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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 11 AUGUST 2010

AT 10.00AM

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THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, I call Mr Graeme Wedderburn to give evidence.

THE COMMISSIONER: Mr Wedderburn, would you like to give your evidence under oath or would you like to affirm the truth of its contents?

MR WEDDERBURN: Under affirmation, thank you, Commissioner.

10

THE COMMISSIONER: Yes, thank you.

**<GRAEME JOHN WEDDERBURN, affirmed**

**[10.05am]**

THE COMMISSIONER: Won't you be seated, Mr Wedderburn. Mr Gormly.

20 MR GORMLY: Mr Wedderburn, can you tell us your full name?---My name is Graeme John Wedderburn.

Right. Mr Wedderburn, I'm just going to spend a minute or two on your background and then invite you to make such opening statement as you'd like to?---Thank you.

Look, you were the chief of staff to the Premier of New South Wales Mr Bob Carr for a period of five years from year 2000 to 2005?---That's correct.

30

Prior to that I think you'd long term been in public life but immediately before that appointment you were his press secretary I think. Is that correct?---Legal advisor and press secretary prior to that.

Thank you. You've since been chief of staff to Premier Nathan Rees. I think you were the general manager or you were the general manager, Government and Regulatory Affairs with Origin Energy for a period of two years and I think you were the director, Specialised Capitalist Group at Westpac and I think you're currently contracting with KPMG?---That, that's correct with one alteration. I was with Origin for a period of a year.

40

A year, all right, thank you. Now, Mr Wedderburn, is there anything that, you're aware of the purpose of this inquiry I think?---Yes, I am.

Yes. Is there anything that you would wish to say by way of opening?

THE COMMISSIONER: Before you do can I ask you a personal question? ---Yes, certainly.

Did you manage the passage of the Civil Liability Act?---I did assist with it, Commissioner, but I answer this with trepidation.

I'm not going to take advantage of this situation, Mr Wedderburn, but I want you to know that I bear a lot of wounds that I think you should bear?  
---I apologise for the injury caused.

10 Yes, your opening statement?---Just briefly to say that I'm pleased to provide whatever assistance I can to the Commission and specifically in relation to the inquiry into lobbying. I believe that lobbying has a legitimate place in our democratic political system but I strongly favour and support its sensible regulation as seen on the lobbyist register and other reforms since.

MR GORMLY: All right. Thank you. Mr Wedderburn, I'm going to plunge into detail if I may. I appreciate that structures of administrative arrangement may later from one Premier and one government to another but generally speaking is it the case that chiefs of staff are to some extent organised by the chief of staff of the Premier?---That's, that's correct.  
20

Right. All of them are employed through Premier and Cabinet rather than by the Premier himself?---Yes.

A fact I just learned outside I must say. But there is a degree to which chiefs of staff are in contact with one another and will report to a principle chief of staff?---Yes, that's correct.

And that's a role that you carried out while you were chief of staff to Mr Carr?---Yes, and to Premier Rees.  
30

Right. And would that also involve meeting, physically meeting with the chiefs of staff?---Yes, on a regular basis at, usually at my instigation.

You can assume, Mr Wedderburn, that we have already heard some evidence and certainly today we'll be hearing more evidence about the precise role of the chief of staff and I won't trouble you too much with that except insofar as it relates to lobbying. As I understand the position a chief of staff is very much a gatekeeper to the minister?---That's correct.

40 But in addition may well do some of the tasks of the minister, for example, seeing and hearing from lobbyists?---That's also correct.

Mr Wedderburn, can I ask you to just give us some idea from your experience of the way in which access to ministers is exercised by people who are represented by lobbyists and in particular comparing of perhaps with those who are not?---I think with lobbyists they know and favour more direct means of contact. And I mean by that, to make a personal approach if you're in a public place at a, a large gathering perhaps, an industry lunch or

dinner and seek to make an appointment with you verbally or by telephone or occasionally by email. I think that differs in some respects with, with an organisation that doesn't have a lobbyist. I think they tend to come through more conventional means, which would be more likely, I think, correspondence directed to a minister or the Premiers office and then that, that request for a meeting will then go through formal public service processes. The handling of the mail in any political office is a combination of receipt in the political office initially. And then it's redirected to the public service in most cases to answer and respond to. If it's a request for a meeting it would be held in the private office with advice sought on whether the minister ought to meet, ought to meet but not at this time if it were a matter that were, were likely to cause a conflict. Or not at all and then the matter might then be referred back to the public servants to perhaps meet with the, with the party wanting to express a view to government or it may be delegated to personal staff or a combination of the two.

Right. Generally speaking, is, putting aside the Premier, is access to ministers in New South Wales difficult to achieve? Perhaps if I can just assist you with that. We're part way into a debate about this or evidence about this Mr Wedderburn, and there has been a body of evidence that ministers are very busy. Access can be achieved or is perceived to be achieved more easily in some cases by using a lobbyist. Ministers generally will say that they have an open door policy and that they endeavour to see people when they can. But one assumes that there is a, a degree to which that can't be complete. What we seek to explore, Mr Wedderburn, is, is the selection process. What are the factors that are likely to impact on whether or not a minister will see someone who wishes to see them seeking - - -? ---So may I ask, are you distinguishing between lobbyists and anyone else seeking to meet with government or, or do you just want me to refer specifically to lobbyists?

No, I think anyone, really, Mr Wedderburn. If we can deal with that first.

THE COMMISSIONER: Sorry, Mr Gormly. There's difficulty in definition as to what is a lobbyist. That's the problem. I mean it all depends, I mean there is more to a lobbyist than a, on one view with the standard third party lobbyist?---I think in most respects representations, almost all representations to government irrespective of who they're from other than to backslap you and praise your work, are, are activities of lobbying. Yes, they want something. People want to see the minister because they want the minister to do something for them or for someone else?---Not on, not on all occasions. I think the private sector has a very strong view, perhaps not universally so, but certainly the big corporates I've worked for or with is that relationships are very important in business. And that means for a bank or an energy firm that it's important for them to have relationships with other banks, with other builders, with all of the advisory firms that work in that field and also with government. They don't always want something other than a recognition that they are in the field. And in

fact, a lot of representation from corporates to government are simply to present credentials I think for future opportunities and generally not for those which are right here and now being tendered. But, but, for example I do know that a bank I formerly worked for is the transactional banker for New South Wales, they value that contract as they, as they do in other states. They would be upset to lose that so that they know that there are key relationships in government that they need to maintain and they know that when the contracts come around every few or several years that performance is important but also general recognition or reputation of that corporate in the market is important so that's, that's the nature of the relationship. They know that when a tender for that opportunity comes around that it's bound by very strict and rigid guidelines about presentation of credentials or discussions of attributes of the new round of the tender, they know that is separate but, but the head of the bank or senior officers of the bank know they have an ambassadorial role at large and all of their officers to present their credentials nationally to a big client like government.

THE COMMISSIONER: And would a minister be ready to receive a person in this ambassadorial role with some degree of willingness, even when he's busy with other things?---The transfer of information, as you know, is, is two way. Ministers often come from general backgrounds and find themselves in a ministerial role where they know they, they, they don't know as much about an industry or a field as, as the CEOs of the corporates they may come in contact with so they use it as an opportunity to learn more about the field that they're participating in the administration of and, and I think also they, they use the ministers and ministerial staff and also the public servants in the same way, use it to, to build their knowledge of a particular industry sector so that if some event comes up at a later time or whether they think that the knowledge they gained here is now relevant to a tender two or three years later about whether this feature ought to be included in the tender for, to provide a better service for taxpayers or, or a new service for, for the public servants administering it. So they see it as two way. Timing, time and availability's the, the biggest issue I think for ministers. Most have full diaries and most as, I think we know, work long and extended hours over the course of the week so an invitation to meet a corporate leader is taken with seriousness and people want, want to be professionally courteous but the next question is always well, what is it about and in some instances it's simply because a new CEO has been appointed by the board and he or she will present credentials and it's important for that relationship to be struck for, for reasons other than tendering competitive opportunities. Where, where it's, where the minister's time wouldn't permit such a meeting the next usual recommendation is whether or not there's another minister in the cabinet who could meet if it's, if it's issued based and the last resort generally on, on issues like this are perhaps so, if not premier or minister then the most senior available public servant and then occasionally say the chief of staff or a senior advisor in that meeting so that there's, so that the corporate can see

that there's continuity between their, their transfer of information to government going into the public sector level but that it is also permeating to the political level so, trapped in the ministerial office and presumably then made available to the premier or the minister.

MR GORMLY: Mr Wedderburn, in the course of the preparation for these hearings, some Ministers under notice have provided details of meetings that they've held with lobbyists and meetings generally and as one scans the, the notes of the meetings that have been had it's very striking how  
10 many meetings occur which don't seem to have any kind of content other than meeting, consistent with what you're saying and I'm not asking this question in any sense of criticism of, of the practice of meeting but it does seem that there are a very large number of meetings where perhaps the ambassadorial role is occurring or where there is no business contracted. Do you, is that a fair reflection of the quantity of, of ambassadorial meeting compared with business?---In my own experience that would be rare because I, I, I wouldn't have had much time in the diary unless there were some pressing matter. I would occasionally, and I might make this  
20 distinction too, that I think in my experience working for Premiers Carr and Rees, I think it was, would have been rare if, if, exceedingly rare, I, I can't recall too many occasions upon which the premier would see someone who was distinctly a lobbyist alone.

Right?---On a matter.

Right?---Generally the premier would seek principles of the firm or of the organisation wanting to make a point to government and on some occasions a lobbyist might've accompanied as part, as part of that group but in my  
30 experience it would've been fairly rare if, if nonexistent for Premier Carr perhaps to have met a lobbyist.

Would that be a general view of ministers that seeing the lobbyist alone was likely to be less useful than seeing a lobbyist with the client?---Sorry, can you repeat that?

Would that be a general view of ministers that they would prefer to see not the lobbyist alone but the lobbyist with the client?---I know, I think opinion  
40 across ministers on this differs, I do know one former treasurer who, who preferred not to see lobbyists at all and, and his advice (not transcribable) otherwise really was I don't want to see them, if there's a point to be made let an employee, the CEO of that organisation and he or she can make the point, they don't need to have a political lobbyist to, to make his, his diary. He, he had a view that their presence was a complication I think in terms of perhaps public perception.

There's been a substantial body of evidence that the complexity of government and the complexity of considerations that a government must entertain is such now that the use of lobbyists is proving of benefit to

government because they are more likely to understand what government want and that they are better trained at compiling an argument, getting the actual data, the facts and figures together and presenting it in a way that's useful to government, they can do that better than their client and perhaps more cost effectively too I suppose but the argument we hear is about the efficiency of the argument. Is that consistent with your experience?---Yes, I'd support that view. I think that, once again referring to my own circumstances I think that lobbyists would know say on a parliamentary sitting day that, that they shouldn't try and force their way into my thinking by telephoning I think on, on a parliamentary sitting day. They'd be mindful that every moment of my time would be allocated that day and so they would choose to call on a Monday or a Friday if they needed to make contact. So I think that's a case where the experienced savvy players appreciate that there are times when, when you can intrude into the thoughts of senior political staff or ministers and there are other times where, where it would simply be registered almost for nuisance value if they were to call. Of course if it's a very, if it's a critical issue, I recall on one instance where the parliament was sitting and a former conservative government advisor turned lobbyist called and it was about the imminent collapse of a regional airline and it was the issue that he knew was pressing and it wouldn't have mattered what hour of the day or where I was, he knew he needed to make contact and, and that he knew, he knew that the issue was of such importance that I would respond as soon as I could.

What about the quality and content of the material supplied by lobbyists compared with non-lobbyists?---I think it's true they have an educative role for their, for the parties that engage them in, in simplifying argument, getting to the nub of what's important, what would be important to the government so reducing the shopping list to two or four or one single point that they need to get across. I think people recognise that I was busy and I would've received certain types of contact only probably deemed to be critical and time critical and I, I don't think I'd have been on many people's lists of the less experienced who were simply of a view that every stone must be turned and I'm on the list so tick, tick. I don't, I didn't get many of those sorts of inquiries it was generally the issue was important or the issue was urgent.

In day to day, and again, I'm sorry, I'm not really asking about your experience as chief of staff of the Premier, but more your knowledge of what those under you were doing with their ministers. On a day to day basis, is it your understanding that a lobbyist is most likely to make contact with the chief of staff to, to get an appointment or to get time?---Yes. Or a senior advisor. That would be common.

Right. I assume that the chief of staff or the senior advisor is going to explore what the meeting is being sought for?---Yes.

And that may well determine whether or not the person seeking the meeting gets through to the minister or is stopped in effect - - -?---Yes.

- - - by a chief of staff or sees the chief of staff?---Yes.

Right. So there's a prioritising of some kind going on there?---Yes, there is.

10 THE COMMISSIONER: Sorry, Mr Gormly, can I take it that one of, one of the things the chief of staff would want to know if a lobbyist communicated with him is who the lobbyist acting for?---Yes, certainly. Most lobbyist now, I think have been effectively whip trained even if, even the people I, I know well and I know their client base, so the first words they state after a greeting are to say that I'm calling on behalf of my client.

20 And by the time the lobbyist gets to see the minister, the minister will know who the lobbyist's client is?---If, if it were agreed between a chief of staff or a senior advisor that there was, there were good grounds for a meeting, it may then transpire in this way, that the chief of staff might suggest that the, the principal of the firm that the lobbyist represents should transmit either a letter or email either to the chief of staff or to the minister's private secretary noting the discussion had taken place and suggesting that it would be appropriate to meet. And then there would be an internal process about whether or not it could be accommodated into the, into the minister's diary. At which point, if principals only attended the meeting, it may not be known to the minister necessarily that there's any connection between the lobbyist and the firm.

