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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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AT SYDNEY

ON TUESDAY 10 AUGUST 2010

AT 2.00PM

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MR GORMLY: Commissioner, we have Mr Bruce Hodgkinson in our witness box.

THE COMMISSIONER: Yes, Mr Hodgkinson.

MR GORMLY: Thank you, Commissioner.

THE COMMISSIONER: Would you like to give your evidence under oath or do you wish to affirm the truth of it?

10

MR HODGKINSON: The affirmation, thank you.

<BRUCE DAVID HODGKINSON, affirmed

[2.02pm]

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Thank you, Commissioner. Mr Hodgkinson, your full name is?---Bruce David Hodgkinson.

20

Thank you. And I think you're here in your capacity as chairman of the Cancer Council of New South Wales?---That's so.

I think you've been in that position since 2007?---That's so.

You've been a director of the Cancer Council Australia since 2008?
---That's so.

30 And I think both are honorary or unpaid positions. Is that so?---That's also correct.

Right. You're a member of the bar otherwise since June 2002?---Yes.

And I think a Silk since 2001 and you have a, I think other interests and roles with the Australian Rugby Union and as counsel assisting the New South Wales Rugby Judiciary and I think you otherwise serve on committees relating to occupational health and safety?---That's correct.

40 Reflects your ordinary legal practice as well. Is that so?---That is so.

All right. Mr Hodgkinson, you have prepared or your body, the Cancer Council New South Wales has prepared a submission which I think was delivered this morning and that outlines the views of Cancer Council New South Wales so far as lobbying is concerned. Is that right?---It does. We've also tried in that submission to describe by giving some examples of how we put our lobbying practices into the field.

All right. So your body is not shy of using the word lobbying as, as part of your activities?---No. Nor are we shy of accepting the broadest definition of lobbying.

Right. Mr Hodgkinson, you've prepared some preliminary remarks, I understand (not transcribable) ---I have.

10 Could we hear those?---Certainly. I don't, I won't go through the statement in great detail. We've described ourselves. We've dealt with some issues as to terminology. One of the issues that we find is of significance to us in this lobbying area is that we not only, we do lobby both governments and governments at all levels, and our Australian Society of Lobbyists, the federal government on our behalf. But we engage in a wide range of activities to mobilise firstly, public collection of opinion and debate and then the propagation of that opinion through various channels and various methodologies into the policy making sector. And I'm using very broad terms I know, but I don't want it, I don't want anybody to think we're nitpicking about this.

20 THE COMMISSIONER: It's similar to the gun lobbying in the United States?---I would, I would imagine - - -

I didn't mean that in a pejorative sense but I mean that's how, in modern times that's how organisations attempt to persuade people of the rightness of their views?---Indeed. Or, or in our case to bring to the attention of those with the capacity to make decisions, the collected views of people particularly in a rural area or, so that we don't have to be always representing a New South Wales view, we may be representing a sector view. Patient transport for cancer patients is a perfect example. There are some areas in rural New South Wales that need greater force in bringing attention that the lack of services in their area than other areas of New South Wales. We, we have very publicly produced a paper on the availability of radiotherapy and the unavailability of radiotherapy in some areas, that, that was a multi-headed campaign, we produced a public paper, we launched a public paper, we launched it publicly, we have been to government to bring that to their attention and to seek their funding of, of new units and the like. So we use multiple approaches to pursuing an issue. One of great importance to us is that we have, we utilise volunteers in the Cancer Council for many good and obvious reasons, quite clearly we are, we have a great deal of skill and, and ability provided to us by Volunteer Services. We run training programs for instance for those volunteers who want to be advocates in their local community. We provide website instruction on what are the issues that are facing people with cancer at the present time. A lot of the big issues we provide scientific facts, we provide other material for those lay advocates we would call them to pursue through various mechanisms be they be local, be they local members of state parliament, be they ministers in the state parliament, be they people in, in local government who are, who are employed rather than elected such as CEOs and the like

but we use those volunteers or encourage those volunteers to pursue those issues. Now, we wouldn't even know every appointment that a volunteer made or every discussion that a volunteer had but we will have provided them with facilities, with, with information which they will use in those discussions.

And the purpose of doing all this is that, I understand this is to, as far as government is concerned both at federal and state level is one is to raise money?---Certainly we don't raise money from government, we - - -

10

What are you after with government?---We, we're usually more interested in policy directions, it may involve spending for instance in the radiotherapy units, radiotherapy units themselves, the infrastructure is very expensive but as importantly maintaining the appropriately qualified staff to run a radiotherapy unit is actually a very expensive exercise, there are some very highly skilled people that are necessary. Now, that's all public expenditure so what we are advocating is the expenditure of public funds in that, in respect of radiotherapy - - -

20

So while you're not asking for money for yourselves you're attempting to influence government as to the way in which government spends money? ---Undoubtedly.

And I assume that you're also interested at times in influencing legislation or other government decisions involving say health benefits and how doctors are paid or not paid?---I don't think. We - - -

30

(not transcribable) goes as far as that?---No, we, we wouldn't normally get involved in that debate. We would certainly be involved in the debate as to where facilities the doctors would occupy might be placed, we would also be engaged in encouraging legislation that assisted doctors in certain areas, for instance, we put together a very large study called The 45 And Up study which involved us in lobbying to get Medicare records and the like put into the study from some 250,000 people.

40

Mr Hodgkinson, are you ever in competition with private interests for government funding?---Commissioner, I think that depends on how you approach the question. If you say that the government has a finite pod of funding then everybody's in competition with everybody else.

I understand that but let's talk about it in a more direct way is what I mean? ---No, no.

Many charities have interests, many charitable organizations have interests which are capable of coming into conflict with private commercial organisations, especially when it comes to occupation and development of property and in other areas as well?---No, we, we, we don't. We enter into

commercial arrangements for leases and things over various shops and the like but, but they are commercial arrangements with landlords and - - -

Yes, that's not a matter of, I'm talking about government decisions?---No. On a smaller level the answer would be yes, for instance, we advocate can we use the local field to put on a Relay for Life fundraising programme at the local sporting facilities and we, we would, we would as every other charity would would ask for it to be pro bono or at the cheapest possible price that the community can afford but we wouldn't be advocating for the allocation of land. We do, however, advocate for the provision of facilities so for, we have involvement in accommodation facilities, for assisted accommodation facilities for cancer patients in various parts of New South Wales.

Now radiologists, do they get government assistance for their various equipment that they acquire or do they have to pay for all of it themselves? ---Commissioner, can, can I use a modern term, can I go to the brains trust on that question because I don't know the answer but I do know Andrew Penman, the CEO of the Cancer Council who has come along will know the answer to that question. He's very specifically come along in case I got stumped.

Right.

MR GORMLY: Well, can we, can we do that formally then, Commissioner.

THE COMMISSIONER: Yes.

30 MR GORMLY: Just so that we remain consistent.

THE COMMISSIONER: Will you swear this gentleman in? I'm sorry, I didn't get your name.

MR GORMLY: Dr Andrew Penman.

THE COMMISSIONER: Dr Penman. Will you swear Dr Penman in.

MR GORMLY: Oath or affirmation, Dr Penman?

40

DR PENMAN: I'll have the oath.

MR GORMLY: Dr Penman, can I just get your full name?

---(DR PENMAN) Dr Andrew Graham Penman.

And what position do you hold with the Cancer Council?---(DR PENMAN)
Chief Executive Officer.

10 Right. That's a full-time paid position?---(DR PENMAN) That is, yes.

All right. And I think that Mr Hodgkinson here with whom you are now sharing the witness-box is the Chairman of the board of which you are the CEO. Is that correct?---(DR PENMAN) That is correct.

Right, thank you.

THE COMMISSIONER: What I'm really, the point of the question is this.
That I, I understand it that there are, that radiological equipment is
20 extraordinarily expensive generally and that it's difficult for private
organisations to buy them although they sometimes, they do, I have an
impression that they get government assistance from time to time?
---(DR PENMAN) They, they purchase, they usually purchase them on
various lease or loan arrangements. The government provides a health
programme grant quantum in their reimbursement to cover the cost of the
capital.

Are they in competition with you for money?---(DR PENMAN) No. No,
we don't - - -

30 Never?---(DR PENMAN) We do not - - -

The amount of money you get doesn't affect the amount of money they get?
---(DR PENMAN) We don't get any money from services to patients.

I put that badly?---(DR PENMAN) Yes.

40 The amount of government money that is spent on, in the way you want it
spent, is that affected in any way by the amount of government money spent
on other medical equipment?---(DR PENMAN) Well, it may well be in the
minds of government but we will not, we don't consciously make a trade-off
or explicitly make a trade-off in our representation to governments on those
issues.

But is that the effect of the, if your representations are particularly effective
does that mean other people that, that money is spent on equipment that
other people would have like it to be spent?---(DR PENMAN) I don't think
you can make a one-to-one trade-off like that. Obviously - - -

I'm not asking if you are doing that, I'm just saying, but there must be, there must be a pool of money available for medical equipment that the government has to spend?---(DR PENMAN) Well, as far as the pool I think is in the control of government.

Yes?---(DR PENMAN) And the government, the government can made trade-offs within that pool or it can agree to expand the pool.

10 And the government decide, yes, but whether the government expands the pool or not, there are conflicting demands on the pool, I assume?---(DR PENMAN) I assume there are, yes.

So the more effective your lobbying, the more you get from the pool?---(DR PENMAN) That would be - - -

I'm using that, not in the sense that you get money, but the more (not transcribable) and the more equipment you get?---(DR PENMAN) The cause.

20

The cause. And I - - ?---(DR PENMAN) More money will go to the cause which we espouse.

Yes, and I, I mean it's, everybody would acknowledge that it is, it's a wonderful cause. I mean it's (not transcribable) on that as well. But there are other causes. And, and it's the nature of our society that they are sometimes in competition, for money?---(MR HODGKINSON) I'll comment. I think, Commissioner, we would accept, indeed we would put it to government that we are, our lobbying efforts or advocating efforts are
30 designed to encourage government to spend money in certain areas, which if they didn't spend it in other areas, they may well spend, if they didn't spend it in the areas consistent with our lobbying, they may well spend in other areas. So in that sense, yes, we are in competition. In the broad sense though, we don't advocate to government that you have to spend it at a particular community or in a particular way, we advocate an issue, radiotherapy as a very costly issue. We advocate the issue, government will then decide whether they want to accept part, all or none of ours, as in any case, but they will spend whatever money they decide to spend on the issue.

