that, that would trouble me. But the principal of, as I said, the principal of complete transparency about what we're doing and how we're going about it, I, I would welcome that and don't resist it.

10

Right. I take it that nobody in your Institute and I assume probably nobody in any peak body is going to be making representations to government without the authority of the body itself. Is that true of your body?---Correct.

Right?---Well, all, all of our policy is, is derived through consultation throughout a broader membership and then is refined and then approved by the board and then we take it out. So it goes through quite a complex, arduous task.

20

Right. If you're, you're making a representation to, to government and the body that appears on the register is the Real Estate Institute of New South Wales presumably it can always be tracked back to you, that is statements made in a meeting can be tracked back to you anyway?---When you say you are you referring to my organisation or me personally?

No, you personally?---If, if I'm, if I'm making a statement that bears the Real Estate Institute of New South Wales, if I make that as CEO then, then that, that statement belongs to the Institute.

30

Of course?---It's not my statement. It is, it is, it will belong to the Institute and if tracked back through the system it would find its way back into a policy that has been considered and signed off by the board.

But if you were trying to find out who's lobbying a minister and you wanted to know that it was happening so that it was in effect a public rather than a private event, the entity that's of interest is the Real Estate Institute rather than Tim McKibbin?---Correct. I'm, I'm, I am merely a, a tool to achieve the outcome of the Institute.

40

Right. Just on the practicalities, Mr McKibbin, if as I understand it, if you're meeting somewhere between, between once a week and once a month with a, a government officer or member of the executive, a minister, chief of staff or director general or other member of a department, we're really only talking about 20, 20 to 30 meetings per year, is that right?---Yes, I wouldn't thought it would have exceeded 30, I'd be surprised if that was the case, although, although having said that my, the Institute is represented by more people other than me so 30, 30 could be the number.

If there were a self, a self-data entry system would you consider it onerous to list the date and identity of persons met by the Institute over a one year period, so you're opening the database, entering the password, moving to a, moving the cursor to a key entry point and then you enter in the name of the person seen and the date that the person was seen?---It's only onerous to the extent, as I said earlier, it's another level - - -

10 It's just more time?---It's just, it's just something else we have to do in our, in our day and obviously if I can avoid another regulatory obligation that, that, and with respect doesn't bring any tangible benefits to, to my organisation it's something I'd rather avoid. However, I can accept that community confidence in the transparency of the process so we'd be, we would be supportive of it. I simply ask that it be as simple to comply with as possible.

20 Sure?---I guess I would have some concern if it was, if it was something that had to be noted before any meeting went along because sometimes we may only be given hours of a meeting and, and we would drop everything else we're doing to get ready for that particular meeting, sometimes, you know, a good example would be the ad valorem, a fee, a feel level or tax - - -

THE COMMISSIONER: I don't think it's suggested that it would be before?---Okay. Because, I mean, we were given zero warning of that before we, we started seeking meetings.

30 MR GORMLY: Sure. Mr, Mr McKibbin, I take it from what you've been saying that, that you don't have any particular objection to the contents of your meetings being publicly disclosed but we have generally heard that, a reluctance to have that occur. Can you yourself see reasons for that?---I'm second-guessing other people's reasons for that.

40 It hasn't arisen for you?---No, no. I mean, as I said to you, and I guess it may harp back to my earlier position talking about our organisation distinct from a body that lobbies for themselves, we, we lobby on behalf of the, of the profession and the industry so our position is, is quite public to start out with so our representations to the minister and to senior bureaucrats we wouldn't resist that being made public. In fact, in fact, we regularly, if not, if not on all occasions, make our position public anyway. So our, our, our, we would have a media release about our position prior to meeting the minister or, or thereafter.

All right. Well, just there's one last matter then. So I'm asking your opinion about this, Mr McKibbin. If you were required to self-register the date and fact of a meeting but not its contents in any way would you adopt the view that that might assist transparency in overcoming the scepticism about lobbying?---I suppose the, it has to I suppose. It would be reality if, if the public can get access to who attended the meeting, the content of that

meeting then, then the confidence that the process was, had integrity I suppose has got to be supported by, by information.

Well, I'm not even suggesting that the individuals that attend the meeting would be registered just the interest, that is, Real Estate Institute of Australia or a particular corporation with in-house lobbyists or a professional third party lobbyist who names their client that's the sort of registration I'm suggesting to you. You think that would assist with transparency?---Again I suppose I'm repeating myself but if it would, I think it would if you, if the public could see the process transparently what was happening and why from our lobbying efforts we, we wouldn't see any impediment to what we do through that process other than I've said just the, the bit that concerns me is the regulatory burden.

All right?---Or the red tape burden may be a better word.

THE COMMISSIONER: Thank you, Mr McKibbin. Thank you for coming in - - -?---Pleasure, Commissioner, I hope I've been of some assistance.

20 - - - (not transcribable). Thank you, you have.

**THE WITNESS EXCUSED**

**[12.33pm]**

MR GORMLY: All right. Commissioner, our last witness of the day is Mr Chaney but I haven't had an opportunity to speak to him and I'd like to have a couple of minutes if I may.

30 THE COMMISSIONER: Certainly.

MR GORMLY: He was actually due to be called at 2 o'clock and he may still prefer that. 3 o'clock. Right. If I could talk to him about that I'd be grateful. Thank you, Commissioner.

THE COMMISSIONER: If you want to start earlier we'll start earlier.

40 MR GORMLY: All right. Thank you.

LUNCHEON ADJOURNMENT

**[12.33pm]**