Can I just explain the reason for my question?---Yes.

30 The register as it stands seems to be expressing only a personal and preliminary point of view. It seems to achieve little purpose. When I put that to registered lobbyists who don't want the register changed from its present form say, well what it does do is it informs the minister or the civil servants who the clients are of the lobbyists so that the, you do not have instances where the client is unknown or, or even where a false client is represented. But it, from a common sense point of view, as far as I'm concerned, it would have to be quite unique for a lobbyist alone to be allowed into an audience with the minister without the minister knowing beforehand who the lobbyist was representing?---Oh, certainly, certainly.

40 That would be the case. I think that I was surprised to hear Mr Gormly say that, that it appeared that lots of meetings appear to be in diaries but without any specific purpose to the meeting. I'm not sure why or how someone intrudes into the minister's diary unless it's a long standing friendship or a, and they're not talking about any material matter of government. They may be talking politics, perhaps, but I, I can't imagine there'd be many circumstances where or any really that a lobbyist would be with, with a minister without, without knowledge of the client.



I've, I've (not transcribable) Mr Wedderburn?---I'm sorry.

MR GORMLY: That the striking feature of those notes of meetings was that it may be an entirely formalised arrangement, that is, that there is the lobbyist perhaps, the lobbyist client, that is the person in whose interest they're all there?---Mmm.

10 The minister, the minister's staff, there's a note taken of the meeting but it's clear that or it seems clear from the note in any event, and there's no reason to distrust it, that the purpose of the meeting is, is not one where there is a direct request that the minister be doing anything. It seems to be a meet and greet type of meeting, entirely legitimate?---Right.

It's just striking the number that seem to be imposed on ministers, perhaps taking up a fair bit of time, without any obvious request or piece of direct business being contracted. Well, that was really the, the question. I wasn't suggesting that there were - - -?---Right, I see.

20 - - - inappropriate meetings?---No.

They seem to be entirely appropriate but just not necessary functional - - -? ---Right.

30 - - - from a government point of view?---I apologise if I misconstrued that. Look, I, I, I would think that, as I said, I think it would be rare for a lobbyist to be with the premier or the minister on their own, irrespective of the purpose unless there was a, a long-standing relationship between, between them perhaps which is unrelated to any material event or decision of government. But I, I think that on some occasions if the lobbyist isn't, isn't coming to a meeting that's been arranged there's probably no formal process other than a chief of staff or a senior advisor communicating perhaps that company X is coming to see you at 11.00am and by the way John Smith Lobbyist represents that firm but he is not attending today, that might be the extent of it. But if they're not an attendee at the meeting - - -

THE COMMISSIONER: Well, that would be unnecessary to mention that? ---I would think so.

40 But if they were attending then the capacity in which they were attending would be known to all?---Yes, yes. And a general practice I think is in, in certainly the premier's office and ministerial offices that I'm aware of is, is that ministers are extremely reluctant to enter rooms unless it's a large gathering of hundreds but in their own premises or if they're, if they're going to a boardroom meeting perhaps elsewhere, they like to know before they go, they have in writing the attendees.

And who they represent?---Yes.

MR GORMLY: Mr Wedderburn, I think you, at the time the current register came in Premier Rees was endeavouring to do a considerable amount to improve integrity and the appearance of integrity. As I understand it, that was the principal motivation behind the register. Is that your understanding?---I, I believe it was, yes.

As times move, and no doubt that was a step forward, it, it put out into the public area the identity of those people who professionally lobby government but as time has moved on the register seems in its current form to serve a lesser use than it did in that it only produces now the name of a lobbyist and the client but not more. So options appear to be to either move away from a register altogether or increase the information contained on the register unless one thought that there was a value in retaining the register now doing only what it does on the basis for example that third party professional lobbyists are out in the open and the people they act for are publicly declared. Do you have a view about whether the register in its current form continues to serve a purpose?---I, I believe it, it does and I think because it acts in concert with other, other factors, the existence of this Commission, the standing royal commission, at all times I think is very powerful in the minds of public servants, so, ministers, their staff and I think generally in the community, the business community included of course, I think generally in the community, the business community included of course. I think also that other action taken, perhaps the example last year of moving to more formal recordkeeping and quite strict guidelines for meetings between officers of the Department of Planning and lobbyists, I think serves to strengthen that while, while not augmenting the register directly I think it, it has, has the effect because the rules of engagement, I think long-serving public servants would be astonished that there's been any blurring of those over time because I think long-standing public servants have always believed that the presence of at least one public servant, recordkeeping of meetings with, with proponents or advocates was the norm and if that's slipped then I think at least in the Department of Planning now where it's mandated perhaps elsewhere in the public sector it will be reinvigorated.

Right. Would you adopt the view yourself that meetings between government and non-government generally need to be recorded?---It depends on the nature of those meetings. We've discussed meet and greet, that's probably less, less necessary there to record, record it other than for what it is, a presentation of credentials or simply to meet a new CEO. I think where, where quite strong views are being put and, and, you know, I've had an experience of this where I met not a lobbyist but someone who was lobbying, I did record some but not all of the detail of that meeting and I recorded all, I recorded in the absence of a public servant and my position and that corporates may have been enhanced had I had both recorded all of the detail and had a public servant present.

Without wanting to stir old coals, Mr Wedderburn, it was a feature that your notes of that meeting were the only notes I think of that series of meetings and I think you were the only person who took notes?---Yes, that's correct.

10 Would you support a, a protocol that required meeting between ministers and their staff on the one hand and lobbying interests on the other, that they be recorded in writing in a way, with the intention that they be retained for state records purposes?---Once again I think on a case by case basis some contact is, is, sometimes I think by the recipients and in my case, and so  
10 chiefs of staff are almost pointless. Yes, you agree to meet but they simply relay something that could have been said over the telephone or that's already known but in, in principle I think that recordkeeping is a very sound idea as a, as a risk minimisation exercise certainly for people in my position as a chief of staff or a senior advisor, the record of a meeting I think would stand. In terms of placing on the public register I just - - -

20 THE COMMISSIONER: I don't think it's suggested that the details be placed on the public register. That's not, the suggestion is that they be subject to FOI, as they are?---They are, as I record all of the notes I took on any subject would probably have been subject to FOI.

Yes?---At any point in the ministerial office.

Yes. It's just to, to return to the past as regards keeping of notes and having somebody, the requisite number of people present?---Mmm.

30 The question is whether you would support that, not, not asking whether that would have to go into a register?---Yes, I'd, I'd support that, the recordkeeping but perhaps not always the presence of a public servant.

MR GORMLY: But at least a record of the meeting?---Yes.

Yes, all right. Now - - -?---Can I just say in relation to that, where the representation, where the meeting's been accepted and agreed and it occurs, sometimes the only product from these meetings was a diary entry that the meeting had occurred.

40 Yes?---So it stands as a record that can, can be obtained under Freedom of Information and on other occasions, as I said, that while I would have and colleagues would have accepted a meeting the meeting turns out nothing, it may be a poor representation by, by the advocate and basically no, no product and simply the meeting occurred and that was it.

All right. Mr Wedderburn, can I just explore with you now a possible expansion of the register rather than its elimination and ask you to consider this proposition that the ultimate question will be whether you consider that this possible expansion might interfere with the sensible and timely conduct of business from the government's point of view. If the register were

expanded so that it required either a lobbyist or government officer, but at the moment let's say lobbyist to insert on the register, a public register, by its own access to that register the office and date of a meeting that occurred together with the name of the interest for which the meeting was carried out, but no more, that is not the content of the meeting. Just the fact that meeting has occurred in a particular interest. Bearing in mind that such an entry would enable the public or the media then, if they wish to do so, to pursue a GIPA or FOI type of application and so that normal GIPA exclusions, normal GIPA requirements would have to be passed before the information were to be released. Would you consider that an expansion of that kind would unduly interfere with the capacity of government to carry on business?---I, my only concern is that if there were issues of competitive advantage. I'm not quite sure how the public interest is served by seeing that a particular lobbyist is particularly active. I think the assumption is that if they're on the register they are from to time seeing, seeing representatives of government on their clients behalf.

THE COMMISSIONER: Accepting that there are instances where the recording of a meeting would the mere recording of a meeting would in itself be commercial in confidence or actually matters of state security or some other generally recognised grounds for concerning the fact that a meeting would take place. And if there were to be a mechanism in place which would allow the, the omission of such a meeting from the, from the register, then with those exceptions, would you support the proposition?---In general I would, but I'm just concerned that the, the onerous task of transferring the responsibility of this on to the, on to the lobbyists to continually update perhaps daily.

It wouldn't be. It would be the, it would be the, on one view it would be the department that would have to do that?---Essentially, at the moment it's self regulated.

MR GORMLY: I (not transcribable)

THE COMMISSIONER: You put the - - -

MR GORMLY: I put the proposition that it would be a self filled - - -

THE COMMISSIONER: (not transcribable)?---Because essentially that's how it operates at the moment. Because the lobbyists self regulate. They update and report.

So that the suggestion is that there would be some kind of online system for the lobbyist to do this himself?---I'm not sure what public purpose it represents. And I answer in this respect, that, that in the competitive processes of the government tenders, the various contracts so for infrastructure and services, there are quite stringent processes around those, including the appointment of probity auditors and, and the bigger the project the more obvious this is that that, there's a point at which the shutter goes

down on a lot of these tendering processes and that if information has, if it's the desire of the corporate to retrieve or to transfer information to the, to the client, to the government, there's a point at which it's appropriate to do it and there's, there's a point beyond which it is not appropriate to do it. So that that, as I said before, I think with the combination of a register that at the moment is, is self regulated by lobbyists, where they, they must name their clients and, and maintain that as up to date as possible, the stricter requirements for meetings we discussed in planning and the reinvigoration across the board of public service, including personal staff, on record  
10 keeping and the access to those through Freedom of Information and so on, I'm not quite sure what other public purpose there'd be in, in regularly updating. Unless, of course it's essentially this, to reinforce that there's the window, you can't, you can't enter here, because the shutter's gone down on tendering processes. I could see that that's, would serve as a very public exclusion that a lobbyist couldn't seek to meet or speak with, about a particular subject. And I'll just say as a, as an advance to that, that the, further to that, that the most activity or I think most, most requests from lobbyists in my experience, directly to me and to my colleagues are generally about information that is ambiguous or unclear or just simply  
20 hasn't been published on, put on the public record.

By government?---Yes. Yep. And, and in a sense fault rests with government because if a timetable for say an asset sale or a tender process, irrespective of what it is, is published at the commencement of the tender, that if there is slippage for whatever reason to that, to that process the only, the only people generally who, who are able to obtain reliable advice tend to be these types of informal contact, where they're not seeking to intrude on the merit based examination of who should win or who should not, in a tender opportunity. But there's just nauseating silence from government  
30 about, about timetable. And I think asking mostly quite simply questions about, it was due to be decided today, it hasn't been. Is there slippage? So generally that's, I think that would be the bulk of contact from consultants really asking about, to have more clarify about government process. But back to your point, Commissioner, about, about it I, I could see some value, but I, I think that it's, I wonder what it does in the public's minds simply to see that perhaps one firm or one lobbyist is more active then another. And whether this is commercial - - -

40 Journalists and others, but particularly the journalists are interested in this because they're, as I understand their complaint with the present procedure, for the present register is that it doesn't allow them to investigate the following situation. The government does a favour to somebody, an unexpected favour. A favour that, and by favour I mean the grant of a license or a contract or even a sum of money and there doesn't seem to be compelling reasons for that. And there doesn't seem to have been an open process which led to this favour being granted. And they suspect the involvement of a lobbyist and if you look at the lobby register and you can see that there is a lobbyist who does represent the beneficiary of the favour,

but you cannot know whether there's been a meeting at a relevant time between the lobbyist and the decision maker. So you can't even actually seek an FOI request because you don't know what to ask for?---In my experience that if, if a journalist suspected whether there was any, any political influence exerted successfully by lobbyists or not, that an outcome was in company A's favour or, or perhaps an industry organisations favour, there's any number of ways already available to journalists working on their own or in concert with, they might resent the expression, but working in concert with members of parliament that, that Premiers generally are on their feet having press conferences once a day or once every other day and busy ministers generally, the same number of times making themselves available to, to the New South Wales parliamentary press gallery. And on that occasion alone you are able to ask anything you wish until the minister departs the scene and you're able to ask staff at any time questions either over the phone, in person or via email and, and I've seen often that even if a journalist wants to protect their interest, their exclusivity in a story and they want to obtain information you've described they won't ask it at the press conference because they ask a great question, they get the wrong answer and then everybody shares in the product but they will ask personally, they'll ask the minister on the way to the car, they'll ask the chief of staff or the press secretary have you met person X at any time in the last three months before this decision published today in the newspaper and if they choose not to answer at the kerbside or over the phone they then put in, put in an email and if the answer is yes, I met with lobbyist X on the 25<sup>th</sup> of March and they know that the decision was on the 11<sup>th</sup> of April well, they can add one and one.