40 DR PENMAN: And can I add to that, we're not, we're not insensitive to the trade-offs the government has to make, so for instance in our current campaign for radiotherapy, we have pointed out to the government that there is a choice that they have between encouraging private sector provision versus public sector provision and in a suite of priorities we're pushing to government in the lead up to the next state election, we have offered to them opportunities to raise revenue to support expanded expenditure. In this case, we're particularly arguing that they should raise revenue from tobacco licensing.

THE COMMISSIONER: There are other diseases for which radiology is a cure and a very expensive cure. Is that not so?---(DR PENMAN) Radiotherapy.

Radiotherapy?---(DR PENMAN) Radiotherapy is the technical point. Radiotherapy is, is exclusively used for the treatment of cancer or other benign tumors essentially.

10 Well, but there are various radiological tests that require extraordinarily expensive equipment?---(DR PENMAN) Yes, and they are, they are of a general benefit because they're not exclusively for the purpose of diagnosis for assessing cancer.

And I assume that, that government has a decision to make as to whether to spend the money on the one kind of equipment or on the other kind?---(DR PENMAN) Of course, but that's probably, we recognise that's probably the function of government. There is always a contest of ideas and priorities - -

20

I know?---(DR PENMAN) that the community is pushing to government for its, for (not transcribable) and support.

And I know from my own friends who are cardiologists that they push a great deal for money for, for radiological equipment from government that they use for the diagnosis and treatment, and treatment of cardiology, of cardiological problems. And they would be in competition, for example, I mean, very healthy competition?---(DR PENMAN) Of course.

30 With people who think that more money should be spent on, on radiotherapy for cancer?---(DR PENMAN) There are many competing or jostling priorities being put for health.

Yes?---(DR PENMAN) I think the worst thing we could do for our cause is to remain silent.

Undoubtedly. I'm not suggesting that for a moment. But - - -

40 MR GORMLY: Do you ever, I'm sorry.

THE COMMISSIONER: Sorry. I'm just trying to, the picture though, is it correct to say that the true picture is that there are a lot, there are a number of organisations all created for altruistic purposes, all which have as their motive the ultimate good of humanity, but who, who each has a particular narrow concern as to a way in which government money should be spent, are all fighting for their share of the dollar?---(DR PENMAN) They are fighting for their share of the dollar and for their share of influence on

government policy because there are things we advocate which are not that cost effective.

And they are lobbying for that?---(DR PENMAN) They are lobbying for that. And - - -

And should that all remain secret?---(DR PENMAN) No, we are, we are, we - - -

10 I'm just asking?---(DR PENMAN) We are completely, we are completely accepting that these things should be transparent.

Right. But there is a difficulty I think that Mr Hodgkinson raised which I recognise immediately and that is if true transparency means that you've got to indicate each meeting you have with government that's virtually impossible as far as you're concerned?---(MR HODGKINSON) Indeed that was the point that I raised.

20 Yes, that is the point that you make. You're perfectly willing to go along with transparency but the idea of listing each meeting is impractical as I understand the thrust of what you're saying?---(MR HODGKINSON) Because of our use of a wide group of volunteers we don't, we would be terribly worried that we'd actually be more often in breach than compliant even with all the goodwill in the world.

And do you have a suggestion at how the needs of transparency could be accommodated in this particular narrow, in the case of this category of a narrow group of people all working for an altruistic cause?---(MR HODGKINSON) Yes, we do, it's a broadly based answer. We have
30 provided to Mr Gormly some extracts, the first is from our general website which is, which shows, which we titled Cancer Action and which itself identifies that we are actively engaged in lobbying at all levels of government and the sorts of issues that we are lobbying. The second is from another website that is also badged with our, our daffodil and attributable directly to us which is a website called Take Action, that website, again we've provided the cover pages for, for Mr Gormly, identifies to people who want to advocate for the issues that we are pursuing, what the issues are, what the information is and how to go about it. We actually provide them with open-based instruction on how to undertake this type of lobbying.
40 And the third, the third of the documents that we've provided this afternoon is what we call a Saving Life Kit, it is again an instruction kit on how to lobby in respect of various issues that go to government. Now, all of those are very public documents that always remain public. Our website is updated so as to ensure that any of the issues that we are pursuing is openly identifiable.

But none of those issues meets the question as to which minister are you seeing and when?---(MR HODGKINSON) No, and we would - - -

Is that an impossibility?---(MR HODGKINSON) It is, it is, it is in the ultimate sense. Mr Penman and myself from time to time have been to see the Minister for Cancer Mr Sartor.

DR PENMAN: No, Minister for Health.

MR HODGKINSON: No, Minister for Cancer.

10 DR PENMAN: For cancer, I'm sorry.

MR HODGKINSON: And those meetings are scheduled meetings, they often involve other people from other organisations such as The Cancer Institute which is another government organisation and the fact that a record of that meeting is made is in fact something that we insist upon. We talk about those meetings and what is said in those meetings, what goes publicly.

20 THE COMMISSIONER: And is that described, can you put those meetings into a particular category, can you describe them? I mean if you were to say, if there was a register which required people such as your organisation to note meetings of that kind is that a practical possibility?---(MR HODGKINSON) At those sort of high level meetings?

Yes, only?---(MR HODGKINSON) Yes, yes, that's not, and indeed if there was a register that said that the Cancer Council should be registered as a group engaged in lobbying we would be, we're very content to be on such a register.

30 It has been suggested to us that there should be a separate register for NGOs and charitable organisations, that is, organisations who lobby but not for profit. And then there is an issue of what should be on the register and to various degrees the concerns of other organisations of this kind are similar to those of yours and in the course of our inquiry I think we would like to examine the possibility of such a register and the possibility of what should go on it taking full account of the kind of problems that you mention. And so that I'm really asking you for help, really what do you think could practically speaking go on to such a register that would advance the cause of transparency but not harm your, the way in which you work because that's really our aim?---(MR HODGKINSON) Commissioner, I think the, there's
40 no doubt that a register of high level meetings with ministers or other government persons elected in government is a possibility. The difficulty we would perceive is that if we were required to register every meeting that any person had on behalf of the Cancer Council with any member of government we would - - -

Persuaded meetings---(MR HODGKINSON) Yes, thank you. So, but, but if the Minister, if the Minister for Cancer asks Dr Penman and myself to go

and speak to him about a particular issue as he did (not transcribable) about our, the published paper on the budget issues.

If the register was to require you to list all meetings that you had with the minister, that the Cancer Council, that representatives of the Cancer Council had with the minister would that be a problem?---(MR HODGKINSON)
Yes, it could be.

10 Why is that?---(MR HODGKINSON) Because we, we have, we have a great deal of intercourse at a huge number of levels through various functions, some of them are fundraising functions, some of them are launching policy functions or the like. A person who is associated with, properly associated with the Cancer Council either as an employee or a volunteer may well have a discussion at those type of functions with the minister or ministers and they may well raise an issue because we publicly put out the issues, we encourage people to raise issues with the minister or ministers and we may not know about that discussion at any time.

20 We've been told that that's very bad practice for ministers to do that and that ministers should only discuss business in the presence of a senior bureaucrat and full notes should be taken of all such meetings?---(MR HODGKINSON) I can understand, I can understand why people who are dealing with private, private wealth or the like who are encouraging government spending absolutely but when you are talking about public issues that themselves may or may not be terribly popular at the time and let's take the anti-smoking campaign. The Cancer Council has been involved in the anti-smoking campaign for many, many years, tens and tens of years, it has taken a long, long time to one, encourage the community to get behind it, two, encourage government to get behind it and three, to deal
30 with the vast expenditure available to those who are interested in retaining sales of tobacco products. That process we can't undertake quickly, we can't just dump money into a, into an advertising campaign or the like.

But we're only talking about meetings with ministers not spending money on an advertising campaign. The tobacco industry is entitled to democratic right just like anyone else no matter what you think of them?---(MR HODGKINSON) No, no, no, I'm not advocating they're not.

40 Shouldn't the tobacco interest know that you are going to the minister asking them to close down their business?---(MR HODGKINSON) They do. We tell them.

Yes, well, then if you tell them why don't you put it on a register?---(MR HODGKINSON) Because we, we publish that material at the time we're doing it, not after we're doing it but at the time we're doing it. That material is out there.

I don't understand why you can't, the high level meetings with the ministers about that kind of issue on a register?---(DR PENMAN) Perhaps if I can give you a practical example. Relay for Life is a major fundraising event for the Cancer Council, there are 65 to 70 communities around the state that will run a relay which goes over 24 hours on a weekend in, in 75, in 70 communities around the state and typically we would invite local dignitaries and if the Minister for Health or the Premier happen to be the local member typically the, the Premier might (not transcribable) the opening ceremony and then perhaps spend five, half an hour walking around the track or
10 meeting with people. If one of our staff happen to raise with the Premier or the Minister for Health their concern about the retailing of tobacco for instance that would be a proper thing to do.

We're not interested in that, we're interested in formal business?---(DR PENMAN) Okay, that's fine, but all I'm saying is that would be a representation from a paid staff member of the Cancer Council but it would not obviously be easy to document each of those conversations.

No, and the minister wouldn't regard that as a, a moment where he was
20 conducting formal business at his office?---(DR PENMAN) So I think that it hinges on the, on the issue of formal business given the wide variety of - - -

(not transcribable)?---(DR PENMAN) - - - mechanisms we use.

Yes?---(MR HODGKINSON) And, Commissioner, I don't think that we would have a problem if you, if you say formal business and that is going to a minister's office, we wouldn't have a problem saying we're going to see the minister.

