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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 11 AUGUST 2010

AT 2.00PM

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

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we have Mr Steven McMahon in the witness box.

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

10 MR McMAHON: The oath, Commissioner.

<STEVEN KENNETH McMAHON, sworn [2.02pm]

MR GORMLY: Thank you, Commissioner. Mr McMahon, can you tell us your full name?---Yep. Steven Kenneth McMahon.

20 Thank you. You are currently the Chief of Staff to the minister, the Honourable Mr Kevin Green, who is the Minister for Gaming and Racing, Major Events, Sports and Recreation. Is that right?---Correct.

You've been in that role since January last year. Prior to that and putting aside your local government role for the moment, prior to that you were with the Business Banking Group of the Commonwealth Bank of Australia?---Correct.

30 I think two years. You were Minister Green's electoral officer for five years and you have had various positions as policy advisor in, with other ministers. Is that so?---Correct.

I think your background is in economics from Sydney University?---Yes.

And in addition to all of that, Mr McMahon, I think you are also a Hurstville City Councillor?---Correct.

And you have been on the Hurstville City Council since 1999?---Yes.

For a period now of 11 years?---Yes.

40 All right. Now, Mr McMahon, are there any, you're familiar with what this inquiry is about?---Yes, I am.

All right. I think you heard a little bit of Mr Gartrell's evidence and I think you've had the opportunity to see the issues paper?---Yes.

And also perhaps to see some of the transcript?---Correct.

Right. Are there any preliminary comments that you would like to make?

---No, only that I'm happy to answer your questions and help wherever I can.

All right. All right. Let's, let's start with record keeping of meetings with ministers. It's a subject that we've been dealing with this morning. Did you hear any of that evidence?---No, I didn't.

10 Right. Now, look I just want to do this shortly if I may, because I'd like to spend some time on the local government issues with you. So I'm going to put this to you in short form for your comment. We've heard this morning that generally speaking notes are taken of meetings between non-
government interests and a minister when he is meeting with them in formal
circumstances, that there's no particular protocol for note taking. They may
sometimes not be taken. But that if they are they are generally just regarded
as the notes of whoever it is that's taking the notes, perhaps an advisor or
the chief of staff. And that there is no particular route or pathway for those
notes to travel along. They certainly don't go to departmental files unless
there's a departmental officer taking notes. And they are not necessarily put
20 into any form where they might be kept or retained permanently or regarded
as being government records. Is that, all of that consistent with your
experience and knowledge?---It sounds like a fair (not transcribable), yes.

All right. Now you've been with other ministries a apart from that of Mr Green, I gather?---Yes.

In, in ministerial roles?---Yes.

30 Has, has that description that I've given you been consistent for other ministries as well?---Pretty much, yes.

Yes. All right. If there is a departmental officer attending do they usually take notes?---It would depend on what they're there for. Sometimes we require a, a departmental officer for additional assistance in terms of their, whatever their chosen field is.

Ah hmm?---Depending on what the meeting is. If, if, if there's a couple of departmental people there, then yeah, usually there is someone probably the junior person that does tend to take notes.

40 Right?---But, it depends on the meeting I suppose and the purpose of the departmental person being there.

All right. Now your minister covers gaming and racing as well as major external events and recreation, I take it that does not cover the hotel industries?---Yes, it does.

It does?---The gaming and racing portfolio covers liquor and that's because the Office of Liquor, Gaming and Racing, which is now part of Communities New South Wales, they look after liquor regulation.

10 Right. All right. Does that, does that mean, would it be fair to say then that your minister is fairly regularly lobbied by interests that would relate to hotels, liquor licensing, perhaps tobacco and gambling interests?---Yeah, not tobacco. I don't recall tobacco ever being one. It's not something that we regulate. One thing I should add though as well is that there's also the separate to our department and the work they do there is also what we call CLGCA, the Casino Liquor and Gaming, Casino Liquor and Gaming Authority and they're under us, they're independent, well they're a statutory body, but they're independent of government. They have a, they have the main role of issuing licenses separate to the department.