THE COMMISSIONER: How often do they get, I mean, is the norm that they will get an answer to their question or is the norm that the question's evaded?---I think the norm is that where it's staring you in their face that you cannot engage in, in a cover-up and, and try as you might you'll end up in this chair but, but if the answer is yes, we met however, I did meet this consultant however I met and only discussed with him or her subject X and Y and here are the minutes of that as were discussed then you may be in the clear and the journalist's tongue will be firmly in their cheek. There is another way that they can obtain the information which is to, if they believe that they can use the processes of the parliament by approaching a member of parliament or indeed the member of parliament may have approached them with a story but not sure, they can then use questions on the notice paper and they can ask questions in parliament if they were crafty enough to draft them connecting one of - - -

You mean the opposition?---Yes or an independent and in the Upper House the opportunities for independents to ask questions broader than the Lower House. But I, so I say in that respect that if a journalist or anyone else believes that something occurred, a lobbying activity occurred in advance of a decision they can obtain the information and they can, can obtain it without necessarily the declaration on the lobbyists register.

MR GORMLY: Mr Wedderburn, one of the reasons that these issues are being explored is to try and increase the degree of transparency that presently exists without encumbering government but the reason for trying to achieve the transparency is because there seems to be a pretty unanimous view even from offended professional lobbyists that lobbying carries with it a tanked and a suspicion, scepticism in the public mind. Now, the degree to which that scepticism is justified is a different issue, whether or not it covers corruption is really a different issue. On any view it would seem that there is at least a perception that at the moment lobbying is an activity carried out behind closed doors and it seems to cause problems. Do you, first of all would you accept that there is that problem with lobbying as it stands at the moment, that is, that there's a perception that there's something about it that is unhealthy and if you do do you have a view about how that could be dealt with or cleared up particularly if one adopts the very wide view that lobbying is a normal part of the democratic process?---In answer to your first question, yes, I do believe that there's a negative perception has arisen in recent years about the role of lobbyists. In some respects I think the perception is unfair, in my lengthy experience I've never, never been lobbied in a way that I would think is corrupt or overbearing and I've generally found that irrespective of political pedigree that the, the lobbyists I've, I've been in contact with over the best part of the last say 20 years have generally been of high calibre and big corporates protect their relationships, I beg your pardon, protect their reputations vigorously and I think it extends to the quality and types of people they employ and engage as contractors and so I've not seen any sharp practice from lobbyists at all directly. Last year we responded to perceptions particularly the Department of Planning that, that perhaps lobbying or political influence was, was interfering with merit-based decisions. I think to this date with exception of say councils at Wollongong, perhaps elsewhere that there's been no matter proven against any officer in the Department of Planning in New South Wales that I'm aware of or for that matter involving a representation made by a lobbyist on behalf of a proponent. So at the moment it is firmly perception.

That's all consistent with the evidence we're hearing here, Mr Wedderburn, that generally speaking lobbying as carried out by professional lobbyists is helpful and of integrity and worthwhile. To what would you ascribe then the negative perception?---I think the community develops a view about a government particularly a longstanding government for various reasons and they make valued judgements about some of the personalities in that government in the political wing. I still think that the evidence remains that, that public servants in New South Wales are still exemplary and of high conduct and professionalism. I think the value judgement has been made about the political class.

Can I put this to you? While I can understand that argument the perception that lobbying, political lobbying of governments is a problem is not unique

to New South Wales, it appears to be a concern across the world in most democracies and there are procedures gradually being put in place or sometimes not gradually, sometimes suddenly and in response to an event which may be an explanation but being put in place to make more transparent and to expose the lobbying process. Would you accept that there do seem to be problems about the way in which lobbying is done generally which are exposing it to an unnecessary public odium or formation of an unnecessary public odium?---I think that governments learn from their mistakes and I think that was has occurred say for instance in  
10 New South Wales in relation to say planning has been that the perception has been allowed to take hold even though as we've discussed here today there have been no investigations or, or findings sustained against any Department of Planning officer or lobbyist or proponent.

THE COMMISSIONER: That hasn't stopped the perception although the new system might but it does not, it's not limited to planning, Mr Wedderburn?---No, no, that's, that's correct but I, I think in part the perception is fear by the longevity of one political party in office and a, a large number or lobbyists in, in this jurisdiction share, sharing political party  
20 membership with the incumbents. And so I think that there's a simplistic perhaps unfair view of it which has become the perception that, that a lobbyist of the same flavour or background as the government necessarily gets you an advantage over using someone else and once again I think you have to come back to well, where in, in essentially merit-based decision-making in New South Wales across all, all portfolio areas, where is there evidence that political influence was the main determinant rather than merit-based decision-making.

There is very little evidence but that doesn't mean to say, I mean speaking  
30 purely objectively, that it doesn't exist. The absence of evidence suggests that it may not exist but of course evidence of that kind is difficult to come by. But leaving all that aside, there, if there is a strong perception of corruption in this area it is really harmful to the ordinary day to day working of the government. Would you accept that?

---I, I agree and, and that it is damaging and hence Premier Rees' announcements last year which I helped work up to reform the practices, certainly in planning but I think that if they're made, if, if the rules of engagement are made, made clear and uniform across the public service I think really the protector of this reputation is government itself. Anyone  
40 can register as a lobbyist and they are of variable quality and background but the public servants and political staff and the ministers are themselves the gatekeeper of the honesty and probity here and if, if, if they work harder I think to reduce the perception that lobbying has a role in decision-making I think that it can only be done by essentially their, the, the clearest regulation of the rules of engagement, how, how people meet and what's appropriate and what's not.



What you're saying has, well, as far as I am concerned, considerable force but I am going to put a particular example to you. I'm not making any, in put the example to you I'm not making any comment on the merits of the example or the merits of the individuals or suggesting that anything untoward has happened but it's something that one reads in the press frequently, in fact, one, I read it only two days ago and that is the influence of the Hotels Association and the, the, the grant of licences for gambling machines and opening hours of hotels and there is a, it is of course connected to political donations which Premier Rees also was to a degree involved in and expressed views and that may or may not change but that example has nothing to do with planning. There is no evidence of any lobbying having taken place at all on behalf of the Hotels Association but the connection between the donation and the resultive government decision allows a lot of play to be made of rumour, innuendo, et cetera in the press. Now, the question is whether a register that required details of meetings to take place, whether the existence of such a register would go a significant way to prevent the kind of perception that has arisen in this particular example, for example, to arise?---I guess it's all eye of the beholder. The confirmation that the AHA either on its own or a lobbyist representing the AHA approached government on one day and then several months hence a decision based on policy or on revenues is made between the Treasury, the Department of Sport and Rec I think it is and, so the Department of Premier and Cabinet to make a policy decision, I don't think you can shift some people's perceptions that that one event led the other and it's very hard to do that if, first I think at the moment the AHA doesn't have to register because they're not a lobbyist, is that correct, but I think that there's some discussion within the Commission about whether or not representative groups like the AHA or the clubs ought to be registered and, and I know that both the Commissioner and, and the state government when they were devising the lobbyists register were grappling with where precisely the line is drawn because I've worked as both, what would be now classified as a lobbyist for a short period of time but if I were doing that activity now I would most certainly be on the lobbyists register and then at other times in the private sector, as an employee of a big corporate, some part of my time would have been undoubtedly described as an activity of lobbying and I could have just as easily been contracted into that entity for that purpose and I would have been on the register in that case. But a lot of lobbying activity goes on in Sydney and across the continent of the UK and elsewhere. It's a case of where do you draw the line at who a lobbyist is, if it's the CEO of a bank then some of their activities undoubtedly will - - -

Those are different questions really?---Yes.

And there are also questions about what do you describe as, what is a meeting that requires to be recorded because it may not, that might not be meetings at social functions et cetera, it might be just meetings in the minister's office or on site, as the Department of Planning requires, assuming that you follow their model. But leaving that aside, those matters

of detail, the question is whether a register recording even such a limited class of meetings would go some way to diminish the perception and to instil a greater confidence in the people?---I think the corollary is that to publish either at the conclusion, at, when a decision is made, the list of meetings that occurred in relation to this specific outcome with interested parties, if that were published I don't think it would do anything to dissuade some people's views that, well, the meeting occurred here and there's the decision, this is just the imprint in black and white confirmation of what, what's being alleged that there's political influence based on say fundraising or political donations or whether it's on the register as a lobbyist sees it and puts it on the register themselves under the self-regulated lobbyist register. Look, it may, from, from the governments point of view I think they get kicked coming and going. That to put it on the register or to publish it at the conclusion of a significant decision would in some, in some people's eyes just be confirmation of wrongdoing.

My, my impression of your opinion, please correct me if I'm wrong, is that you would say leave the register as it is and apply the present Department of Planning Protocol to all government departments?---Yes, and I think in, in relation to incidents of say the hotels or the clubs or whoever it might be approaching government, big organisations like that are in contact with government about all manner of things all year and they access government at all, all points and I think conclusions may be wrongly drawn that one representation leads to a decision, well, in my experience in the, in the, in politics that decisions usually go one way or another and you either will or won't be the beneficiary of the decision.

Well, I notice that today, in today's Daily Telegraph there are two articles that indicate that the Premier is about to introduce a bill that prevents or limits public, political donations substantially and one of the, one of the reports says that no more than \$100,000 could be spent in one constituency. Now that, if, if, if that becomes law, that would go quite a long way as well wouldn't it?---Commissioner, when you say one, one constituency, do you mean a limit, a cap on donations in a jurisdiction like New South Wales or - - -

No?---or a state electoral boundary or - - -

Yes?---I, I have a very strong view about, about political donations.

Well, we're not into - - -?---No. But - - -

We, we are, I mean the idea of political donations or the concept of political donations is highly relevant to the inquiry because in many ways that's inextricably linked with lobbying activity?---Indeed.

But we're not specifically investigating that. There's been a parliamentary report and according to today's Daily Telegraph, the recommendations of, of the parliamentary committee are going to become law, according to - - -? ---Which is ironic. The Premier Rees and I forcefully introduced this last year and it was one of the reasons that he's no longer the Premier, I suspect. But the, the, I think they are inextricably linked.

10 It's all a matter of timing, Mr - - -?---It is indeed. But I strongly favour, favour a shift toward full public funding. And I think, and limited political donations significantly lower than the figure you mentioned. There's concerned within Labor - - -

It doesn't mean \$100,000 per person. It means \$100,000 overall?---Well even that might be seen to be a significant amount of money to some. We would've favoured something significantly lower than that I believe. And I understand that Premier, former Premier Rees may give evidence later on. But the, I think they are inextricably linked and, and that the combination of significant political donations from developers and others to political parties and then with the perception about, about access and lobbying of the  
20 department, I'd think that the presence of the donations has done a great deal more than the presence of a lobbyist to take public perception about, about approval processes.

MR GORMLY: Mr Wedderburn, I have a number of short questions that I want to ask you?---Yes.

30 THE COMMISSIONER: Mr Gormly, can I, would you mind if, I think this is now a point where I'd like to ask Mr Wedderburn a question that is related to this topic. But it's not a short question.

MR GORMLY: I know the question, Commissioner.

40 THE COMMISSIONER: Mr Wedderburn, we have heard evidence of the involvement of the party office in a form of lobbying, that is connected with political donations. What we heard was that, and it really is a hearsay report, no more than that, but it's a hearsay, it is a hearsay report from a person who should know, that there are times when the party office would interfere. By interfere I mean, would telephone and say look, you haven't given X access and he's a donor. And it's important that he be seen. Is that something that you ever experienced?---Personally no. But all I could do is contribute to hearsay if I went further.

Well, would you, please?---Well only that, that I, I had heard that - - -

You heard the same sort of thing?---the public perception, as a matter of fact I've been asked that by a journalist in my former role working for Premier Rees on one occasion. But I, I have no direct firsthand knowledge of it.

But you have hearsay knowledge of it?---I've, I've heard it suggested. And I might add that, that Premier Carr, a former Planning and Environment Minister was insistent, was insistent that, that he and the Planning Ministers and their staff be scrupulously clean handed about, about this. And, and if it's, if it's occurred, I had no knowledge of it - - -

Yes?---before all August '05. But essentially all I could add is hearsay.

10 Yes. And does the hearsay every extend to threats such as, relating to pre-selection or something of that kind?---No. I have no knowledge of that. And I'd be, I'd be surprised if, of such a thing.

MR GORMLY: I take it from the response you're giving, from what Mr Carr, well from Mr Carr's attitude at the time, that it would be regarded as not just an act of political expediency, but actually the wrong thing to have happen, there'd be no doubt about that?---Yes, I believe it an utterly inappropriate role.

20 Right?---For the party office.

Let me take you to some other matters. Mr Wedderburn, at, as we understand the position there has been a draft Code of Conduct for Chiefs of Staff of ministers. I don't know that it's ever taken a final form. Do you see a value in there being a Code of Conduct for Chief of Staff?---I believe there was a Code of Conduct drafted, not exclusively for Chiefs of Staff, but for ministerial personal staff.

30 Right. All right. I'm sorry, I did mean that?---Yes. But it is one and the same.

Right?---A Code which is similar though in some respects I think different from the Code of Conduct for employees of the Premiers Department.

Right?---It was in draft form while I was on Premier Rees staff and while it was an important issue, it was overtaken often, consideration of it was overtaken by more urgent events.

40 Right?---And, but I did have one misgiving which was a proliferation of codes.

Right?---There is one for ministers, there is one for employees of the Premiers Department, which is largely consistent, I think, with the Code of Conduct across the public service. And I, I needed persuading, but didn't ever really hear much discussion or argument on it that there needed to be something separate again in relation to personal staff. The key elements of it relate to honesty and integrity. I don't know that it extended to issues like those which have now been prescribed around the Department of Planning meetings. But I, if that doesn't already exist in the Code for the Premiers

Department, then it probably should be there. And then I think simply it should be extended across, across the other class of people otherwise you're developing a Code for 240 public servants which in some ways is meant to be different from the several thousand at Premiers Department.

The 240 being ministerial staff?---Approximately, yeah, in my experience it's a number of around 240 or more personal staff.