30 We've been told the general practice is that, leaving aside organisations such as yours but just generally, functions are held, dinners are held, ministers go there, people talk to them and whenever there is a, a suggestion when somebody speaks to the minister about something that he wants the minister will say well, well, if you really want this to be discussed seriously make an appointment with my office and we'll discuss it and we're not interested in recording the initial approach but we're interested in recording the formal meeting that follows that approach and it's just a matter of definition, which might be hard in itself, but I mean that is the, that's seems, I'm not saying that's what we're going to do but that, for, for, if one looks at
40 the view that the more, that the formal meetings between lobbyists and ministers should be noted, not as to what was discussed but the mere fact that they took place, then, then it's really only an issue of defining that kind of meeting and it would exclude all these other less formal contacts that you have raised?---(MR HODGKINSON) The, as I say, at that level I don't think that we'd have a problem. Our problem might start to kick in again if you started to take it down to less than a ministerial level. For instance, local government. If a meeting with a local government councillor was to be considered a formal meeting in the context in which you've just put it,

then we would not be confident that because we do use a large number of volunteers, and I should give you this statistic, Commissioner, 3,000 people are on our permanent volunteer register, 80,000 people volunteered to help the Cancer Council in New South Wales last year. It's a very large number of people. We're very grateful to those people but it means that we can't sit here and tell you that we could be responsible for every meeting that they might organise in their own community, even going there saying I'm here representing the Cancer Council.

10 And are they able to, do they have the authority to go to the local council to, what would they ask them, what are you interested in local councils for?
---(MR HODGKINSON) Well, there are, there are many issues that, that local councils might be dealing with, transport, parking, parking is a very large issue for cancer patients, smoke free, smoke free areas in, in clubs and hotels and restaurants, there are a number of issues that may well be and are dealt with. Again, we started coming, we came to this inquiry not hiding from the, the breadth that lobbying can be involved with.

20 Yes. And are those kind of meetings, are those attended to by volunteers and not say high officials of the Council itself?---(MR HODGKINSON)
Quite often, and they would be arranged by the volunteer and they are - - -

Decisions are taken?---(MR HODGKINSON) Not, not necessarily but, but the fact that a decision might be taken at that meeting we couldn't rule out. That would be a matter for the person who is being spoken to.

Thanks. I'll let Mr Gormly deal with this easy position.

30 MR GORMLY: Mr Hodgkinson, Dr Penman, either firstly, how many people are on the executive of Cancer New South Wales?---(DR PENMAN)
Eight.

Eight. And how many employees are there paid?---(DR PENMAN) Around 340.

Across New South Wales?---(DR PENMAN) Yes.

40 Right. How many of those would be in non-clinical positions?---(DR PENMAN) Non-clinical positions? Well, we, the majority of them. We have approximately 20 people who are engaged in providing professional information and support to cancer patients.

To patients, right?---(DR PENMAN) The rest are all engaged in public health and other non-clinical roles.

Would I be right in assuming that nobody who is paid by the Cancer Council would be authorised to bind the Cancer Council in a representation to a minister without the permission of the executive? You might encourage

people to lobby generally in relation to cancer and government expenditure but no one is going to bind the Cancer Council without authority?---(DR PENMAN) Correct.

Right?---(MR HODGKINSON) But can I say this though?

10 Yeah?---(MR HODGKINSON) A lot of our lobbying and all the issues that we lobby on would never bind the Cancer Council. If we are lobbying on behalf of an interest group or on behalf of a policy change it's not to change our policy or to bind us. It's to bind, it's to get an agreement that somebody else will do something.

20 Yes. If the Cancer Council at executive level forms a view that the central western area is insufficiently supplied with radiotherapy equipment I take it that you would disapprove of and appropriate discipline some employee of the Cancer Council that went and saw a minister and said no, the Cancer Council executive has got it wrong, the money really should be centralised in Sydney where there are better patient support services. Now, you would not approve of that, is that correct?---(MR HODGKINSON) That's right.

So there is a degree to which the Cancer Council can control it's own employees about policy matters, correct?---(MR HODGKINSON) Certainly, correct.

And it would also, I take it, be a problem for the Cancer Council as an effective charity if it couldn't formulate policy itself and policy objectives which it thought appropriate for the government to pursue?---(MR HODGKINSON) Absolutely.

30 All right?---(DR PENMAN) Can I just also add that we have on occasion had to publicly distance ourselves from statements made by volunteers - - -

Of course?--- (DR PENMAN) - - - who've aligned their position with (not transcribable).

40 I can well imagine that, Dr Penman, and I take it that that kind of action would be quite different from the sort of actions that you would like unpaid volunteers to pursue when you encourage them to engage in advocacy training on the website?---(DR PENMAN) That's right.

Are really different activities?---(DR PENMAN) Yes, that is correct, yes.

Right. And raising a general awareness of cancer as a problem and encouraging the government to look at cancer is one thing but pursuing clear policy objectives which require expenditure is quite a different matter. That's something the Cancer Council at its executive level might well form? ---(DR PENMAN) Yes. We have formalised positions which we put to government.

Okay. Accepting your point that any volunteer, any person interested in pursuing cancer objectives can say anything they like to government would you accept the proposition that apart from perhaps Mr Hodgkinson, Dr Penman and I think your government relations person, forgive me, madam, I've forgotten your name.

(not transcribable)

10 MR GORMLY: Thank you. And perhaps one or two other persons, the Cancer Council would be reluctant to have spokesmen go to the minister on its behalf unless it knew exactly who they were and what they were going to say?---(MR HODGKINSON) We might extend that to parts, to members of the executive on particular issues - - -

Yes?---(MR HODGKINSON) - - - who, who are, who have a responsibility but who would be going to the minister on the basis of a policy predetermined by the Cancer Council has a whole.

20 Of course, I accept that. So really when it comes down to it, if you put aside the volunteer advocacy as one problem, that is, you encouraging the world to express their view to the government, the fact is as a powerful policy body in the community the voice of Cancer New South Wales or the Cancer Council of New South Wales is going to come down to half a dozen individuals well informed of policy matters?---(DR PENMAN) Half a dozen individuals and with sufficient transparency that any, any minister or member of parliament who's approached by another person speaking or purporting to speak on behalf of Cancer Council can readily confirm whether - - -

30 Sure?--- (DR PENMAN) - - - whether that position is consistent with the Cancer Council or the, or the position the Cancer Council's (not transcribable).

And probably knows who the personnel are?---(DR PENMAN) Yes.

40 All right. Well, would you accept that if all cancer, I'm sorry, if all charities who wished to lobby government at ministerial level were required to at least declare that they were lobbying government, if they were required also to put a date and the name of the government officer seen, when I say government officer, in the broad sense, on behalf of the Cancer Council that could be limited to half a dozen people if we're talking about those who do it a policy level with the authority of the Cancer Council?---(MR HODGKINSON) Provided we adopt the formal type meeting that the Commissioner, Commissioner referred to and provided that we, we understood that what we were talking about was the lobbying process directed on behalf of the Cancer Council as a whole.

THE COMMISSIONER: You could exclude from this all volunteers?---
(MR HODGKINSON) That excludes me. I've got - - -

You're an officeholder?---(MR HODGKINSON) I've got an honorary
position as the - - -

As Mr Gormly says, you exclude them, all volunteers other than office,
officeholders?---(MR HODGKINSON) That, that would certainly go a long
way to addressing the one fear that we have out of, out of regulation.

10

DR PENMAN: And then I think the question becomes what constitutes a
communication for these purposes.

(not transcribable) a meeting?---(DR PENMAN) Okay. So it doesn't
include an email or an SMS, those sorts of things, right.

MR GORMLY: If it were done as the Canadian lobbyist register does it,
that is oral and pre-arranged and it's with the authority of the Cancer
Council, you wouldn't have any difficulty registering and nominating the
meetings?---(MR HODGKINSON) No, indeed. At the moment we
would've, we would've declared that publicly every one of those meetings
publicly in any event. So it would be just another registration for that same
meeting.

20

I understand that. Yes, I understand that point, Mr Hodgkinson. You're
saying that you do all this publicly anyway. But that's not true of every
charity on, you would accept as a general proposition that that wouldn't
necessarily be true of every charity or every body that carries out some
charitable work (not transcribable)?---(MR HODGKINSON) Unfortunately
I would have to accept that.

30

Right. Can I just go back to a matter that the Commissioner raised earlier,
as to competition between charitable interests. I accept as my platform for
this question the propositions put to you and your answers that there is of
course competition for a part of a fund which can be contracted or
expanded, depending on budgetary considerations. But, does the Cancer
Council ever find itself in a position where when lobbying for an expansion
of patient services, say in an area, involves putting an argument that
government should spend more money on the provision of cancer facilities
then for example, post cardiac rehabilitation services or something like that?
Does it ever put an argument where its, its needs for cancer patients exceed
those of other health needs?---(MR HODGKINSON) No, we don't, we
don't advocate on that basis. That is we don't advocate on a competition
basis.

40

Right?---(MR HODGKINSON) We advocate and we, we publicly advance
our organisation on this basis. We, we have a scientific based approach to

argument. That is we collect together the material that supports our case, not destroys or interferes with somebody else's case.

Right. So you do not engage in a method of argument that involves prioritising one form of health against another?---(MR HODGKINSON)
No. Do not and would not. No.

10 All right. Would you accept that there are some bodies which carry out in part charitable functions who might or do engage in that kind of advocacy?
---(MR HODGKINSON) Absolutely.

Do you accept that although you may not know of it, that there will be bodies out there who are engaging in that kind of lobbying behaviour? Contrary to your interests?--- (MR HODGKINSON) There's no doubt that there are some organisations that take a competitive approach to the way in which they seek either funds or policy determination. We don't take that approach and indeed, I think the majority of good organisations in the charitable sector don't take that approach.

20 All right. Thank you. Well, would you accept that that is an argument for rendering transparent, even the activities of thoroughly accepted charities such as Cancer New South Wales, that that is an argument for making it more transparent by increasing public exposure?---(MR HODGKINSON) Mr Gormly, at the risk of being controversial, the direct answer to your question is yes, but it's not within the scope of this inquiry. The real question that you're asking is whether or not there ought be more government regulation to expose transparently the activities of individual charities. And the answer to that question in my view is, yes, there should be.

30 All right. I accept that. Yes?---(MR HODGKINSON) Indeed, indeed Cancer Council is working towards in the cancer sector, with the assistance of the Cancer Institute, a government body, the collection of information on all of the charities in the sector so as to provide the people of New South Wales with a much greater level of transparency than exists at the present time.

Accepted, Mr Hodgkinson.

40 THE COMMISSIONER: You're quite right in saying that we're only, that we're not concerned with transparency in charities as a topic. But we're concerned in transparency with lobbying into the extent that charities get involved in lobbying. We're concerned in the degree to which they are transparent?---(MR HODGKINSON) I understand that, Commissioner. I think Mr Gormly's question though directed us into a competitive style of argument, one, A versus B as distinct from - - -

MR GORMLY: No, no, no. No, no that, that, Mr Hodgkinson, this issue has arisen before. The fact is however excellent your charity may be, there are others who don't engage in the same - - -

THE COMMISSIONER: In the lobbying field?--- (MR HODGKINSON) Indeed. And that's why we, that's why, precisely why we accepted, as both Dr Penman and I accepted earlier, that if, if we had to register the fact that we had attended a formal meeting with a minister, we would have no trouble doing that.

10

MR GORMLY: All right?---(DR PENMAN) I just say that the issue of competitive, competitiveness between interests in our area of lobbying actually comes up much more often when what we lobbied for affects a commercial interest.

THE COMMISSIONER: Well, I was going to ask you about that because I imagine, please correct me if I'm wrong, that you do do lobbying not only against tobacco, but against alcohol and perhaps clubs or hotels or, I mean I'm not sure if you - - -?--- (MR HODGKINSON) No, but - - -

20

DR PENMAN: Let me give you some examples. We're currently lobbying for the introduction of a regimental licensing tobacco retailers. We're currently lobbying for changes to the way nutrition information is conveyed on food packaging. We are lobbying for smoke free outdoor venues, both at state government level. These, these positions do impact on commercial interest, we do however pride ourselves that our position and our approach to that lobbying is more transparent perhaps than the people we lobbied, whose interest reflected.

30 MR GORMLY: But it can be combative?---(DR PENMAN) It can be combative.

Mr HODGKINSON: Certainly in the commercial field, there's no doubt, it has been and it will be combative. Our, our, we've had a lot of difficulty in the anti tobacco campaigns. It has been a very combative fight.

THE COMMISSIONER: So in other words then, the minister that you will be seeing won't necessarily always be the minister for cancer or the minister for health?--- (MR HODGKINSON) Particularly not in New South Wales.

40 Our experience has, reflects the change in Premiers. We've had a number of ministers in the short period that I've been in the chair of the Cancer Council, I think there have been three ministers for cancer. Now, that's a lot of turnover in that role in three years.

MR GORMLY: Just one other matter, Mr Hodgkinson and Dr Penman, we have had some lobbying groups object at times to having their lot as a registrant cast in with the third party professional lobbyists who are the only ones at the moment who have to register. Do you think that there is some

need for a, if you were to require everybody who lobbied to register, do you think that there is some need for charities to be on their own lobbying register or do you think that, do you think that there's no particular reason why everybody shouldn't be cast in together?--- (MR HODGKINSON) I think it's more a perception than reality. And it may be a perception that people are worried about in the media, that is that charities may well be legitimately worried that they're portrayed as third party lobbyists, when instead they're lobbyists in their own, in respect of their own mission or interest. And that perception is one that, particularly small charities, would
10 be really quite sensitive to and legitimately sensitive to.

All right. So that one, one way of handling for example, a self registration system, an online self registration system may be in effect to have panels, you could have the third party professional lobbyists charities and other groups, in-house lobbyists, in-house lobbying commercial interests or peak bodies or something of the sort?--- (MR HODGKINSON) I think, I think that, that goes a long way to meeting, to meeting the interest. I deal, I deal collaboratively with a number of small charities in our sector. And they're
20 problems that they have because they don't have the resources that we have and the capacity that we have, is a different one. And they are very, very sensitive to perceptions that may be distorted by in respect of which they don't have to put it bluntly, the clout to, to answer. And so, so I think the divided register or different registers as least goes part way to addressing that.

All right?---(DR PENMAN) There is a distinction made between a peak body that's acting on behalf of membership and an organisation like the Cancer Council which in the usual scheme of things advocates for its own mission and its own interest but it does get blurred in some campaigns
30 where we or the Heart Foundation or another lead body may be acting on behalf of a coalition - - -

Of other charities?--- - - - (DR PENMAN) that's committed to the same objective. So in the case of the smoke free pubs and clubs campaign the Cancer Council acted as the convenor and leader of a coalition that included a "diversity" or organisations. In our advocacy for change to travel assistance the coalition we represented included people like the CWA, the National Farmer's Federation and so on because they all had an interest in that one outcome. So there is a, there is a complexity there that you may
40 want to consider.

Yes, yes. All right. Thank you. Now, there is one or two other peripheral, not peripheral but matters that don't directly go to the council but, the Cancer Council but might have a bearing on charity views. Do you have a view as to whether former ministers should be restricted from acting as lobbyists for commercial purposes as occurs at the moment?---(MR HODGKINSON) You mean in the charitable sector?

No, outside. I'll come to the charitable sector in a moment.

THE COMMISSIONER: I mean you might have faced them as an opponent?---(MR HODGKINSON) Indeed. I don't think the Cancer Council has a view so you'd only be getting my personal view which is not really what you want.

10 MR GORMLY: Let me put it in another way. I'm now after your personal view. From your experience as Chairman of the Cancer Council have you ever come across a situation where there is a former minister or a former director-general or some senior government officer acting for a commercial interest in opposition to a program sought by the Cancer Council where you have thought that it would be better if that public officer did not have that commercial role?---(MR HODGKINSON) The first part, yes, I'm not so sure about the second part.

All right?---(DR PENMAN) I think the answer is yes from my point of view.

20 Yes, you have come across that situation?---(DR PENMAN) Come across that situation but has it ever really we think substantially affected our ability to press our case, no.

MR HODGKINSON: But can I make the point I made a moment ago. A smaller charity, a charity that doesn't have our resources may well have a stronger view that there's an unfair advantage being gained by a commercial interest that retains somebody with the connections which is essentially the reason for gaining assistance from ex-politicians and the like. I think we're perceived well enough and we have a large enough position in the
30 community and we are able to mobilise community behind our, our campaigns that there isn't, that we don't necessarily perceive a problem but others might.

MR GORMLY: Depending on who you are it doesn't provide an insuperable advantage or an overwhelming advantage if there is a former minister on the other side for a commercial interest?---(MR
HODGKINSON) No, it doesn't in our circumstances, assuming all other things to be equal or what we're really talking about is access and, and we would have to say that we are generally well received in government circles
40 and have access.

Conversely I suppose it would be something of an advantage to you to have a minister join your board should such a situation arise with that array of contact?---(MR HODGKINSON) That's a difficult question on this basis. The Cancer Council, the Cancer Council up until 2006 was a government appointed board and in 2006 became through constitutional change an elected board. The election of the board, and I became chairman fairly shortly after that. The election process that we have adopted for our board

as once again being an open process where we have tried to attract skill sets so that the board itself is properly balanced in order to run the \$60 million a year organisation. We haven't sought or would we particularly seek a person who had a political background unless they otherwise had skills that would assist in the balance of the board, that of course doesn't exclude a person standing because it's a membership electoral system for a position on the board who had a political background and gaining such a position.

10 You may have become aware that it's a relatively open issue that's been debated in these hearings as to whether a person with a ministerial or director-general background is prohibited at present by operation of a code of conduct from the role of a commercial lobbyist. Is that a prohibition that you would support or not support from any experiences that you had?
---(MR HODGKINSON) I think again the Cancer Council's position would be that whilst we know it's happened in the past and we know that they've been utilised in campaigns against us we don't perceive that that has given a particular advantage to the other side.

20 Or an unfair advantage?---MR HODGKINSON: Or an unfair advantage. We don't, but let me just backtrack a little bit. If a person had the interest in getting onto our board and had the skills set that the board required the fact that they had been involved in political life would certainly not exclude them from it.

30 That may well be an advantage?---(MR HODGKINSON) It may well be an advantage. We want people who have the interest of the developing the Cancer Council and pursuing its policies on the board and that includes, because we are not government funded very heavy fundraising at all sorts of levels. So we, we would, we, we may well with open arms welcome the right person who wanted to get on our board if they had the right
commitment.

DR PENMAN: Can I also just add as a point of information we do have a regional structure and we have volunteer advisory committees for each of our regional, for each of our regions and there are a few ex-politicians who serve on those regional advisory committees.

40 MR GORMLY: Dr Penman, Mr Hodgkinson, thank you. Commissioner, I have nothing further.

THE COMMISSIONER: Yes, thank you both for coming along, you've been extremely helpful and valuable to us, thank you.

THE WITNESSES EXCUSED

[2.57pm]

MR GORMLY: Commissioner, our next witness is Mr Chaney.

THE COMMISSIONER: Mr Chaney, would you like to give your evidence under oath - - -

MR CHANEY: Oath, thanks.

MR GORMLY: Mr Chaney, we know but could you tell us your full name?---Frederick Michael Chaney.

Thank you. Mr Chaney, let me do it this way. I think at the present time you hold a number of positions as post-parliamentary occupations. Is that correct?---Yes.

10

Can I ask you to, I know there are a number of them, to identify those which currently keep you most occupied but which also involve lobbying?---Sure. I think almost everything I've done through my life has involved either lobbying or being lobbied. My current activities are that I chair a statutory corporation in the Northern Territory called Desert Knowledge Australia, that is concerned with the environmental, social and economic circumstances in desert Australia. I'm on the board of Reconciliation Australia which is of course concerned with the issue of reconciliation. I'm on the committee of a foundation I helped set up called the Graham (Polly) Farmer Foundation which is involved in Aboriginal education. I'm on an advisory board to a, to Rio Tinto in helping to give out Rio Tinto money to causes and I'm involved in a committee with the National Bank with respect to their reconciliation activities and I'm what I would regard as a very active citizen so I'm involved with, through my wife's involvement, in a refugee support group and have been involved in lobbying with respect to that issue over quite a period of years so that all of my involvements, one way or another, do involve either lobbying or being lobbied.

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30

All right. Thank you. Mr Chaney, I'm not going to go back through your history, we've done that with most witnesses but yours is extremely public. What I will ask is that I understand you have prepared something by way of preliminary comments and you've also had an opportunity to see what this inquiry is about. Is there anything that you would wish to say by way of preliminary comments about lobbying?---Yes. First of all, can I apologise for not having prepared a written submission which could have no doubt been sent to you.