10 So you're not opposing a Code. I take it you regard them as a value?---Yes, I do.

Right. It's the problem that it's a fragmented system?---I just thought it easier, I couldn't see why there needed to be any augmentation to create a separate Code just for the personal staff when personal staff were already subject to the Premiers Department Code of Conduct.

20 Right. All right. Thank you. Now, the next question, in fact I think it's really the second last question. Premier Rees in effect banned lobbyists from being appointees to government boards or committees?---Yes.

There appear to be two views about whether that should continue. One is that it is a useful insurance against there ever being a conflict, the other is that there is a loss, in effect a loss of talent when ordinary rules of conflict might solve the problem so that you could have an appointee to a board, get the benefit of that experience and it often may be ex-ministerial experience as well, lobbyists contain those persons in their ranks. Do you have a view about the utility of continuing that ban?---I helped initiate it, I think it might've been - - -

30 Which you might have?---Might've been a little excessive. I agree with the point that in banning certain individuals who were in this class that we've, we've lost some talent and, and experience. I think the public perception to flip it back over may be difficult but not impossible and I take, I agree with your point about how, how conflicts could be managed, managed. So I thought of the suite of things that Premier Rees announced last year, it was one of the, the least important, one of the least valuable.

40 All right. Now, the last matter, this is an attempt to deal with a problem for the future and not to make a comment on matters that are reported in the media. If you don't wish to answer the question I won't press you, Mr Wedderburn, but as part of this lobbying inquiry an issue has arisen about how one handles the problem or how a system handles the problem of lobbyists who are part of the family of ministerial decision makers.

THE COMMISSIONER: Spouses for example?---I beg your pardon?

Spouses for example.

MR GORMLY: It seems to be a difficult problem, Mr Wedderburn, because one would have thought that there would be necessary instances of conflict yet spouses are not people who are amenable to codes of conduct applicable to government officers, you could do it of course by requiring registration of a, of a lobbyist and therefore the acceptance of a code of conduct but it would mean obviously prohibiting somebody from a certain occupation because their spouse is a government decision maker. Is that an issue that you have had to consider or that you can see a solution to?

10 ---There was an occasion where a former minister's partner was operating as a lobbyist and it, it posed a general conflict of interest across the board given that he was a senior minister and privy to the most senior levels of decision making not only in cabinet but in, in the most significant subcommittees at cabinet and his spouse's activity probably ranged on the subject matter before those committees from time to time. His position was invidious and very difficult but it really meant in that case that his spouse was ill-advised to continue working as a lobbyist and I think in that event she chose a more narrow course of, of professional activity in the law I think and disposed of those activities so in a sense that household paid a, perhaps a financial penalty but I think it was an obvious one, it was a very difficult  
20 thing to have a minister and his, his, his spouse lobbyist the government where he was, he was one of the key decision makers and, and where that person's activity was likely to range on, from time to time the decisions that he'd be privy to. So that's, that's how that was dealt with, that was Premier Carr and I think it came to light from media reporting about same and that's how the premier dealt with it. In relation to personal staff I think there has been, when a government's been in as long as say the state government has here that there are a lot of people in the ranks of personal staff who, who know one another and they are there because they hold professional skills but also party membership and their community of interest extends to, pretty  
30 widely through that political party and its sub-factions. But I, I think it does from time to time throw up potentials for conflicts of interest and I wondered once again whether they are dealt with adequately in the ministerial code of conduct, I beg your pardon, in the code of conduct for the Premier's Department.

MR GORMLY: You're suggesting that they are?---I'd be surprised if a conflict of that wasn't already anticipated in the drafting of the code for public servants even if it were not drafted with public, with personal staff in mind, I'm sure that there'd be members of the permanent public service in  
40 premier and cabinet whose partners might work in some profession and so may be some conflict in (not transcribable) activity but they must deal with it I imagine by absenting themselves from, from knowledge of and from the decision making of particular things.

In your experience over a number of governments is the fact that a member of parliament's spouse is a lobbyist a factor that might impact on whether or not that member of parliament is asked to serve in a ministry?---No, I couldn't see any connection between the two.

Now, there is a last question. You're familiar with the concept of the cooling off period for - - -?---Yes.

There appears, Mr Wedderburn, to be a number of issues about that. The first is whether it serves utility, the second is if it does for how long and the third is whether there is a post-parliamentary problem for members of parliament who leave parliament but are prohibited or precluded from working in what might be the only obvious field for them once they leave.

10 Do you have views on that topic?---I think once again the, I think the restraint of trade argument I think is powerful, I, I think that ministers, members of parliament perhaps and, and former staff ought not be so restrictive but with very strong caveats that ministers are bound by the ministerial code of conduct and, and by cabinet confidentiality, they swear on oath that means something, it means that they can't use, misuse the knowledge they gain in, in government decision making or cabinet decision making for any other purpose, not for a year or two years but for life. So I think that they swear on oath to that effect and also I think the obvious

20 conflict for all of those classes of people, ministers, senior public servants and public servants and staff is that if you have worked on a matter and been paid to do so by taxpayers that I think it is a conflict to leave the public service one day and the next day or even soon after in some time after to take that folder under your wing and all of that knowledge trapped in your own mind and then go and work in the private sector. I think they're the clear areas that ought to be barred. I had a period that I could refer to where I was working as a, some part of my professional life as a lobbyist and then I returned to work in government to work for Premier Carr. There were matters I had some knowledge of that I was lobbying government on about and the lead times for these projects are often quite long and so I was

30 meticulous as, as I've seen others do so that I would absent, I'd know that an item was still under the consideration of government and I knew in order to avoid a conflict I had to be scrupulous about not receiving papers, not being privy to informal conversation about a matter and certainly never being present when formal decision making was occurring so my presence and then my deliberate absence from cabinet committee meetings was recorded by the public servants who were the record-takers for the cabinet office. And I think going out the other way as I have since last year knowing about certain things that I would not trade on matters that I have knowledge of relationship with where I was carrying, carrying responsibility

40 of decision making role, participating in decision making on a matter. I think that's the very clear - - -

You're saying it's up to the integrity of the person who's sworn the oath and accepted the terms of the Code of Conduct - - -?---Yes.

- - - simply to act appropriately?---And I think it, I think it visits on, on, on the private sector proponent involved in perhaps tendering for an activity or whatever the nature of the knowledge is. It, it complicates matters, I think,

the sheer presence of someone who was one minute the minister for or the senior advisor for and then flips over. I think it's a complicating factor for that proponent if those people end up on their bid team or as an informal or other advisor and I think generally it's misguided to do that and that's why I think that people who have, in the absence of a formal cooling-off period, who have essentially taken one have acted with wisdom.

All right. Thank you, Mr Wedderburn.

10 THE COMMISSIONER: Mr Wedderburn, thanks so much for coming. Your evidence has been extremely helpful to us and given us a lot of room for thought, thank you for coming?---Thank you, Commissioner, I was pleased to assist.

**THE WITNESS EXCUSED**

**[11.31am]**

20 MR GORMLY: Commissioner, I call Mr Tim O'Halloran to give evidence.

THE COMMISSIONER: Right. Again I would leave it to you to indicate whether you would wish here an adjournment or not?

MR GORMLY: Commissioner, may I have five minutes with Mr O'Halloran?

THE COMMISSIONER: Yes.

30 MR GORMLY: Thank you very much.

**SHORT ADJOURNMENT**

**[11.32am]**

MR GORMLY: Commissioner, we have present Mr Tim O'Halloran to give evidence.

40 THE COMMISSIONER: Mr O'Halloran, would you like to give your evidence under oath or would you like to affirm the contents of your evidence?

MR O'HALLORAN: By affirmation, please.



THE COMMISSIONER: Mr Gormly.

MR GORMLY: Mr O'Halloran, can you tell us your full name?---Timothy James O'Halloran.

10 All right. I'm going to get you to pull that mike a bit closer to you if you wouldn't mind?---You mean the, the little red button there?

It's on, you just need to speak into it. You are currently the Chief of Staff of the Minister for Ageing, Disability Services, Youth and Volunteering, is that correct?---Yeah, that's right.

Now, Mr O'Halloran, you're originally Victorian?---Yeah.

20 I think you have a Bachelor of Arts with Honours and with majors in politics and public policy. Where, where was that from?---Melbourne University.

Right. And then some time after that you came to Sydney and I'll just get the story of that from you in a moment where you joined a, in effect a lobbying firm. I think you have a background in, a family background that is, in chief of staffing. Is that so?---Yeah, my dad was Brian Howe's chief of staff for a period during the Hawke and Keating governments.

30 Right, thank you. So you're familiar with the requirements of the job so to speak?---Yeah, in, in a way. I mean, Dad didn't speak all that much about his job but, and I was quite young at the time but, but yes, I've got a familiarity with the workings of political officers.

Right. So can you just tell us briefly how you came to go from your studies in Melbourne to ending up in Sydney?---Well, at the time I was working part-time as an electorate officer, which was just in a member of parliament's office while I was at university and then I - - -

40 I'm having trouble hearing you. Just pull that mike closer if you wouldn't mind?---Sure. At the time when I was studying I was also working as an electorate officer for a couple of members of parliament in Victoria and so, and I was also a member of the Labor Party and through that work I got to know a friend of, a good friend of mine, still a good friend of mine, who was then the CEO of CPR Communications which is a communications consultancy.

Right. A lobbying firm operating in both Melbourne and Sydney?---Part of their function was to lobby, yes. But I'd classify them as a communications firm and, and as I say, Erik was the, the CEO at the time, Erik Locke, and,

and he suggested that I have an interview with the Sydney manager of CPR when I, when I moved to Sydney as obviously I was looking for a job.

Right. Did you know anybody in Sydney at the time?---Not a soul.

Was that a drawback?---Look, it probably was perceived to be a drawback by some of my colleagues at the time. But, no, I don't think it was a drawback. I think the key, well the key skill that I possessed that allowed me to be useful in a consulting role communications and also lobbying or government relations was a familiarity with how government works. With  
10 how public policy is developed.

Right. Forgive me for this, Mr O'Halloran, I'm having real difficulty hearing you, so I'm going to ask you to speak up as well if you wouldn't mind?---Sure.

Thanks. So once you went into CPR here in Sydney, what kind of work did you undertake?---I started as a fairly junior consultant and so my work was largely supporting other consultants, at least for the first six months that I  
20 worked there. So for example, if they were running a media relations campaign, I might've drafted the media release and they may have actually then used their networks in the media to try to sell that story. Or if it was a government relations job, then it may have been that I did some desktop research for the senior consultant about a particular government programme or policy. And that may have extended to contacting a bureaucrat from time to time to get more information. So essentially it was a research function. After about six months I was promoted to be a senior consultant and that meant that I had a number of accounts that I managed myself. And so in that role it was much more hands on with the client, developing - - -  
30

Would that be government relations work?---As I said, I guess I would've classed it as communications work. But in designing any communication strategy, I think that implicit in that is how you manage and talk to your stakeholders. And, yes, a lot of our clients, one of their key stakeholders was government and so as such, as aspect of your communication strategy needs to be how do you communicate with government.

Right. And you were I think successful in that role. Is that right?---Yeah, I'd like to think so.  
40

Yes. Well I think, I'm asking you to, to divulge the piece of information, Mr O'Halloran, I think that you're, in terms of work output, you I think exceeded others. Is that so?---I would've been one of the more productive consultants at the, at the firm in Sydney, yes.

Right. All right. Was that work at the time, I'm not going to ask any financial details, was that work at the time on a billable hours basis?---Yes.

Right. And did that billable hours arrangement turn on in effect your ability to usefully spend time with clients?---Yes, that's right.

So was that where the bulk of the time was? Was it with the client or was it with government?---Certainly not with government, in as much as holding meetings with government. And probably not with the client either. As I say, a very large part of the work that you do as a consultant is designing a strategy and a lot of those is desktop research.

10 Right. Just getting the information together?---Yeah. Exactly.

Would that mean that you would produce documents in the process?---Yes.

All right?---Both things.

And did you in the course of your work with CPR end up seeing government decision maker at times?---Yes, I did.

20 Is your work developed then, perhaps towards the end of it when you were in full swing, can you give us some indication of, about how many hours in a week or month you might spend in seeing government officers on behalf of a client?---I'd estimate something like and this is a bit of a guess, but anywhere between two hours and six hours a week might be spent actually meeting with someone from government or speaking with someone from government over the phone.

Right. Just putting aside phone calls for the moment (not transcribable) really face to face meetings?---Yep.

30 Are you able to give us an indication of the range of people you were seeing? For example were you seeing ministers during that period?---Not regularly, no. I would, it's been, it's a couple of years ago now, but I would say 75 per cent of the people at the time that I would've spent meeting with government would've actually been with bureaucrats.

40 Right. So not necessarily the director general but people in positions in the department other than the director general?---Yeah, usually a, bureaucratic at say an executive director or director level and, and then sometimes at deputy director general level and then very occasionally you would, you would meet with the director general.

Right. When you did meet was that usually in company with a representative of your client or was it usually alone?---Usually in company with the client.

Right. Would you ever train up clients so that they could see the government officer themselves without you?---Yes, yes.

I'm saying, I mean advise them as to appropriate methods of contact?---Yes, yeah.

Normally you, you would go with the client but if you were having a meeting with government but sometimes you would, for various reasons, sometimes you weren't available or - - -

Was there in-house training in CPR at that stage?---I'm sorry, what do you mean by in-house training?

10

That is, on the job training perhaps as to how to go about the task of doing what I will call lobbying, government relations?---Yes, there was, yeah. I wouldn't say it was formal training but more mentoring in terms of utilising the skills of other consultants in the office and learning from their, their experiences.

Right?---But I wouldn't say there was a formal training programme or anything like that.

20

What is, what, what would you see now and having emerged from a university say in the last, I think, what is it, five years, what would you see as the sort of training that a useful government relations person would undertake or could undertake with a view to career development?---I guess a background in development of public policy is critical in terms of understanding how government works, how government policy is developed and I'd say a communications background is extremely useful because inevitably, as I say, what you're doing as a government relations consultant is just a part of a broader communications strategy that has to also link to how your client is communicating through the media and with other stakeholders.

30

The kind of degree that, that you did then?---Yeah, yeah, definitely useful.

All right. Or alternatively perhaps a, a communications degree?---That's right.

Essentially a journalism degree?---Yeah.

40

All right. I think you are currently doing a Masters of Economics at Sydney University as well at the moment. Is that so?---That's right.

All right. Now, in due course you left the CPR and became chief of staff to Mr Primrose. Is that so?---Well, initially when I left CPR I went to be a policy advisor to Minister Lynch and then later - - -

Sorry?--- - - - I went to work for Minister Primrose.

Right. How long were you with Mr Lynch?---Approximately 12 to 18 months.

Right. And so when did you start with Mr Primrose?---Approximately six months ago.

10 Right. When you were with Mr Lynch was that a job which exposed you to the work of a chief of staff, that is, did you see it underway?---Well, obviously my boss was the chief of staff, there's only a dozen people in the office so, and so yes, you're obviously in close contact with your chief of staff.

All right. At the present time do you see the other side of, of government relations?---Do I see lobbyists?

Yes?---Very rarely, in fact, I think since I've been chief of staff I'd say once.

20 Why is that?---In a formal capacity that is.

Yes. Why is that?---Frankly, I don't think that there are very many lobbying firms out there that have clients in the disability services space.

So, so the degree to which lobbying is going to occur by professional lobbyists will depend to some extent on the ministry itself?---Yeah, exactly.

Is that right?---Yeah.

30 Did you see lobbyists when you were with Mr Lynch?---His portfolios at the time were also disability services and, and ageing so and at, in fact Aboriginal affairs.

Right?---Again, three particular areas where lobbyists are rarely working.

Right?---Not that they don't work in those spaces but it's rare and often when they do work in those spaces its pro bono.

Right. Have you seen pro bono work done by lobbyists?---Yes.

40 All right. What's the nature of that work? What, what causes them to do that?---I suspect for the same reason that other professional firms do pro bono work, that it's seen to be giving something back to the community. Often a consultant will have a particular passion for a particular policy areas in, in a lobbying firm. They may have a policy background for example in Aboriginal affairs and therefore care a great deal about the development of Aboriginal affairs policy in New South Wales and for that reason they may take on a, an NGO or some such that, that does work to try to improve the lives of Aboriginal people, that's an example.

In what you have seen of, of lobbying from your position as chief of staff and from what you saw of it when you were with CPR, has it been your impression that there is a difference between the lobbying conducted by a registered lobbyist on the one hand and the lobbying conducted by an unrepresented lobbyist on the other? Are there some conclusions you can draw about that?---In terms of the way that they conduct that lobbying?

10 Yes?---Yes. I think that a client that's represented by a lobbyist invariably is more adept at putting their point of view in a concise way that isn't wasting a minister or a minister's staffer's time. In other words, they're able to consider their client's commercial proposition, for example, and put it into context with government policy to be able to present it to government in a way that's actually relevant and to the point. Often the clients that are, well, not always but sometimes clients who have not drawn on expertise of people who have worked in government will put their position in a way that perhaps isn't all that useful.

20 Without beating around the bush with this, what have you noticed about unrepresented clients that can waste time or cause a problem? I'm trying to explore here the benefit of formal lobbying, Mr O'Halloran?---Well, often, yeah, often, often a client, I mean, for example, as a, as a lobbyist often you will advise you client not to see a minister because you know that basically they'll be wasting the minister's time and you advise them to go and see a bureaucrat that's actually going to make the decision about that issue because (a), as I say, you'll be wasting the minister's time; (b) the minister won't be the person making the decision about that issue anyway so often there's some value in directing the client to the right part of government, in terms of who they should be talking to.

30 Is that something that sometimes clients just don't know about?

---Absolutely, I mean government's the biggest beast in the country, it's a massive organisation. If you haven't worked in it you're highly unlikely to know who the decision-makers are and, and who the people are that are actually influencing - -

40 Have you seen occasions where the unrepresented client has been better off than the represented client?---Yes. In hindsight I have. There are some ministers, people in government that have a particular aversion to lobbyists. In those sort of instances you'd be unwise to take a lobbyist to a meeting I'd suggest.

Is that, I'm sorry, Commissioner. Is that known?---Is that known?

That is, do, do ministers or persons who have an aversion to lobbyists, do they tend to make their position known about that?---Not publicly but, yes, if you worked for a minister you'd, you'd probably ascertain their attitude towards lobbying and lobbyists.

If you worked for a lobbying company would you learn to know which ministers did not like lobbyists?---Probably, yes.

What do you understand to be the reasons why some ministers don't like or have an aversion to lobbyists?---I suspect they have the same perception of lobbyists as some people in the broader community which unfortunately lobbying is tainted by some and I emphasise a very small number of, of shonky practitioners.

10

THE COMMISSIONER: In what way are they shonky?---I guess some lobbyists like to over-emphasise their capacity to influence government. In my experience government isn't influenced by a particular person, they're influenced by an argument about a particular policy matter.

You mean when they go back to the client they tell the client, they exaggerate to the client their influence that they have had?---Yes.

20

So does the, in your experience does the lobbyist often see the minister alone without the client?---Yes, that does happen.

30

Is that unusual or is it normal?---It depends on the lobbyist, some lobbyists would prefer to do that, other lobbyists will prefer to have the client there with them. For example in my opinion if you are going to see a minister and the issue that you want to present to that minister is substantial it's important to bring the client because they're actually going to understand the nature of their business and the nature of the issue they're putting to the minister better than you will as a representative of them. So it's actually better to have a client in the room for that meeting. I'm not quite sure why other lobbyists might choose to - - -

(not transcribable) lobbyists in a sense and to a degree responsible for the poor perception of lobbyists?---Well, I guess like any industry where you have shonky practitioners - - -

40

But in this case, I mean if you say the nature of their dishonesty is the representation by them as to the extent of their influence over the minister they are really, they are direct cause of the perception that lobbyists may have a degree of influence that's improper?---I don't know that I'd quite put it in those terms but what I would say is that there are some lobbyists who would trade off their capacity to influence government and - - -

Which may or may not exist?---Which may or may not exist.

And they would publicise that? That's trading off I assume?---Indeed.

And when they do get a favourable decision would they exaggerate their influence over the minister?---Look, I haven't experienced that first hand so I guess I'm, I'm speaking from third hand information but - - -

Is this the hearsay - - -?---Yeah, indeed.

10 - - - from the lobbyist industry?---Yes. I mean, it's a funny thing about lobbying is that you're putting your client's point of view about a particular issue but you can never actually know whether it was your meeting with a particular individual in government that persuaded them that that was the correct path to take. Whether it was a bureaucrat that happened to hold the same position as you that put that argument as well you can never actually know whether a particular event has caused the event if you like.

MR GORMLY: It's been pointed out to me and I'm so sorry for this, I'm forgot to ask you whether you would like to, or whether you've prepared any form of opening statement or whether you would like to make some preliminary comments.?---No, I didn't.

20 All right. Thank you. Now, do we take it then that your view is that if lobbying, that is, third party professional lobbying were to be abolished that you would not favour that?---Yes, that's right.

30 Because you think that they add value in some way?---Absolutely. I think government relations consultants by, for the most part are extremely professional people who are able to add a great deal of value to the way that a company communicates with its most important stakeholder sometimes which is government. Why would you, why would you cancel, why would you stop that industry from being able to develop anymore than you would lawyers being able to give advice about how the legal profession works, how the legal institutions work.

40 I suppose a couple of reasons might be that there seems to be a very wide spread public scepticism about the role of the third party professional lobbyist particularly where it includes politicians, former politicians and because even in the ranks of government there appear to be ministers that you've reported on who have an aversion to lobbyists. So there does seem to be an argument that professional third party lobbyists don't contribute to the system. I take it that's not been your experience?---No, I don't agree with that at all.

Now, you I take it in the portfolio that your minister has have been exposed to peak body lobbying. Is that so?---Yeah, that's correct.

Right. Can I ask you to just indicate what kind of peak bodies have lobbied your minister?---Yes. So the peak bodies in the disability and aging space would be National Disability Services who is the peak for the non-government organisations who are funded to deliver services in our sector.



NCOSS the New South Wales Council on Social Services would be another peak body that represents the interests largely of advocacy groups and family groups in the sector. Council on the Ageing COTA is the peak, one of the peaks in the aging space.

10 What do they cover?---The Council on the Ageing's membership to be, to be honest with you I couldn't tell you exactly what their membership is but they represent I guess issues to do with the ageing population and pensioners and seniors in the community. They're more of a policy think tank I think than anything else.

All right?---And there's also organisations like National Seniors, again a policy think tank in relation to the ageing population.

Do you get lobbied by the large service organisations like the RSL or Legion?---No, not, not in this policy, this policy space, no.

20 They would tend to be federally orientated I take it?---I'd say so, yeah, and perhaps they'd also have a fair bit to do with the Minister for Veteran's Affairs.

Right. Now, those peak bodies that lobby your ministry some I take it would be private owner and capital oriented groups and I'm thinking perhaps of nursing home groups on the one hand and those who may be philosophically or politically inclined like NCOSS, would that be right? ---Yes, that's, that's partly true. We don't have nursing homes lobbying us very often because the age in portfolio is, in terms of nursing homes is actually a federal issue so they're largely organisations that might provide disability services such as accommodation services, respite services for families, post-school programs to improve people with disabilities access to the community, that sort of thing. So large organisations that deliver the disability services on behalf of the government.

40 Do you notice a difference between the kind of lobbying that they will do and that with which you're familiar from the third party professional lobbyist?---Yes, I guess it's highly variable in terms of the value that that, that those organisations provide in, in meeting with my minister and meeting with myself. Often they are very articulate in putting their position but sometimes they spend a meeting dwelling on issues that perhaps are not going to be, not necessarily matters that the minister needs to pay attention to that could've been better resolved by talking to a public servant.

Right. So they've either picked the wrong person or they haven't picked the issue?---Precisely.

Right. All right. Does the minister allocate periods of time for these meetings?---Yes, generally between half an hour and an hour. And an I just add just for the record I'm not saying that those meetings are not valuable.

It's understand?---It's valuable to hear, you know, feedback from all stakeholders, the more feedback you get from your stakeholders the better informed your minister is going to be to be able to make decisions about the sector. If you sat up in your ivory tower and didn't meet with anyone you'd never have any idea what was actually going on on the ground and what the issues were in terms of sector development, in terms of advocacy issues, families issues, there's only one - - -

- 10 They've come along to ask you for something you can't give you can get something yourself which may aid the industry?---Absolutely.

Is that exchange process something that is a feature of every meeting or is that just something that happens now and again?---It happens more often than not and in large, because even if a client has come to talk about a particular issue you often deal with that issue fairly quickly and then you can get on to talking about some of the broader systematic and policy issues that they are encountering and that, and that you want their feedback on.

- 20 All right. Now Mr O'Halloran, when a meeting does occur with the minister, does the minister tend to have someone else present from his staff?---Always.

Is that frequently you?---Yes. But also my policy advisors.

Right?---Probably more often - - -

Approximately how many?---I have four policy advisors.

- 30 Right?---Sorry, yes, four policy advisors.

Are they specialists in different areas of Age and Disability Services are they?---So Youth and Volunteering, one policy advisor and three policy advisors for Disability and Aging.

Right. Is there some protocol for the keeping of notes of meetings by persons who have come to see the minister?---There's no clear protocol, no. Generally speaking, a policy advisor will keep notes on the meeting, but no, there's no clear protocol.

- 40

All right.

THE COMMISSIONER: What happens to the notes?---The policy advisor will be responsible for keeping their own notes.

What do you mean keep them?---In their own offices, usually - - -

In a file?---In a filing cabinet.

Do they put the notes in the file, is there a file, when a person comes to see you, a lobbyist or an individual seeking a favour or a company seeking a favour, is a file opened for that particular individual?---Within the ministers office?

Yes?---We, I'd say that that is either an irregular practice, that is to say that  
- - -

10 It happens occasionally?---Yes.

What does it depend on? The importance of the topic?---Yeah. The, and the size of the issue. If it's going to be a long running issue then, yeah, you'd establish a file.

(not transcribable) notes are kept of an important issue, they go in that file I take it?---Generally speaking, yes.

20 Sometimes not?---Sometimes not. As I say, I think it's an irregular practice.

And, and when it's not an important issue and notes are taken what happens to the notes?---For example, I keep all of my notepads in, in one file. So either, you know, an A4 note binder.

In respect to each individual?---To keep their own notes?

Yes?---Yes.

30 And for how long they keep them?---I've never thrown out any of my notebooks.

But that's your personal practice?---Indeed.

No one has told you anything about that?---There is on clear protocol that I'm, that I'm aware of.

Or speak to anyone, speak to anyone to throw their notes away whenever they want?---As I understand it, yes.

40 MR GORMLY: So copies of the notes for example wouldn't go back to the relevant department?---So for example if there were issues raised that you needed the department to action - - -

Yes?---such as they've raised an issue that you didn't know about and you needed some information or a briefing about the issue then you would usually draft an email or have a conversation with the department to ask them to follow up on those issues.