40

THE COMMISSIONER: We're just grateful that you're here, Mr Chaney? ---Can I just, the first thing I'd like to say is that I think lobbying is extremely important and is an essential part of having a democratic society and a democratic system. In other words, every citizen I think is entitled to lobby government and by that I mean politicians and their bureaucracy. I think it was the previous Governor General, Bill Deane, who said that all power in Australia comes from the people and I am a republican and I believe that and I believe active citizenry involves advocating for what you believe and for what you think should be supported by government. In my own case, looking back in thinking about this inquiry, I've been involved in lobbying since I was a teenager, as a university student, I can remember

lobbying the, what's he called, the Under Treasurer in Western Australia on the issue of student fees, lobbying the Liberal Party about Aboriginal voting rights. I was an active member of the Liberal Party, I lobbied for amendments to the Mining Act in favour of private landowners. I have been an advocate of policy changes for the whole of my period before Parliament and a point that I think is relevant to this inquiry, Commissioner, is that from the earliest days I had to some extent privileged access because my father was a member of parliament and for a brief period a Menzies' minister and this meant from my very teenage years anyway I knew
10 ministers of the Crown and I met them socially and I was a cheeky opinionated person and I put views to them, quite strongly at times. And the point about that is, well, the relevance of that to your inquiry is that the opportunities to lobby government are unevenly distributed through the community.

Are unevenly?---Unevenly.

Yes?---And I think one of the justification for having people who are formally lobbyists is, and I do want to illustrate that point further, a little
20 further down the track, one of the justifications for having lobbyists is that this does something to level the playing field. There are people who are really ignorant as to the processes of government, as to how they go about having their voices heard and I think some people do need professional assistance which, because of my, in that sense privileged background I have not needed. As an MP, of course, I was endlessly lobbied and again perhaps illustratively I can remember once being semi-accused by a public servant of perhaps slightly improperly lobbying because I made representations about the application of section 23P of the Income Tax Act which was a
30 section which exempted the income received from the sale of rights to mine by bona fide prospectors for certain minerals, they got them tax free. And in the sixties there was a mining boom, as you would know, or a prospecting boom in Western Australia and a lot of people sold mining rights and at the stage when I became a senator people that I had met had been denied assessments of tax by the Tax Office for seven years while they puzzled over that. I made representations as a senator to the then Deputy Commissioner of Taxation, Pat Lanigan, who was later the head of my department in Social Security, but not for long, and Mr Lanigan kept referring to my constituents as my clients. None of them had ever been my clients in legal practice but it was to make the point that there was, I
40 thought, an imputation there that in some way what I was doing was improper. I thought what he was doing, which was denying an assessment of tax to people for such a long period, was quite improper and bad public administration but I just mention that as an illustration of how people can see things differently. As a minister I was incessantly lobbied and I in turn sometimes lobbied my fellow ministers on matters of interest to me but the point I'd make with respect to that was the immense value I got from lobbies. Both in the Aboriginal area but in Social Security, and Social Security it's a simpler example, there were lobby groups for the aged, for

people with disabilities, there were, there were, there was ACOSS, all of the state COS's, you know, Council of Social Services and so on, and although I was well-served by exceptionally talented public servants to whom I'll always be grateful, there's no doubt that those groups drew to my attention things that I needed to know and would not otherwise have know and I regarded them and the consultative committees which we set up which drew from the non-government sector and which gave the groups formal access to give me advice, as immensely valuable and their work very much in the public interest. One of the difficulties you have and I listened with interest to some of the evidence of the previous witness in this regard, is that as a minister lots of people talk to you, both formally and informally and it can be immensely valuable what you pick up and you take it back to your department and check it out and sure enough there's either something that they didn't know or something that they hadn't thought was necessary to tell you so I can't emphasise enough the importance that I placed as a minister on the formal and informal contacts, on the formal lobbying bodies that dealt with me. I found them to be of great assistance and totally complementary to the advice I was receiving from my departments which in all cases in those days, and I'm talking about the good old days as one always does about the past, I thought I was served by extremely able public servants of great integrity but I found those external influences, external sources of advice immensely valuable as well. The, subsequently as a far too long period as a shadow minister where I moved into the economic area because if you are the Minister for Social Security in a recession, Commissioner, you quickly learn that the production of wealth is actually quite important to social wellbeing so I was involved in industry and resources and various other industrial relations and once again I found the formal lobby groups immensely valuable. I can remember attending functions for example when I was shadowing John Button, with John Button, and I am sure they gave exactly the same advice to him as they did to me and all I can say is that in opposition in particular but to a lesser extent but still true in government, that these bodies are really important sources of, or too many sources of advice and information. There's a huge amount of information out there. Inevitably it funnels up to you when you're in a ministerial position. When you're in a shadow ministry and you don't have anything to funnel it to you, you are essentially in a state of permanent tutorial. I mean, if I can explain that, I was given a different job every couple of years, often about subjects I was not expert in, it was part of the Westminster system, the way it works, and essentially I was in permanent tutorial. I was continually in the company of people who knew intimately the area of activity that I was politically responsible for and I'd have to say their generosity with time was amazing. I, I have never been knocked back by anyone from whom I sought advice and people would give me hours and hours of their expertise to provide me with information and advice which would enable me to sensibly consider and develop policy in the area so again I think these people are performing a really important source, both through the formal lobbying bodies and the informal and individual contributions. I would apply that in the environmental area

where I have responsibilities for a time, I mean the Australian Conservation Foundation, The Wilderness Society, Greenpeace, WWF – not all of whom I would regard with the same affection and respect or as all having an equal sort of, I'd call ethical base but in each case they would expand my understanding and knowledge and I just found them immensely valuable again. So, then I moved into being a statutory officer after I left parliament and I must say I was operating in a system which I thought was in many ways entirely inappropriate. I was a member of the National Native Title Tribunal and I totally agree with the views that were put by past Judge Hal Wootton QC who I think is an extraordinary able man committed lawyer, and great Australian – that we had converted an area that demanded policy attention into a legal process which was quite unsatisfactory. So even though I was a statutory officer of the Commonwealth I felt free to make representations to successive Commonwealth Attorney General about what I thought was the inappropriateness of the approach of the Commonwealth and indeed the inappropriateness of much of what we were doing. Now I regard Native Title as the most significant shift of power for Aboriginal people since white settlement. I think it's been a fantastic instrument for bringing Aboriginal people to the table and I think it's a shame what the political system and the courts have allowed to happen which is to force Aboriginal people into legalistic non-sensical processes which turn their minds backwards instead of forwards which instead of helping them to become part of the future of Australia force them to show that they're part of a society which draws its rule making from pre-settlement law and custom. I can't think of anything more non-sensical. What I'm saying is that there were legitimate reasons for wishing to lobby government and I felt free to do so in those circumstances as an individual and as a citizen. Currently as a citizen, I remain close to some Aboriginal communities in the central desert, the western desert around Warburton and the Ngaanyatjarra Lands. Those communities in my view are being severely negatively impacted on by current government policy. The amendments to CDEP and the introduction of job search allowance in circumstances where CDEP was the glue that held successfully functioning communities together and the imposition of job search arrangements which were entirely inappropriate to their circumstances is – I think – something of scandal. So I'm currently engaged and have been engaged for the last year and a half, lobbying on behalf of those communities. Not as paid lobbyist but as a lobbyist – as a friend. In terms of my work with Desert Knowledge Australia – it seems apparent to us as an organisation and is apparent to the many people who were brought together to discuss this is that you will not significantly improve the environmental, social and economic circumstances of desert people including non-Aboriginal desert people in places like the Pilbara if we do not substantially change the structure of government. So I'm consistently involved in lobbying on that subject through a process we call the remoteFOCUS project. And that has involved also lobbying governments for support for that work and I've recently achieved some funding from both the state and the Federal governments, state government of Western Australia and the Federal government to pursue that work. So I

guess my point here is Commissioner, is simply to make the point that over a 50 year period it does seem to me that lobbying is a significant undertaking which you take on because you see that things are not functioning as you believe they should and so you use intuitional means, you use personal means and so on to try to achieve change. I think that is an honourable act of citizenship and the issues that you face – when can lobbying be abused and used for wrong purposes and is there some way of regulating so that it is not so used.

10 THE COMMISSIONER: You'll find no challenge from us in anything that you've said to us.---I just wanted to staunchly defend the notion that this is a positive public thing.

What you've said, if I may so has been quite fascinating and very informative but you need have no fear that we will recommend that anything that is based on the proposition that lobbying is immical to our society but that's not to say that lobbying does not give rise to serious problems that in themselves immical to our society when abused.---Well - -

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And I mean one just has to see, as United States of America as one of our very early witnesses was describing how, how lobbying can be abused – I'm not suggesting it' in any way that's what the case is here but the, we are faced with – certainly in this state – with a perception that there, that various evils have arisen through lobbying and that there is a perception of corruption and at some unknown level and on some unknown basis largely because of the secrecy that the practice involves and I think that really as this inquiry has progressed a very important task seems to us to devise some system to combat this notion of secrecy. I mean, if I could just explain one thing. In this Commission, I don't think it is a secret that virtually every week we get complaints that are based on the following propositions: a donation was made by so and so to so and so who is a member of X party, of a party in power. Several months or a year later the donor applies for some favour – there's a lot of reason, according to the letter writer not to grant the favour but the favour is granted and then there is the allegation that this is all as a result of corruption and sometimes accompanied by the fact that there is a relationship of family or friendship or some other relationship between donor and decision maker and when one tries to work out how the decision is made, that's not possible. So there's a complete lack of evidence that either negates the idea of corruption or supports it and as time goes by and sort of thing goes on and it has gone on now for years there is a breakdown in respect for governmental institutions and the real, that is why as part of our statutory mandate we are called upon to investigate situations in which corruption may occur and plainly lobbying is not only a situation which may occur it's a situation where when it's perceived to have occurred causes grave damage to democratic institutions.---Well, Commissioner, I'm sorry I gave a very lengthy introduction because I was going to move on to perhaps touch on some of those issues.