Right?---But no, the actual, the physical notes wouldn't be sent to the department.

10 All right. Well, now there's many ways of course of keeping notes of meetings and I'm not suggesting there's some perfect way, Mr O'Halloran. I just want to explore with you some different ways. One is that you keep a note for the purposes of follow up because you can have a meeting where there is an intention to do something, but if you don't write down what it is, it's going to get lost. So that's just a practical four point note, so that a reminder to yourself to do A, B, C and D. So that's one form of note taking. Another of course is to minute the meetings so that you have a time, a venue, time, date, venue, attendees, purpose of meeting, contents of meeting and outcome. That's another way and perhaps the more thorough way. And of course there are any number of, of possibilities in between that are less formal. Would you consider that it would be a problem, sorry, let me put it to you affirmatively. Can I suggest for your agreement that it really would not be a problem to keep a note of a meeting that was limited to time, place, venue, attendees, purpose, contents and outcome?---No, that wouldn't be a problem.

20

Right. And it would be consistent with ordinary business practice too, I take it. Would you agree with that?---That's basically the, what I would - - -

You'd do yourself?---notate in, in a meeting anyway.

30 Right?---What I just if I can anticipate your next question in relation to minuting a meeting more thoroughly. It would just require that there be an officer in the room to undertake that because the policy advisor, I wouldn't be, I wouldn't feel comfortable with them purely writing down notes from the meeting. Their role is to engage with the meeting, engage with the issues.

Right. I see. So, so there would be a problem about people, I understand your point, you can't both engage and keep a proper note?---No.

Right.

THE COMMISSIONER: Well, boys doodle all the time?

40 MR GORMLY: That is, that is true, Commissioner. Solicitors of course, keep a note of course keep a note of every meeting they attend, generally speaking. And they have to engage, so I suppose it's not true to say that, you're saying that it would be preferable or helpful to have someone else take the meeting notes?---Yes. Yes. Yes.

All right.

THE COMMISSIONER: But you take your own notes sometimes?---I do. I do.

And you participate?---But for example, when I'm speaking I don't take notes about what I'm saying.

No, no?---So that's not minuted.

10 No. I'm not talking about minutes. I'm talking about a summary of what has happened?---Yeah. Perfectly reasonable to expect that a, for a summary of the meeting to be taken and yes, no, most times I would, I would do that.

MR GORMLY: Mr O'Halloran, as I understand the position with my limited understanding of this topic. Generally speaking because of the volume of work that ministers conduct and because they are supported by departments in any event, there is a tendency to try and not create ministerial, separate ministerial files. Is that so?---That's correct.

20 All right. And if there is to be a file referred to and maintained on a particular issue, ministers generally would prefer that to be done by the department?---Generally, although for example, if you were to meet with a client that had an issue with the department, so their concern was that the department had, for example, behaved improperly or that they had been unfairly treated by the department.

Yes?---Or there was a departmental officer that had been rude to them, something as simple as that, then there may be reason why you wouldn't want a file to be kept at the department.

30 And in fact why a minister might open a file for him or herself?---Correct. And indeed why the person is there in first place and why they didn't go and see the department.

Yes. Can we just put aside that kind of complaint issue for the moment?  
---Sure.

Would it be true to say that at the present time it would be unusual for notes, ministerial notes to be sent to or contained as part of a departmental file?  
---Yeah. I would, in my experience, that would be unusual.

40 Right. So that, would it also be true to say, and I appreciate you haven't yet gone through a change of government, but would it be also true to say that there may be a question as to whether the note books of meetings kept by policy advisors and yourself would not necessarily find their way into state records?---Into state records, what - - -

Yes. So at the end of a ministry where there may be obligations to box up ministerial records, certain ministerial records and convey them to state

records, that those notes might not necessarily be seen as notes that would have to go to state records?---Yes.

10 All right. Would it also be true to say that the way in which the notes are kept at the present time, and I'm not implying any criticism here, Mr O'Halloran, of anyone, that it may not be possible looking through the note books to actually tell what they are notes of? We haven't seen them, Mr O'Halloran, so I'm just speculating here, is what I would imagine a notebook of, of notes kept by a policy advisor may differ from person to person?---My guess is you probably couldn't read my handwriting for starters, so - - -

All right. But putting, putting that issue aside, would it be true to say that the policy advisors notebooks may have notes but we may not necessarily know that it's a meeting between the minister and X or Y?---Yes. Yep. That'd be fair.

20 All right. So there may be a mix of quite good minutes or just a to do list? ---Indeed or you know - - -

Follow up?---Exactly. Just a - - -

THE COMMISSIONER: Or nothing?---Or nothing, yeah. Just notes about, you know, a conversation you had over the phone about an issue you needed to talk to the minister about. It could have nothing to do with meetings. Yeah.

30 MR GORMLY: All right. And would it be true, I withdraw that. Do you have knowledge yourself as to whether that's probably reflective of a wider practice, that is, there's no particular protocol for keeping records of ministerial meetings?---In my experience that's correct.

Right. All right. So that at the present time unless there is a departmental officer present keeping a note there is no regular system for tracking through to the notes of a minister's meeting?---No, there's not.

Right. If there is a, I withdraw that. Are there meetings where you do have a departmental officer present?---Yeah, quite often.

40 Right. And I take it that there are also meetings where you cannot have a departmental officer present precisely because of conduct issues or complaint issues of the type you raised earlier?---That's right.

All right. When there is a departmental officer present is that officer given the task or generally accept the task of being the note taker?---Again that would be in a regular practice, sometimes they would take notes, sometimes they wouldn't. For example if I have the director-general in the room for a meeting with the minister he certainly would be unlikely to be taking notes.

If I had a junior departmental officer there or a department liaison officer which is a position that exists within the ministerial office then, yes, they would quite often take notes.

Well, Mr O'Halloran, I'm just exploring an issue here with you when I ask you this question. Directors-general and their minister of course will have no doubt many conversations. It would be correct to say that it would not be possible or practical to minute conversations between a director-general and a minister. Is that correct?---Just a meeting between the director-general and a minister?

Well, all conversations?---Yeah, that would be impractical.

Right. And particularly I take it if it's a busy ministry and if the relationship between director-general and minister is close?---Indeed, yeah.

Right. But of course the director-general is not lobbying his minister is he generally speaking?---I wouldn't describe it in that way, no.

Right. He may try to persuade him of something but he's not lobbying him because of an interest?---No, he'd be providing, you would hope, unbiased and good advice, yeah.

And of course that advice may not be determinative of anything it's just a discussion?---That's right.

But if an external non-government person is meeting with a minister and let's say they are lobbying as no doubt external bodies usually do and notes were kept of that meeting but no departmental officer was present there would need to be a system for storing, recording and storing the notes. Is that correct?---Yes.

So that they could go to, if necessary so they could go to state records and be tracked down later on if that needed to occur?---Yes. And I guess the only thing I'd say there as well is that sometimes the nature of those conversations between say a large non-government organisation in my portfolio area and the minister would, I would've thought be appropriate to confidential.

Why?---Well, for example, the contracts that we have with our suppliers, I mean I'm not aware of it but my guess would be the commercial in confidence contracts.

THE COMMISSIONER: Why?---I'm sorry, that's the assumption I make.

Isn't the public entitled to know what contracts you have?---Yes, I suppose so.

I mean, there can be contracts which are confidential especially ones relating to defence but I can't understand why a contract involving disabled persons or aged persons should be confidential?---So for example if, if I had a contract with a supplier for, say a \$10 million contract for them to deliver respite services and it prescribes how those services are to be delivered and under what terms and so on that that agreement should be public.

10 Well, I suppose it's open to question but I'm, what's secret about it?---I don't think there's anything that's secret about it necessarily other than that they are in competition with other suppliers to procure those contracts.

Isn't it in the public interest that other people know so that they can tender against it and you get the best price available or is that not how it's done?  
---To be honest with you I'm not entirely sure.

MR GORMLY: Are you talking about the negotiations leading to a contract?---No, I'm talking about the nature of the contract itself and the terms within, within the contract.

20 All right. In any event you, you think that there may be occasions where there's some commercial in confidence issue discussed?---If, yeah, for example, okay, if we move away from the issue of actual contracts.

(not transcribable), Mr O'Halloran?---Yeah. So if we were to move away from the example of, that we've just used and there will be occasions where an organisation will come and see you where they are raising issues that they would prefer not to be in the hands of their competitors for example.

30 (not transcribable) that's different?---And so there are times when a meeting with a minister there's information that's divulged that needs to remain - - -

There can certainly be times when there are matters that are commercial in confidence but there's no reason not to record that. That would be covered by FOI?---Yeah.

And if they were truly confidential you wouldn't have to disclose them?  
---Okay, yes.

40 Mr O'Halloran, have you, are you aware of ever having received an FOI or GIPA, it's now known as GIPA, I don't know if you know that, Government Information Public Access Act, application for the production or access to notes of a meeting by a minister with someone?  
---No, I'm not aware of that.

Right. Have you ever heard of that happening at ministerial level among your colleagues?---Not in my experience, no.



Right. All right. If you were asked by an FOI application to produce the minutes of a meeting that had occurred 2.00pm on, I'm making up a date here, 3 December, 2009 involving the minister and X company would that currently be something that your office could do?---Not easily and not always.

Right?---On occasion those notes would've been kept as I've said and we could go back through our notebooks and find them but - - -

- 10 There wouldn't be a system for doing - - -?---There's no system for keeping those records.

Is that generally true?---In my experience, yes.

THE COMMISSIONER: All departments?---Of all ministerial offices?

Yes?---I couldn't speak for other ministerial offices but in the ministerial offices that I've worked that, that is the case.

- 20 MR GORMLY: All right. And I just want to explore with you for a minute the practicalities of having a system and it's not something that I'm asking you to prescribe about or bind anyone but I take it that it wouldn't be unduly difficult to keep a minute of a meeting containing the seven items I referred to and in effect store them or register them, put them in a volume so that they are accessible for later search should that need arise?---No, I wouldn't have thought that would be unduly difficult.

- 30 Is there any impracticality about sending copies of notes of meetings with the minister to the department if they are relevant to the department or relevant to the file?---No, I wouldn't have thought so.

Right. Can you think of, put aside conduct and complaint issues does it occur to you that there are reasons why the notes of a ministerial meeting with a stakeholder who is lobbying would not be sent to the department? ---I can't think of a practical reason why he wouldn't want to do that.

On space there seem to be good reasons to do it. Would you agree?---Yes, on its face I agree.

- 40 THE COMMISSIONER: Have you got computer access between the department and the minister?---No, I don't, I don't have access to the department's databases and so on however I do have a departmental liaison officer which every ministerial office has and that is a departmental officer that sits within the minister's office and they will generally although not with all departments but they will generally have access to the department's databases and so on. And can place material on that database?---I'd have to check that but, yes, I imagine that would be possible but, as I said, it's, the, the way that those records are kept vary between departments. There are

some departments that I know of that have up to 13, 14 different IT databases so it's far from a simple system and it's far from consistent.

Would, would electronic access or electronic communication of notes of meetings between a ministerial and department be a problem?---I wouldn't have thought so.

10 Would it save time?---Yeah, I guess so. I mean, the alternative is just simply to scan them to email and email them to the department. That's not particularly time-consuming if you did them all in one hit.

And then you wouldn't need to have a file except an electronic file?  
---That's right, yeah.

20 MR GORMLY: Now, Mr O'Halloran, can I just take you to another area. I presume that in the nature of Mr Primrose's ministry that he would be periodically lobbied by other members of the government, well, I'm sorry, by backbenchers of any party. Does that happen?---Definitely. I think it's, it's very common that members of parliament will raise issues with a minister on behalf of their constituency.

And a perfect appropriate thing to do?---Absolutely.

Yeah. Is there method for dealing with inquiries or lobbying or representations made by backbenchers?---In my office I have a person who is responsible for dealing with member of parliament's officers.

Right?---That's one of his specific tasks.

30 Can you tell us how that works?---So generally speaking you'll get a, he might take a call from an electorate officer working for a member of parliament about an issue that someone in his community has raised. That person in my office will take that query, make some inquiries with the department, if it's relevant to our portfolio area, and, and seek to get a decent response back to the minister, back to the member of parliament's office.

40 Right. So that's one way. There's a phone call from a electoral, an electoral office?---Or an email, I mean, one way or another the matter's raised with my staff member.

Right. And does that, that, there is a staff member who's designated the task of receiving backbench representations or the offices of backbenchers, is that right?---Yes. In my office his title would be parliamentary and caucus liaison officer.

And that, that being a reference to a liaison between the ministry and other members of parliament?---Other members of parliament, that's right.

Would that include - - -?---Generally the official title I'm sorry is the parliamentary liaison officer.

Right. Does that include representations made by other ministers, I'm talking about constituents firstly?---Only, only in their capacity as a member of parliament.

10 Right. All right. And what's, what's the purpose of having a liaison officer?---Obviously members of parliament, one of the most important stakeholders that, that we have as ministerial officers, they are the government's representative in their community and as such we take the issues that they raise very seriously.

All right. Are they recorded or noted?---Sorry, is what - - -

20 Do you actually record in some way that minister, I'm sorry, that member X of the lower house, some other seat, has made this request to the minister? ---Yeah, that's how we would follow the issue up with the department, so it would be usually an email to the department saying such and such member of parliament from this electorate has raised a matter on behalf of such and such a constituent and the issue relates to X, Y, Z, can we please get a response from the department about the matter that's been raised and that response would come back.

Right. So I take it that that's consistent with a role that makes parliamentarians effective, is that - - -?---Exactly.