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What we really would be interested in any views that you might have how to address this, this particular perception problem and the, the problem of secrecy. I don't think that anybody wants too much to be disclosed but there should be enough to enable a trace to be followed should suspicions arise.---Well, I think you've ready mentioned what I think is the ultimate only safeguard which is to maximise transparency. In other words, the more that is in the public area the better but there's a counterweight to that which is, if there's so much in the public area that no one can encompass it - - -

10

Well, that's not transparent then?---That's not transparent. Exactly. I did want to just touch on though one other, one or two other minor complexities in dealing with this, and I want to give you a quite specific example of my experience of experience as Minister for Social Security in terms of the unevenness of citizens' access. Try and imagine what it's like to be a Minister for Social Security where you have millions of people receiving benefits. Clearly there are lots of problems and lots of people want to talk to you. So I had a process of whenever a request for an interview came up or a meeting, it would go to my department and come back with a
20 recommendation which I could accept or reject. But in one batch there was a request for, for a meeting with a group called Community Childcare and a separate request from the Catholic Women's League of Victoria. I can't say I was surprised that I was advised I should meet with the Community Childcare group but I should not meet with the Catholic Women's League of Victoria. In event I chose to meet both. And my opening question to each was the same, How many members do you have? And the answers from the CCC group was, first of all, distinct puzzlement that I should ask such a question and a lot of uncertainty when answering, but in the end I think they came up with a figure of six or seven or eight people were
30 involved in Community Childcare. The interesting thing was they had two full salaries from my department. The answer from the Catholic Women's League was eighty thousand members. The difference was that within my department there was a deep ideological commitment to Community Childcare group and I would suggest probably in that very narrow part of the department, an antipathy to Catholic Women's League, an antipathy which I clearly as a Catholic did not share. My point is this, that there is a great unevenness in the influence which is I think probably more significant than dishonesty. In other words, I think that there is an unevenness of access among citizens to government.

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That's a political problem?---It's a political problem but it is a, to me, an important problem which outweighs the other issue. Corruption, can I raise an objection to, I read your Issues Paper and I was shocked that in New South Wales you needed to draw upon West Australian examples of corruption.

But they're the best.---Despite the- - -

But they're the most extreme.---Historically, can I just say with great respect, historically New South Wales is the champion state. After all, this is the state of Askin and various people out of Kings Cross. And I just want to say as a loyal West Australian I find it utterly offensive that you should hold up West Australians. Excellent examples, but, I mean, absolute minnows in the field. However- - -

10 There's a traitor in the ranks?---However, let me, yes. I felt I had to reproach you, Commissioner. I think you showed great disloyalty to your old state. But to go back to, to your, to your question, again I think it's really important to put this in proportion. The present federal government has just, and I don't suggest any impropriety in this, after considerable public and private representations, made amendment to their minerals tax proposals involving billions of dollars of foregone revenue, billions. At the same time, Mr Andrew Forrest has been talking very freely, according to the press reports, both access to the previous prime minister, the access of his financial officer to the previous prime minister's office in terms of organising changes to that. We are talking here of billions of dollars. Now, I'm not in any sense either criticising the original tax or changes to the
20 original tax. What I'm saying is that we are here dealing with billions of dollars and there is a clear capacity on the part of the companies on which this country is completely dependent for its present economic good fortune, a huge capacity to influence government and it dwarfs the sort of, you know, the minnows of areas of concern. What I'm saying is that in very large issues like the mining tax, you get a tremendous capacity to influence government and it's quite clear, and though some of that is done terribly publicly and some of it is done quite privately, in my view the safeguard always is transparency so that there is a complete recording in a public way of how this influence is being exercised. So that really is, is where I come
30 down, is that I think there were some really interesting views put by an ex-editor of the Canberra Times to the Commonwealth Parliamentary inquiry into their fairly minimalist registration requirements where he said, "Just a simple list of who has made representations would be a great, of great value." And I agree with that.

A question immediately arises there. That idea there is sympathy with. The question is, do you need the individual or do you need the organisation on whose behalf the meeting was held, because if you're going to deal with the individual you're met with a lot of arguments based on the proposition that
40 that could involved thousands of people a day, and then you get the transparency problem and so the one way of dealing with that is to say, well, you don't have to say who, but you have to say what entity was being, was meeting, who was being represented at that meeting with the minister?
---Look, I accept this is a genuine difficulty and yet, and what makes it even more difficult is that sometimes the incidental informal conversations with people of little apparent influence or power can be very very decisive.

Mmm?---And I can give you an example of that. I mean, it has been said to me and I think it's probably true, that the conversations that various Ministers for Aboriginal Affairs, the present minister for whom I have great respect, previous ministers, perhaps going right back even to me, are hugely influenced by anecdotal conversations, episodic conversations that they have with people in communities. And that if you're in pursuit of evidence-based policies, for example, the impact of income management, across the board income management, what are you going to rely on, are you going to rely on systematic information collected scientifically or are you going to rely on necessarily episodic fortuitous conversations you may have with individuals that you happen to meet when you visit a community? So I'm pointing that up because it in a sense conflicts with what I'm about to say. I don't think you can possibly hope to record the sort of conversations I heard you talking about with the previous witness, namely when ministers go to social functions and, you know and are buttonholed by people. Forget it. I mean, I do that. I'm merciless if I see someone that I think I want to influence and I see them at a party or a cocktail party I'll buttonhole them and speak to them. Can't possibly cover that. But you do have to cover a situation where for example billionaires, and I mention Andrew Forrest because he's self, you know, I mean, he talks about this quite publicly ah, influences or seeks to influence the prime minister on issues, whether it's Aboriginal employment or mining tax or whatever. So you are dealing with, you know, opposite ends of the spectrum in a sense in terms of apparent influence and power, and yet to leave out the meetings with individuals who are in a very influential position and clearly do have a capacity, seems to me to, to, to render any sort of coverage pretty meaningless. So how you actually distinguish between real representations made very seriously, in that case apparently by a series of meetings with the prime minister, and again I'm not alleging any impropriety here, I'm just saying this is what's on the record. It seems to me that is just as important as a meeting of a mining council which was apparently dropped out of the negotiations by the government. So the formal body has been put aside in favour of discussions with a number of companies and in favour of then separate set of discussions. It seems to me these are very important influential discussions involving decisions about billions of tax dollars. They must be caught up, surely, in any, in any proper disclosure.

Mr Chaney, it's very difficult to devise a system for the very reasons that you've explained that covers that and we really have to do the best we can, I mean, those kind of examples are so gross that they should actually come to the attention of the people who have an opportunity to deal with them in the election if they, maybe but it is, that's not, this is a different problem that we have, it's a problem at a much lower grassroots level, a gradual insidious wearing away of the roots that bind people to the rules that the government makes not the major decisions, they are small trivial acts of corruption that people perceive to occur day after day and that is all in secret. They don't necessarily, they don't have that, the one or a thousand of them or a hundred thousand can't have the same impact as perhaps a corrupt act involving

billions but over time they do a great deal of damage?---Well, it seems to me one approach might be and I'm slightly embarrassed putting views at all because I've not systematically thought about this over a long time but in thinking about it since the invitation came it does seem to me that you can isolate areas of government activity which are peculiarly susceptible to this sort of problem that you've outlined. Clearly planning decisions are one of those and that's an area where I think it would appear to me quite sensibly in New South Wales the relevant department has its own set of rules and guidelines about what must be recorded and how it must be recorded and how transparency is, is achieved. It does seem to me you can look at those areas of government where there is a capacity to significantly provide a private benefit, the rezoning of land, planning applications, the granting of large contracts, it's very significant it seems to me and I think has been an issue here in New South Wales privatisation and so on. It does seem to me that you can have some general rules that cross government in terms of requirements of honesty and so on which should presumably have part of the law already but where you can have more specific measures which cover the degree of disclosure in those areas of potential risk, high risk. It does seem to me too that it's really important that the rules govern both those making representations and those receiving the representations, in other words there must be a set of rules which binds both sides of the equation. And also seems to me that there needs to be a set of rules where a breach of those rules has consequences. Now, I must say I have a particularly - - -

They do have consequences because of this Commission and our statute?
---Yes. There is a bit of a tradition growing in Australian government the most horrific example of which is the death of Mr Ward in the back of a van in Western Australia where the Commissioner in charge of Corrective Institutions I saw on television saying to the family, I am the Head of Corrective Institutions, I take responsibility. What does that mean? What does it mean? He's still the Commissioner, nothing has happened. In other words I think that there must be, there must be a sanction, a real sanction if there is a breach. Now, again I know there are difficulties and, and I would - - -

There are real difficulties even with our Act of the parliamentarians because there is great jealousy amongst the parliamentarians for the parliamentary privilege so unless there is an offence or a serious disciplinary issue they are free and even a serious disciplinary issue is a problem because that depends on their code of conduct which at the moment is something that is, we have difficulty with?---I have not read closely but I would commend the views of Harry Evans, as a generality I commend Harry Evans the Clerk, the recent retired Clerk of the Senate who I know made a submission to the Commonwealth and Parliamentary Inquiry on, on the rules as they would apply to members of parliament and he is a jealous defender or parliamentary privilege in my view the best traditions of parliament. There is an issue about members of parliament being able to access information wherever they can and so on, I think the really sharp point in terms of

members of parliament should be that they presumably are subject to the criminal law in terms of any corruption and there does need to be I think careful examination of the link between campaign funding and decisions. I think the closest thing I've seen to an attempt to improperly influence me was in the one occasion when I became involved in campaign fundraising. Is it worth my telling this story?

10 Yes?---It was a time when Labour was governing very successfully in the eighties, it was a time when the Burke government was doing very well in Western Australia and we know the history of that. On a single visit to Western Australia when the prime minister lunched with various people including Laurie Connell and a lot more respectable people he raised I think several million dollars in the course of a day and funds for the Labour Party. When Brian Burke and his brother were raising very significant funds for the Labour Party and the Liberal Party came to me and said, No one will give us money, you're the only person they might give some money to, there's no funds for a senate campaign, if you want any funds for the senate campaign you'll have to raise the money. Well, I did want a senate
20 campaign so I went out and I raised slightly under \$300,000 which was pathetic in terms of the fundraising of the Labour Party at that time. But I raised it by directing approach people and asking would they donate. They sent in cheques, I sent those cheques, I acknowledged them by letter, sent the cheques to the Liberal Party, said you'll get a receipt from the Liberal Party. I tell the story because Paul Keating used it to give me a very hard week in parliament when he said I was a bag man for the Liberal Party and a very bad person and I don't remember enjoying that very much. But my point is that one donor insisted on coming to my home to deliver a cheque. Now, he arrived, a number of people arrived, they were from particular
30 industry, I took the cheque, again I gave it to the Liberal Party, said thank you and that was the end of the matter. But I thought this is just their way of saying to me, you know, you owe us. I'd been trained in this, my father was a member of parliament and he never had any money, he was a school teacher with six or seven, seven children but I remember when the Trade Practices Act was introduced a businessman in Perth rang my father and said he'd like to talk to him and my father went to see him and he said, I supported your campaign. My father said, Yes. And he said, I want you to oppose the Trade Practices Act. My father said, How much did you donate to my campaign? Why do you want to know? He said, Well, I've got my chequebook here I'll write you a cheque immediately. He said the bloke got
40 terribly, and dad told me this story when he got home. The bloke got very embarrassed and dad left and presume voted for the Trade Practices Act. But what I'm saying is I think this is an area where there need to be laws which somehow separate out and as a senior frontbencher in the opposition I attended some of those lunches, dinners with major diners in the company of my, when I was in the leadership group of the Liberal Party, it seemed to be standard practice, it's written up in the papers all the time that people pay vast sums of money to sit next to ministers, tables and so on, it's the standard way of fundraising. It seems to me very, very difficult and

dangerous circumstance where the expectation presumably is one of influence.

That's very interesting, thank you. Mr Gormly, are there any questions that you'd like to ask Mr Chaney?

MR GORMLY: Yes, there are, Commissioner, if I can just - - -?---Can I make, I'm sorry, I do want to make a couple of other points.

10 THE COMMISSIONER: Yes, certainly?---One of the reasons why there is in my view the use of paid agents and lobbyists in planning and local government is because of the difficulty of getting decisions.

Is delayed?---Delay, delay, delay and I think that honest people sometimes turn to less desirable people for the simple reason that they cannot get a decision out of normal processes so part of the problem arises from process which are not in themselves transparent are not effective and those processes are inevitably very difficult where there are discretionary elements to the decisions which are made. Who gets rezoned, who doesn't.
20 The nature of developments which, about which there can be honest differences of opinion, but the more the law permits discretionary decisions the more likely or the greater the possibility of corruption.

And the greater the perception?---And the greater the perception because the disappointed person of course feels that there has not been a fair outcome. Now, again, I can say that my episodic and anecdotal experience of this is that people can be put in a very difficult position by very stupid bureaucratic processes and sometimes very stupid bureaucrats and therefore you look to find ways of unlocking that system so part of the answer lies in the
30 approaches we adopt and it would be much better if government was to be more clear in setting policy objectives in these fields and setting out what it wants and perhaps looking to precedents such as are applied sometimes in Queensland with major developments, where there was an office I think called the Coordinator General where the clear democratically, the intent of the democratically elected government was to achieve a certain development outcome, a senior and experienced and talented bureaucratic was put in charge of that and instead of it being a complete shambles and a muddle, it was driven by a clear government objective towards an outcome which you can then disagree or agree with in the ballot box but which is
40 clearly a political decision because these aren't political decisions essentially, they are choice decisions and the more that you can have a clear objective and a process which is not full of bureaucratic discretion the less likely it is that you'll have abuse or the appearance of abuse. I'm sorry, counsel.

MR GORMLY: No, no, no. Mr Chaney, you'll appreciate and the questions I'm about to ask you that although it may look as though they are pointed at others, this is a policy inquiry not a conduct inquiry but you are

an obvious person to get assistance from on this point, on these two points. The first is as to cooling-off periods for politicians, particularly former ministers, who leave parliament and then immediately pursue what could only be described as a commercial interest where there is a suggestion that their current knowledge from the minister and their former relationships from political life are used for the benefit, are in effect sold into a private interest, putting it crudely. A method around the world for dealing with that problem has been to create cooling-off periods. In Canada it's five years, here at the moment it's one year and in other places it's two years. In the course of the debate here it's been pretty clear that the currency of a minister; knowledge dies fairly quickly as to current activity but the relationships live on forever so to speak. Do you have a view about whether cooling-off periods serve a useful purpose, whether perception or in reality, and secondly do you have a view as to an appropriate period if you think there is one applicable? I'm really thinking here of New South Wales state if that makes a difference?---Well, I wouldn't claim myself to be an expert on things New South Wales other than a fairly sharp external critic of the history of the state. My friend Reg Withers said that you never got over the rum rebellion here and I think there is a sense of that around the rest of Australia but my answer to your question is yes, I think there probably is a place for cooling-off periods because I think that if you are actively involved in public administration and then you move directly into an area where there are, for example, defence contracting, childcare is a recent example where Larry Anthony went into the childcare business after being a minister in the relevant area I think, I think that's unwise and I think, again I certainly wouldn't accuse, having mentioned Larry Anthony I make no accusation of wrongdoing, I don't know him but I knew his, I know his family and I, I'm, so there's nothing accusatory, I'm saying it doesn't look right.

It creates a poor perception?---It creates a perception which is unhelpful in terms that the Commissioner has outlined. I should say that I think that, I mean I was Minister of Aboriginal Affairs over 30 years ago and yet I have remained closely involved in that and I am still closely involved with public servants I worked with 30 years ago because it's an area of policy which, it's an area of Australian life I wish to work in and I was on the Native Title Tribunal for 12 years and it has been a continuity in my life as a lawyer, as a politician, as a minister and so on. So I mean need to think about those connections very carefully so I wouldn't, I think that for a past employee working in an area where you have continuing interest in the policy of that area is perhaps slightly different from where you are in an implementation position in terms of where the government is contracting or providing benefits and so on. So I think again, I guess my rather waffly answer, at it's becoming, having said yes I do think cooling-off periods are important because they will at least aid the perception of straight conduct. I think as in all these things there are complex issues and my own experience and life is one of engagement with Aboriginal issues from the age of 17 to now which has taken me through law, politics, ministerial, being a statutory officer and

so on and I mean if you look at the career of lawyers in this field, Commissioner, I mean it's really interesting, if you go back to the Gove land case in 1971, who is the counsel for the Aboriginals? Ted Woodward. Who is the counsel for the government? Bob Ellicott. Who is the counsel for the Northern Territory Land Council, Gerry Brennan. Now, if you track through the events of the next eight, 10, 20 years you find a relay race. Woodward is a Royal Commissioner three years later on land rights, Bob Ellicott is chairman of the Aboriginal Affairs Committee in the opposition and recommends the acceptance of the Woodward Report. Gerry Brennan
10 is the High Court judge in the Mabo case, you know, there is a relay race of people, in other words, continuity of interest.

THE COMMISSIONER: But we're only talking about a cooling-off period in relation to lobbying.

MR GORMLY: And commercial interests.

THE COMMISSIONER: If there is - - -?---What I'm saying is that - - -

20 Would it have stopped you from being, continuing your interest in Aboriginal affairs, it would have just stopped you from lobbying (not transcribable) for a couple of years?---Well, I suppose you could say that Ellicott became a lobbyist within the opposition for the precise opposite of the position he'd argued on behalf of the Commonwealth. I mean, all I'm saying is there, there are some continuities but my, I guess I'm unnecessarily complicating the question, yes, a cooling-off period is a good idea - - -

30 MR GORMLY: All right?--- - - - in my view.

Yes. Would you, would you agree with the proposition that we've heard reasonably frequently that the currency of what one might call saleable information for a subsequent commercial entity is not a long period for a minister, obviously it varies from ministry to ministry and level of government to level of government but it's been suggested that the saleable currency is fairly short?---Knowledge of how the system works is long and I suppose Graham Richardson is a very good example of that who's mentioned, I mention him because he's mentioned in your discussion paper.

40 Yes?---I mean, he does seem to have converted his knowledge of the processes of the Labor Party and government into a very long term thing. It seems to me that - - -

Well, that's real expertise, isn't it?---Yes.

It's knowing how the system works?---That's right.

But what about the actual current issues of the time, you know, if somebody is dealing with a series of development projects in Western Sydney and then ceases to be a minister and goes into a development company, I mean, I know you can't talk about how long that development period itself might last but it has been suggested that that kind of current knowledge of what, what is actually happening as distinct from processes of government is short. Is you're reluctant to answer that, Mr Chaney, I'm not trying to pressure you into an impossible answer but - - -?

10 ---I suppose my, my sense of land development is that it is a very long term and patient process and therefore I would've thought that the shelf life could be quite long. I say that because very successful developers in Western Australia buy broad acre land well in advance of development and I think they, they take a very long view and I think they become involved in local government elections and in establishing sympathetic councils and I think that, I'm sorry, I think that is a very sophisticated long term business on the part of many operators.

20 All right. Let me take you, I have two more questions, Mr Chaney. The first one may also sound pointed. An issue that's arisen in this investigation is as to what happens when a minister has a family member and in particular a spouse or partner who is a lobbyist. Now, it's risen federally and state level in recent times and I'm really not trying to ask questions about that issue but the issue itself is one that bears heavily on lobbying because it's understandable that perhaps that people who have a political interest are likely to breed so to speak within the same family associated lobbying or perhaps someone in political life ends up in a relationship with somebody who lobbies so it's not going to be an infrequent event and it isn't. Do you see some appropriate pathway of assuring the public of the problems that inevitably arise when a decision maker is married to a lobbyist?---I think

30 you have a perception problem that's impossible to overcome. And I say that acknowledging that the circumstances between spouses are very widely are disparate. In my own case it would be ridiculous to suggest that my wife and I have separate financial interests, it would not accord with reality even though we have legally modest but different (financial) interests. In the old way my wife leaves that to me and I would be lying if I said that I didn't know what she had and I didn't know what, what influence her material wellbeing and so on. I have met couples who claim that they have totally separate professional lives, I find that impossible to imagine because

40 it's not the life that I have lived but I think given the range of circumstances to expect members of the public to see people as having Chinese walls as I think the expression is ridiculous, I don't think that would be as people would see it. I don't think the Chinese walls exist, so-called Chinese walls that exist in some financial institutions are anything short of ridiculous either as we've seen in some of the recent broking or merchant banking scandals and so on. So I think that from a perception point of view it's quite clear that that is a very bad look.