30 Would you see them as getting some priority in, in their applications, that is priority over others who compete for the minister's time?---Yes, to an extent I would say that, as I say, members of parliament are, are one of our key stakeholders so when they do raise issues with us they, they are probably prioritised above other issues, depending on the urgency of other issues that are, that are around. I mean, if, if a matter is clearly urgent and relates to, for example, a client who needs respite services on the weekend because their mum's going to hospital you'd deal with that matter above any matter that's raised by a member of parliament of less significance.

40 Right?---But if you're comparing a, yes, you would generally try to get members of parliament's issues followed up as quickly as possible.

All right. Yes, thank you, Mr O'Halloran. Commissioner, I don't - - -

THE COMMISSIONER: Yes. Thank you very much for coming, Mr O'Halloran and that you for giving us the benefit of your experience. It's been very helpful?---Thank you.

**THE WITNESS EXCUSED**

[12.36pm]

MR GORMLY: Commissioner, I next call, I think if he's present, Mr Scott Gartrell.

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

10 MR GARTRELL: I'll affirm the truth of my evidence.

MR GORMLY: Mr Gartrell, I, I haven't spoken to you before but I think you've probably had the opportunity to hear how it's done. What I propose is just to get some initial details from you and then give you an opportunity to make an opening statement if you wish to about lobbying and we'll then get down to some business of exploring some issues?---Okay, thank you.

- 10 All right. Now, look, firstly I think, you have been for some considerable period involved in public life and as a chief of staff. Is that so?---Yes, the first part of that is definitely so.

Right. I don't think I asked your full name?---Richard Scott Gartrell.

Thank you. Can you tell us something of your history. I think at the moment you're the chief of staff for the Minister for Health. Is that right? ---That, that's correct.

- 20 And deputy premier?---That's right.

But prior to that, immediately prior to that you were involved with a, what I will call a government relations firm. Is that correct?---That's correct.

For how long?---Almost five years.

Right. And that was Government Relations Australia, is that so?---That's correct.

- 30 Now before that you were in the office of the Federal Minister for Infrastructure, Transport and Regional Development as an acting chief of staff?---I had a short stint with him while I was at GRA. I took leave from GRA to go and work for him immediately after the 2007 election for a short period.

Right?---So it broke, it broke the time that I, I was with the - - -

I see?--- - - - with GRA.

- 40 All right. And that's because you'd been a director at GRA for a couple of years prior to that, from March 2005?---That's correct.

All right. You've previously been in a communications role with various firms including Ernst and Young and Baulderstone Hornibrook?---I have.

Right. And I, I, you have quite a history, Mr Gartrell, in both public and private but a lot of that's been with Baulderstone Hornibrook?---Yes, I had nearly eight years I think with Baulderstone.

And Thiess as well?---A short period, about a year with Thiess.

Right, all right. Now, Mr Gartrell, is there anything that you would like to say by way of an opening statement concerning lobbying before we get down to some other questions?---Look, there's just a short statement I'd like to make if I could, Mr Gormly.

10 Sure?---Could I just say at the outset that I think this inquiry is a good thing, I think a public inquiry into lobbying and attempting to understand lobbying and how it's regulated is a good thing and I certainly support it whole-heartedly. It's been my experience that lobbying plays an important role in facilitating interaction between the community, business sectors and government and I think the, the benefit that that provides to government is quite considerable in informing government about the impact that decisions are likely to have on, on those being affected by it. I've had the benefit of working in a range of roles where I've been lobbyist and been lobbied. I've been, worked in the bureaucracy, I've worked in ministers offices, I've been, worked as a trade union official and I've had the benefit, I think, 20 looking at, at the interaction between the community and the business sector and government from a number of angles and I think the role that lobbying plays in assisting, building an understanding between stakeholders and government is a, and vice versa is a valuable thing. I think that's the main point that I want to make. I had a more detailed statement, which I don't think is necessary. I guess (not transcribable) that I think the process is valuable, it provides value to, to all those involved. And I think is one that does need to be regulated. Does need to have I think the spotlight on it to ensure that people do behave appropriately. But within those confines, I think it's a, it provides a valuable service to the community.

30 MR GORMLY: Thank you, Mr Gartrell. I want you to assume that what I'm about to say being used to bind the Commission in any way that we are at a point where you may assume that there is no doubt that, that lobbying in some appropriate fashion is part of the process and a healthy part of the process. May I ask though why you consider it to be an activity that warrants regulation?---Yeah, well I think, I think for a couple of reasons. The first being I acknowledge, I think the perception and it is in my experience only a perception, but that's important, that the pursuit of a commercial interest or an interest with government that isn't conducted in, 40 in the full glare of the public eye can be in some way inappropriate. And I think for that reason on its own, there does need to be a, I think a process that can provide comfort to the public and others that there are rules. So I think that's the first reason. Secondly, I think there is enormous complexity to the interaction between business and the community and the government and I think it, it, there are just so many people involved, I think it does need to be guided and I think the process that governments have moved to around Australia, progressively in the last few years, excuse me, has been, has been I think the right way of, of going about regulating that activity.

THE COMMISSIONER: Why do you think the perception has grown up?  
---It's a very good question, Commissioner. I don't know that I have a good  
answer for you. There is a cynicism about I think about that exists as large,  
I think about the pursuit, the commercial pursuit between, you know,  
companies and, and government. I, I've struggled to understand why that's  
the case myself when I've had a lot of involvement in, in working on, on  
transactions for private companies with government. And I have never seen  
any indication of corrupt or illegal activity associated with those sort of  
10 large procurement processes. So it is a mystery to me, but I acknowledge it  
exists and I think we do need to deal with it.

Would you agree that one of the causes is a lack of transparency between  
where decisions are made in favour of persons who are perceived to have a  
pool with government and without, in a context where there is simply no  
explanation as to what the communication has been between these powerful  
interests and government?---Look, that could be, that could be the case. But  
I think it also demonstrates ignorance of our procurement processes. And in  
my view how robust they are. You know, the probity regime that sits  
20 around a large infrastructure transaction is, is very strict.

The, correct me if I'm wrong, I mean this is a purely subjective view, that  
the perception is not, there is certainly a perception about the awarding of  
contracts to a degree. But that's not the main source, I don't think, of the  
perception. I mean, there is the, the awarding of benefit of some kind,  
licenses, particularly, favourable conditions of trading, the Planning area  
was, maybe still is one. The hotel industry is another. Those are, not in the  
sense of procurement, but just in giving, the gambling industry is another,  
just in giving licenses or favours to certain interests where many in the  
30 community don't want that. There might, it may be a perfectly legitimate  
decision to make and there might be an extremely good reason to make the  
decision, but very often the decision is made without any understanding of  
the process that led to the decision?---I think that's very true.

And, and that, would you agree that that is one of the main causes of the  
perception?---I think it adds to it. I think it's a big, it's a, it's clearly a  
powerful driver for the perception. I don't think it's, it sits there on its own.  
And I, I would, I'd just add I think that, you know, government, it's for  
government to clearly make the decisions and also to communicate them.  
40 They need, that needs to, that needs to happen in a way that demonstrates, I  
guess the context for the decision. And that's the point I'm making. I think  
about, you know, people not perhaps understanding how a decision has been  
arrived at.

Yes?---But I think another equally powerful driver for the perception is that  
it's, that there's been a benefit accrued because of a relationship between  
organisations and government. Whether that be because of a, they're from

the big end of town or whether it be because they've got, you know, a lobbyist working for them who, you know, who knows people.

Or who have made donations?---Well, I think the donation thing is quite separate. And I'd have a different comment about that. But I think it doesn't help, it doesn't help the - - -

10 It's separate to the perception?---No, I think, I think, I think it, it assists with creating some, you know colour and, about, about procurement processes. I just make the point that, you know, having been involved in, you know, in the making of donations from a range of perspectives, you know, it is, you know, there's just, there is just no connection obviously in my experience, but I accept that - - -

A connection between?---Between the making of donations and the accrual of a benefit by, by organisations. I think there's been a large public debate about that. I think it's not been well informed. I think it's been built around myths and, and hasty conclusions. But as I say, I think, I think the process of government arriving at decisions, whether it be in relation to a procurement decision or a policy one, I think is very robust, very robust.  
20 And I think it, it survives very well and isn't in my experience influenced by some of the things you've been talking about.

MR GORMLY: The perception is inevitable though isn't it? Whether it's true or not and I don't put that in issue, Mr Gartrell, but perhaps from the governments side, the receipt of a donation may be useful to its party, may even be known, but may have no bearing on the decision that's made. But the perception that the two are linked is an inevitable one that would be drawn publicly, would you not think?---Well, I don't know that it's inevitable, but certainly, it's certainly the connection has been, has been  
30 drawn and, yeah, the last few years, yeah, I accept that.

And of course, the perception of the donor and the donee, may be quite different too. That is the donee of the donation just wants the money and is not going to connect it to any benefit, but the donor of the money may frequently, particularly if they want to make a song and dance about it, will do it through a lobbyist. The donor of the money may have some expectation or some hope that there will be a connection even if they can't directly establish it or make the donation in a way that makes it clear that they want a benefit, they will have that perception themselves. Do you  
40 agree with that?---I've, I've not had that experience.

THE COMMISSIONER: Well, what is the reason why for large commercial organisations making donations to both parties usually with the higher donation to the one in power but nevertheless making a significant donation to the one that's not in power? What's the point of that?---I accept that the process that we, that we, we live with, Commissioner, is one that requires funding, private funding. I mean, I don't support the - - -



Do you - - -?---I don't support that. I think I'd much rather have a public funding model because I think it is a problem in terms of the perception.

Are you suggesting these donations are made out of pure altruism?---It's been my experience that the companies that I've worked with that have made donations accept the need for private donations for, to run our, our, our political process. They accept that. They understand that's the system.

10 But I'm not sure if you've answered by question. Do they do it just because of the love of country?---Well, I don't think the- - -

If there's a touch of cynicism in the question, is there, if you sense it there, it is there?---I accept that.

20 And I think, maybe I'm just one of the group who has the perception, wrong perception?---I think cynicism's an easy default position too, Commissioner. I accept, I accept your cynicism. I think the, you would need to ask people directly obviously. My experience is that they do it because they, they understand that's the case. Do they think a benefit will accrue, not, not a specific benefit but they probably know that it puts them, you know, people will be well-disposed towards them. I guess it's that general comfort.

It advances their position in an indefinable way?---That's probably right.

30 MR GORMLY: Or it can happen in reverse, that no benefit's going to arise from whatever amount I give but if I don't it's something that might be noticed?---Look, I don't think that's the case and I think that's increasingly, I mean, I, you know, in the last four or five years it is much more common now for, for corporations to take a position of not donating to either party.

Yes?---Much more common.

(not transcribable) Mr Gartrell?---I think they do without any fear of penalty.

40 Yes, all right. Now can I move to something else. Were you present outside, were you able to hear the evidence of Mr O'Halloran when he was giving evidence?---I listened to the last 10 minutes or so.

All right. There's an important topic I just want to raise with you. He gave some evidence consistent I must say with what we've heard from, from every other source about this topic, that there is no regular system for the keeping and maintenance of notes of meetings between ministers and those who may be lobbying them, not, not to suggest that there is any practice not to or that notes are not kept but that there isn't necessarily a system for keeping and retaining notes in a sufficient form to be able to track back to

them. Would you agree that that's, that's probably correct?---I, I think that is the case. There's no mandated or recommended process.

THE COMMISSIONER: Is that a, is that a new practice or is it something that's been going on for a long time?---Well, it's not been a, I must say, I think, my experience has been it's mostly not the practice. As a lobbyist - -  
-

10 It hasn't been the practice for a long time?---I'll put it in the positive. My experience has been that people take notes. When I go in as a lobbyist or I go with a company people are busy recording.

People are taking notes?---Yeah, absolutely. I just, I think, I might have misunderstood the question. I don't think there's any, there is certainly no - -  
- -

MR GORMLY: No regular practice?---No regular practice, certainly nothing recommended at a government level that that be the case.

20 THE COMMISSIONER: There's nothing by way, nothing laid down?  
---No. My experience has been it's pretty common for that to happen.

And what happens to the notes?---Well, in my case I keep my notes.

But that's entirely your personal decision?---It is. It's, it's the policy I have in, in the office as well for my staff, that's right, yeah.

30 And where, do you keep them in a file?---I keep my diary, I have my dairies going back a couple of decades so it's - - -

So your notes are in your diary?---Yes. I think part of the note-taking is that they will, you know, my experience is more often than not there'll be a public official there who will, who will be recording.

As well?---As well, and that's certainly, you know, that's my recommended practice as well, is to have someone - - -

40 What happens to his notes or her notes?---Well, they're personal property. They may, they may, they may be kept in the form of a diary I guess or go back into files, I don't there's any - - -

Again a matter for personal decision of the individual?---Yes, that's correct.

MR GORMLY: Did you hear Mr O'Halloran's evidence to the effect that he didn't think that it would be impractical to have a standard for note-keeping that contained the seven elements of date, time, venue, attendees, purpose, content and outcome and to keep it in such a way that it, it could form a permanent government record available for FOI at a later

day should that be required. Would you agree with that?---I think that sounds very reasonable.

All right.

THE COMMISSIONER: Mr Gartrell, what I'm really interested in what you said in the beginning when you were talking about lobbying and you said, I think because Mr Gormly asked you about, that it needed regulation, and you explained why, for two reasons. One was the perception of  
10 corruption and the other is just the size and complexity of these relations do really demand a form of regulation for good practice?---Yes.

I think, have I summarised that correctly?---Yes, yes, Commissioner.

Well, have you thought about what regulations should be brought in?  
---Well, I think we have a system currently that works.