Would you accept that it's probably also not possible to regulate, prohibit or restrict in any way the lobbyist in a relationship of that type?---Well, I don't, I don't see why you couldn't actually.

Do you mean through codes of conduct?---Codes or even legal prohibitions.

As in statutory prohibition?---I mean, look, the Commission is aware Western Australia is an island community, it's a very small place, I mean, it's more an island than Tasmania in my view, socially. I find now that
10 wherever I go in Western Australia I trip over a conflict of interest. I'm old so I've been around a long time, I know a lot of people. I have a brother who's a very distinguished businessman, I've got a brother who's a judge. My wider family I have another brother, several, three sisters, we are involved in so many things. Almost every time I talk to anyone I have to say by the way on an issue I'm sorry I've got some involvement here, perhaps not direct but, so what I'm saying is that Australia is a small society, I mean, it is a big country and a very small society so we are shot through with conflicts of interest and it doesn't (not transcribable) again I
20 think the only defence is transparency I suppose so again perhaps talking back against myself here. So transparency is, is the fundamental thing the public is entitled to demand but I think - - -

THE COMMISSIONER: Sometimes the power of the people involved is so great that transparency isn't enough?---No. I've had to disqualify myself in the indigenous area from involvement in things I'd really like to be involved in because companies my brother chairs are involved. I mean, I think the perception I simply could not expect the public to see this as other than problematic. So, and I mean, again the same brother I was actually buying
30 some shares in one of his companies once and I decided to, they were very cheap shares at the time, I thought really sort out my future and he came to me and he said, You must not, I see, I've been told you've been buying some shares. I said, Yes, I'm going to buy some more. He said, No, you're not. And I said, What do you mean I'm not? He said, Well, it's (not transcribable) I can't be buying shares, I must not, I don't want there to be any parents and members of my family. So I mean it's that sort of thing we're talking about here, I mean, the perception really matters which I think the word you used, Commissioner, you know, what is the citizen who gets the hard end of the stick all the time supposed to think about privileged
40 people who always seem to get the advantaged end of the stick.

MR GORMLY: All right. Okay. So there are a couple of very short ones now, Mr Chaney?---(not transcribable)

No, no, I'm so sorry, I didn't mean that I wanted you to be short, I mean the questions are in a small compass. In the course of speaking before you referred to right at the beginning the fact that lobbying is an essential part of the system that in a sense almost everybody is lobbying everybody and that you as a minister might lobby your fellow ministers and they might lobby

you. There are two questions arising out of that. Firstly, do you consider that there is some room or no room, whatever, for tracking or recording the lobbying that one politician will conduct, one member of parliament will conduct with another, that's the first question. And the second is related, that is, as to the activities of backbenchers who are in a sense there to lobby. Do you consider that backbenchers are in some special position where any of their lobbying either should or should not be tracked or regulated, regulated as in exposed?---I don't, I don't think you can track what I would regard as the legitimate exchanges between members of parliament a lot of which in the old days anyway occurred in the party room. Certainly in the party room I entered in the 1970s was a place of vigorous, very vigorous debate and people put views very strongly and I would've thought that it would be absurd to suggest that there should be some external recording of those views. Members of parliament eat together, go to committee meetings together, there are party policy committees and they, when the system's working well are places of vigorous exchange. I think that's, that's the system. There are two areas that I think, one is we've had recent British examples where people have sold their vote. I think that was regarded as a criminal offence in the United Kingdom and certainly I think that any suggestion of that sort would I assume be a criminal, I think here would be corruption, wouldn't it?

I think so.---So that's presumably covered. The second thing is though that it's really a reminder of how important parliamentary consideration of major issues is through committees as a fervent support of the committee system when that's functioning properly what happens is you get on the public record of views that people have – just as you're putting public record views here, the parliamentary inquiry into the Commonwealth's code of conduct or whatever they called it was all on the public record. And I think back to major issues that we dealt with and I'm sorry to go delve back into history but my first term in parliament I sat on the parliamentary committee with Johnny Button and Jim McClelland and a very distinguished QC from Tasmania whose name I can't remember who went off to be a Judge and very Sir Reginald Wright on our side and I can't remember the third member, Alan Missen. We received for examination and report the National Compensation Scheme which was a huge government initiative, Whitlam, just one of Whitlam's many huge government initiatives. And we got an immense list of submissions, all on the public record. In the end we unanimously recommended that, that the government not proceed for reasons that were supported by all six of us across party lines. Now, it seems to me that is a reminder that there are good ways and bad ways of dealing with important public policy issues. If you compare that to the recent way that the mining tax was dealt with, it seems to me that was infinitely superior, where you had a totally open public examination of a very difficult issue with major economic implications, as against the way that the mining tax was handled where you've got a unilateral declaration and then a huge outburst from the affected parties and then a negotiation and billion dollars, multibillion dollar changes made. And we have no real

public understanding of the process, except we know quite openly that three companies met with senior government people and senior ministers. There were side discussions going on with Andrew Forrest and so on. So what I'm saying is that the antidote to much of this would be to have a better approach to the responsibilities of parliament by parliamentarians. It is my understanding that the level of internal discussion and debate has diminished in both parties, and I think the party system has intruded on the senate committee system, so that for example the report on this subject by the, divided on party lines. If you go back to the parliamentary committee system post the High Court Judge, what's his name, Murphy, there was a use by the parliament, it's a separation of powers incident thing. Parliament took itself seriously as other than simply a jousting chamber for the two parties. Now, in New South Wales the, I'm sorry to sound as though I'm against the mother state, but the bear pit is the euphemism for the New South Wales Parliament. I think that Parliamentary reform should be aiming to make a much greater use of parliament as a public forum for these issues where views go on the record, including members of parliament's views go on the record, so that the public can have a greater sense of confidence. All these issues interrelated. Campaign funding is an interrelated issue to the one you're, it's a closely related issue, but I think the way the Westminster system operates with its centralisation of power in the, in the head office is also very significant.

In the head office of the party, you know?---Well, no, the head office of the prime minister or the premier.

Right?---I mean, the fundamental reason why Mr Rudd has gone, in my view, is that he was simply centralising power in the prime minister's office to a point where the cabinet was becoming irrelevant, the party room was irrelevant and so on, and the House of Representatives was irrelevant. And as Senator, as Harry Evans said during the Howard government, that Howard had absolute power. He controlled the cabinet, party room, House of Representatives and he didn't control the senate, but once he did of course- - -

It all fell apart- -?---It all fell apart.

Mmm?---So all of these issues to my mind are actually closely interrelated.

40 And all of them are ultimately about transparency and the power of debate? ---Yeah. And it's also about public people taking their public responsibilities very seriously. So as a parliamentarian you are more, you owe duties to the parliament and the people as well as to the Labor Party or the Liberal Party. And to be quite honest, I think that there has been a decay so that when I went into the senate, I don't think this is irrelevant, perhaps it is, Reggie, a senator from Queensland had crossed the floor a hundred and thirty times, Reggie Wright a hundred and twenty times, Peter Durack, a later attorney general, many times, my subsequent, the leader who

succeeded me in the senate had crossed the floor many times. In other words, there was a sense of parliamentary obligation. For example, senators would frequently amend legislation which the thought reversed the onus of proof or infringed on civil liberties. People like Reggie Wright and Peter Durack actually read legislation and objected if it was not good. I don't hear that happening any more, with perhaps the honourable except of Senator Watson from Tasmania. So what I'm saying is, there's a decay in the sense of what is your responsibility, who are you responsible to. And I think that's part of the picture that you're, this is, the broader picture into which you're looking at a subset. I'm sorry if that's irrelevant,
10 Commissioner.

THE COMMISSIONER: Not at all.

MR GORMLY: Thank you, Mr Chaney.

THE COMMISSIONER: Mr Chaney, I have two very small questions. The one follows on from the question that Mr Gormly asked about parliamentarians and their vote. What about, what about parliamentarians
20 who get paid to, to lobby?---(not transcribable)

There's a distinction between parliamentarians who lobby because they believe in something and parliamentarians who pay because, who lobby because people pay them to.---I think that is entirely improper and ought to be illegal.

The second question I- - -?---But can I say the problem with your, that is, that once the payment is the knowledge that there will be substantial campaign funds (not transcribable). That's where the campaign fund issue
30 becomes- - -

Yes. Sorry, how does that work, that the, you know that if you lobby there will be campaign funds. Yes?---That's a possibility.

It is. The second question is also a minor issue, but there are people who have said to us that in the old days in parliament, when one dealt with a minister say twenty years ago, it was the absolute rule that if you met the minister in his office he would be accompanied, there would be present a senior member of his staff and all the proceedings would be taken down in writing, whereas that doesn't always happen now. And one of the potential
40 arguments against any recommendation that we may have that these formal meetings in the minister's office should be at least written down, not necessarily publicised, but certainly recorded and available on FOI is that that would be too much trouble. Can you comment on that?---I can't cast my mind over the hundreds and hundreds of meetings I had as a minister and say whether I always had someone, a note-taker, but I think the normal course would have been to have a note-taker, if only because I'm

excessively lazy about making notes myself and if you want follow-up, you've got to have a note.

And would that be kept in the file the note?---Yes.

And it would be not only kept in the file but kept? In other words nobody could, nobody would remove it from the file to destroy the evidence of the meeting?---No, I mean there is the notorious case that you would be aware of when I think the Burke government, where everyone went through
10 removing all of the yellow Post-it Notes. We didn't have Post-it Notes in those days so I can't say whether we were more virtuous we just didn't have the technology but no, I think the destruction of records of meeting would be quite improper and be against the law in the Commonwealth.

Mr Chaney, your evidence today has been educational, well, certainly for me and I'm sure for everyone else who's heard it and I look forward to reading it again. It's been extremely helpful to us so thank you so much for coming?---Well, thank you even though it has been (not transcribable)

20 Even to New South Wales?---(not transcribable) worthy, Commissioner, that is a problem as I indicated.

Thank you very much?---Thank you.

THE WITNESS EXCUSED

[4.10pm]

30 The Commission will now adjourn.

AT 4.10 THE MATTER WAS ADJOURNED ACCORDINGLY [4.10pm]