Yes. Do you think, are you satisfied with it?---I think there could be some  
20 tweaking. I don't think it's fundamentally flawed but I think there are some things, I mean, I think the suggestion you made about record-keeping would add to the process.

Are you content with the register as it stands?---I, I think there's a gap in, you know, there's a much, a large debate gone on about who a lobbyist is and I think there is a gap in, in, that not all third party lobbyists are caught. I don't, I don't think that there's a case for extending it to anybody who is a lobbyist you know, in a, in a sense working for themselves or working for in  
30 an, in a, in an interest that they are employed with but I do think third party lobbyists should be on the register. They should be required to declare that, that there's a commercial interest.

What do you see the purpose of the register?---I think it, it, it publishes for the public and for government, I'll come back to the government benefit in a minute, it's a record of, of those who are accredited in a sense. Accredited meaning that they have been required to swear a declaration that they, stating that they understand the rules that should apply, the Code of Conduct that applies, process that they should, should comply with, declaring their involvement and their interests. I think that's, that's all, that's a good thing  
40 and I think to go to my comment about other third party lobbyists, I think in the case of, you know, banks (not transcribable) the professional Services organisations who will act not for a client on a client's interest and lobby and will lobby, and I have been lobbied by them, I think that that's a gap. I think they are acting in a way, it's no different to a, you know, a standard professional lobbyist.

But if, each time a lobbyist comes to see you you would know who that lobbyist was acting for, wouldn't you, before he came or immediately arrived you would find out?---I, I always ask, yes, yeah.

And that would hardly be unusual, wouldn't it?---That I, that I know who they're acting for?

10 That when a lobbyist came to see a person in a senior position like yours or a minister that the person being lobbied would know who the lobbyist was acting for?---I do know when it happens. I think, I mean, I think the practice of stating in a meeting formally for the record that you're there acting on behalf of X corporation to, to talk about and list the issues, I think that's a, that's a good process. It puts it plainly in front of people. That certainly was the process we used.

It has been suggested to us that there are a very small minority of lobbyists who will actually not tell you the truth about that. Have you ever come across that?---I haven't, no.

20 So you don't need a register to tell you that?---No, but you need somewhere I think to ensure that it is done consistently, information that says to people here's the process that should be followed in dealing with government. Now, I think the register forms a good mechanism to do that but it doesn't exist on its own it needs the code to say to people here's the process that, that you should comply with.

So a lobbyist on the register should actually undertake to comply with the code?---By all means, yes.

30 And do you accept that on breach of the code would lead to removal from the register?---I think that's right, I mean, if it's sufficient they should, the practice has to be queried, yeah.

Why shouldn't they supply it to everybody who lobbies?---I think the, in the case of the third party, well, going in the reverse direction I'm not sure where I'd stop the, the definition, I mean, it's a very, very broad definition if it's not limited to that, to third parties.

It's very difficult to conceive of a lobbyist who wants something that's not in competition with somebody else?---That's true.

40 So why should some have an advantage and not others?---I don't think being on the register is a disadvantage.

Well, why should some have to undertake to comply with the code of conduct and not others?---Well, I accept that codes of behaviour or conduct should apply to all dealing with government in that instance (not transcribable) - - -

Especially all who are in a competitive position with other people?---Yeah, I accept that.

MR GORMLY: Mr Gartrell, at the moment one can see regulation of lobbying as having one of two or both purposes. One is to prevent wrongdoing and that can be by code of conduct or criminal sanction or disciplinary sanction to stop people from doing what you would regard as a bad thing. The other purpose of regulating may be simply to organise so that there is a consistent approach to a particular type of activity and everybody knows where they stand. Now, in regulating for lobbyists if you take the organisational approach putting aside the wrongdoing for the moment one might well consider expanding the categories of people who have to lobby as the Commissioner's just been putting to you to those who either lobby for a fee or lobby professionally so that you might for example have in mind not just the third party lobbyist but very closely aligned to them the lawyers, the accountants and others who appear representatively for other people, let's put those aside for the moment. And I take it you wouldn't have any issue with that?---No, I don't.

Because they, they do exactly the same thing as the lobbyist and there is at least a public disclosure of who they're acting for?---Yes.

Another group that might be considered though is the interest that has an in-house lobbying component and putting aside the practical issues of who within a corporate entity does the lobbying, it may be the chairman and it may be their government relations expert, at least you might consider saying if you want to lobby government you're free to do so, no one's impairing you but you need to declare yourself publicly. Do you have any difficulty with requiring people who want to lobby government to make themselves known?---No, I don't. I guess the only, the main reason for my comment about third party lobbyists is that, you know, that's the bulk of lobbying in my experience, that would cover most people and if you were seeking to cover all people then what you suggest would be the way of, of approaching it.

Would you see most lobbying as being done through a third party lobbyist?  
---Yes, that's a very good question. A large, a large amount, yes.

All right. I don't mean to put you on the spot about that but can I suggest that probably the largest category would be the peak body lobbyist, that is, industry bodies, professional bodies, trade unions - - -

THE COMMISSIONER: Lawyers groups?---Yes.

MR GORMLY: Yes. Lawyers groups.

THE COMMISSIONER: An employer?---Yes. And in health it's, it's, it's the, you know, it's our internal stakeholders who, who we have the most to deal with. I don't just mean the professional bodies like the AMA, I mean medical staff, council chairs and, you know, and the like.

MR GORMLY: Well, in that particular field as in the legal profession there is research that suggests that a principal reason for joining those bodies where it's voluntary is that it provides a voice for that particular group to government. Is that something consistent with what you've heard?

---Absolutely. It would be my experience in the construction industry, I mean, that's, that's certainly the case.

10 All right. Now, if one were to have this line in the sand so to speak where representative groups or professional lobbying bodies were to declare themselves publicly can you see any practical reason why peak bodies and I include unions bearing in mind that you have some familiarity with unions and employer bodies should not be on such a list?---No, I think they, I think they, I think they should be, they are, I agree with your summary there, they are, they are frequent lobbyists on behalf of members.

20 THE COMMISSIONER: It's quite difficult to get them to sign a code of conduct, I mean, the body itself could undertake to comply with the code of conduct but it will be difficult for it to police that because you could always get individual people who don't?---Employed by the body?

Yes?---Yeah. I think that's true, Commissioner, but I think it, you know, if I take the organisations that I've been experienced with they generally don't have a lot of their officials who are doing the lobbying, it will be, it will be - -

30 Would it be practical to require the people who do the lobbying to agree to be bound by the code of conduct?---I think it is practical, it's not a large group of people. You know, if I go back to, excuse me, to my own lobbying days every person in the, in government relations Australia that had anything to do with working for a client, saw a stat dec and was registered and that included administrative people who set meetings up, who would send an email to a government office took a very wide view about that contact so I think in - - -

40 And in many ways it would actually be fairer because a breach of the code of conduct would result in the individual being removed but not the entity? ---Yes, well, that's probably true- although you'd, I think, this is perhaps a detail we don't yet need to get to but you would need to have some engagement with the organisation also as to why the behaviour occurred.

Yes, quite.

MR GORMLY: I want to try something out with you, Mr Gartrell. We had here yesterday Mr, the Honourable Fred Chaney who is currently actively involved in lobbying and I won't trouble you with the detail of that, for various charitable interests. He proffered a view yesterday consistent with other views that we've heard here that good lobbying can, by a reputable

profession, a trained profession can itself be a safeguard of appropriate lobbying. We heard a similar view endorsed but not accepted by Mr Ian Macintosh a former lobbyist but also a former mayor of the City of Bathurst who expressed the view that good lobbying between the small to medium developer was likely to reduce the degree of lobbying in that very difficult land development field at local government but that it would be an imposition of a cost that would be unacceptable. So we have the irony that the scepticism of the community about lobbyists is actually a scepticism about a body of people who could potentially be by the introduction of professional standards and acceptance of codes of conduct and so forth can actually act as a guardian against corrupt conduct acting as a person between the extremely keen proponent for a benefit from government and government itself. The question that arises is firstly, it really springs to another view of Mr Chaney that lobbying as it stands in most Australian political jurisdictions at the moment is an activity insufficiently used by community interests, commercial interests and so forth. That is, that at the moment far from there being a problem of government being inundated by lobbyists – in fact – there is probably insufficient consultation between government and the community. Mr Chaney, and this may reflect his own views, is of the view that, that is in part because government doesn't have in place sufficient initiating consultation procedures – that is, it doesn't go out and get views as actively as it might, rather that it's accustomed to people coming to it and lobbying. Firstly, can I ask whether you would accept the view that – I know it's a broad question – that there could well be procedures in place which would improve the degree of formal consultation initiated by government and that in doing so, one might well also end up with a more respected professional lobbying profession. A large body of material I've put to you Mr Gartrell for comment.---It is.

But do you understand, essentially it's about government consultation first, and secondly about the effect that might have on the lobbying profession. ---I guess I could answer that in a couple of ways. The first is, I think government understands the, from a process perspective, the need to consult with the community about decisions and about the implementation of decisions and we see it in relation to, you know, new services and construction projects and the like and I think there is a process that sits around that that's probably not caught by our question but I think that happens reasonably well. I think the, I think government is getting better at looking for input to inform its decisions but I think it hasn't in the past done it terribly well and I think that's for a range of reasons. And lobbying does help with that but no, I don't think lobbyists will be there to rescue government in that respect, I think they can help improve it, they have the capacity I think to build understanding and I think that is important on both sides. Going to the very early part of your question about working with companies to say, this is the right way to deal with government, I think that in my experience that is exactly what good lobbyists do. The lobbying industry itself has changed quite dramatically in the last 10 or 15 years. It's gone from essentially from sole traders and small partnerships to you know,

a number of instances now listed companies and has become more professionalised along the way and I think there are four or five large organisations now that, that do train their own people in codes of conduct and ethically behaviour and have that as a brand if you like.

THE COMMISSIONER: There's not a professional association of lobbyists is there?---No, there's been some discussion about it but there isn't one at the moment.

10 Would that help?---I can't - - -  
Lay down standards, monitor them?---Yeah, I think it could, I'm told it's helped in the UK, they've done that there and I don't know, I know this third hand that it's been a good process of self regulation. It can't hurt be explicit about the things that would be good for the industry of lobbying if you like and I think it being professional and it being seen a value-adder is only going to help people's businesses and that's ultimately where I guess where it's headed. So I'm not sure I accept Mr Chaney's premise that it's, you know that lobbyists will rescue the government in that regard but they certainly help build understanding. I mean, I've had this experience  
20 working as a lobbyist in at the state and commonwealth level in trying to sort of open up the consequences of particular actions to the government officials making the decisions at the time.

MR GORMLY: What would you say of the proposition that the poor image of lobbying at the moment, which is usually attributed to closed doors, relationships with politicians or the inclusion of former politicians in the ranks and preference arising out of old relationships, might in fact be in part ascribed to the absence of formal methods, more formal methods of consultation by government.---I think that could help. What is good  
30 lobbying is getting inside the business and getting inside the policy. It's got nothing to do with whether you're a politician, in fact, in my experience politicians are necessarily good at either of those things. You need to really understand the commercial opportunity and you need to understand the policy framework and be capable of working in both areas. You've got to get the business to think about why government should buy the thing that it's interested in, whatever the thing is and you have to talk to policy people and say look, I think you're policy could be improved and here's an opportunity. That's the discussion that happens and it's why it almost always starts and finishes in talking to public officials not talking to  
40 politicians. They will be involved in a decision at some point but the bulk of that discussion happens with the people who are writing the policy.

We've received, I'm not, not responding to your comment Mr Gartrell but we've received anecdotal evidence that the lobbying industry very significantly increased in size in Australia in the 1990s and perhaps the early years of this decade but in the last few years there may have been a levelling out in its growth. There is no way of testing that proposition unless you have procedures like the Canadian's have. Is it however, at least



anecdotally or in terms of impression consistent with what you've understand has happened?---Well, that's probably largely right. I would, I would probably add this just to say that it's no coincidence, it coincides with governments moving away from service deliverers in some areas, the big day labour forces employed by the railway and public works agencies around the country are almost all gone now and a lot of that work is done by the private sector. Similarly, in health and other areas there's been a lot more interaction between the private sector and government in delivering services and so I think, I think that's been a big driver of the requirement - -

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THE COMMISSIONER: Contracting out brings more lobbyists?---Well, yes, it brings the requirement to understand government. If you want to compete for the, compete for the work you need to have the thing that's a little bit different that gets you across the line and I think that's often understanding what it is that government wants that's not in the tender document. The sort of, the additional thing that would be great to have that's not actually written down somewhere.

20 MR GORMLY: Commissioner, I think I could go on with Mr Gartrell for some time but I think that's as much as we can usefully deal with and he's been very helpful.

THE COMMISSIONER: Yes, Mr Justice Marr used to say, the court is hungry but the Commission is. You don't wish to ask Mr Gartrell any more questions?

30 MR GORMLY: Well, Commissioner, I could ask him about the cooling off periods, there is one particular thing that, can I ask you this in short form Mr Gartrell, you'll appreciate the issue concerning cooling off periods for people who have come out of government positions and then move into private positions where relationships or knowledge can appear to be sold. The only question I have about that is whether you consider that there is a material difference between the departmental officer on the one hand and the ex-minister on the other in terms of the length of the cooling off period. ---I don't see any reason for any difference.

Right. It's the body knowledge and the contacts that count.---Yes.

40 Thank you Commissioner.

THE COMMISSIONER: Mr Gartrell, thank you so much for coming it's been really helpful and we do appreciate it.---Thank you Commissioner.

The Commissioner will now adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[1.20PM]