Of course. Do they report to your minister or to, to parliament, I suppose directly?---Yeah, no, they have to - - -

20 All right?---they do meet with the minister regularly.

Yes?---Just to keep us abreast of what's going on and they do furnish us with confidential, their minutes of their board, monthly meetings. And, yeah, they answerable to parliament through their annual report as well.

Now in the, in the lobbying that your minister does receive from various interests that bear on his industry, do you get professional third party lobbyists lobbying?---Occasionally, yes.

30 Do you get peak bodies lobbying?---Yes.

Do you agree interests other than, a very small interest, do you get interests that will attend unrepresented by anybody?---Yes.

Right. And what about in-house lobbyists, do you, do you ever find yourselves lobbied by companies or corporate entities that do their own lobbying through a, you know, a more or less professional body?---So if they had like a government relations person?

40 Yes?---Yes. Yes. Yep.

Right. When you do get, can I, we'll just work with the in-house lobbyists for the moment?---Sure.

When you do get the in-house lobbyists attending on behalf of their employer and they may have the role of government relations person, does that mean that that is the only person from the company from whom you'll hear or might you also hear from members of the board or others in the company?---Usually the government relations person is the person who

initiates the contact or asks, requests a meeting or writes to us or, or contacts us. And usually when the meeting is held my experience would be that they would probably bring along, whether it's their CEO or the director responsible for whatever issue it is they, they have a concern for. So they would usually, not always, but they would usually probably bring someone more senior than they.

10 All right. Is the government relations person of an in-house entity likely to be someone known to you over time?---It's very hit and miss. I suppose since I've only been a chief of staff for not too long I could only recall one or two that I did know from other, from my previous life or from my, my roles but no, I wouldn't say it's common.

20 Does it help or does it make a difference if you do know them from some past life?---I guess it helps in terms of me knowing, well, making a judgment on that type of person's character and I suppose it helps in terms of me forming a judgment as to, you know, their bona fides I suppose so I would guess it does help in that respect but it normally doesn't make a huge difference to whether we meet with them or not.

If you do know them does that, does that incline you to accept their bona fides or is it just that you know who they are and what they're like?---It depends on how I know them I suppose.

All right?---But in the case, in the cases that I've had I've know these people to be good and decent people so I would be more comfortable having a meeting with them knowing that they're good and decent people.

30 Might that apply by the second or third meeting you've had with someone you didn't know previously?---Yeah, that's a fair statement.

It's just an ordinary work relationship - - -?---Yes, that's a fair - - -

- - - that develops over time?---Yeah, that's a fair statement, sure.

40 Now, when they do turn up with a chairman of the board or a board member has it been your experience that the board member or the chairman or whoever it is will take over the meeting or does the government relations person generally have the running of the meeting?---I suppose it's horses for courses, pardon the pun with our racing ministry, but normally the government relations person would start the meeting or would give a summary of what they're here for and then, yeah, I think that's fair to say that then the, the CEO or whoever the person of responsibility is there would then take over the show. Yeah, I suppose that's pretty fair.

In principle does that differ much from when a third party professional lobbyist is used? When I say (not transcribable) I mean in general terms?

---Yeah. I would say that an in-house lobbyist or a government relations person tends to have more, I guess, ownership or understanding of the issue than a third party lobbyist.

So a third party lobbyist is likely to be acquiring it for the purposes of the brief, so to speak?---Yes, yeah, yeah, they've just hired them to do that.

10 Do you have a preference if you're going to be lobbied by someone?---No, because pretty much every time I answer the phone or, or run into someone they're usually asking for something so I suppose that's some form of lobbying so no, it doesn't, it doesn't bother me which way, if it's in-house or external.

What, what's your, I'm sorry, I withdraw that. When you're lobbied by peak bodies or when your minister is lobbied by a peak body does that include trade unions?---It can. We haven't had too many in this portfolio but it can.

20 And employer groups as well?---It can. We've only had, yeah, we've had one or two examples I can think of of that but, yeah, it's not, it's not common in this portfolio but, yes, it has happened.

30 And are they essentially the same or are they different from other peak body lobbying?---It's certainly a little bit different only in that their issues are different. The issues we had to do with a union, for example, was when we, there was the government wound up what used to be the Harness and Greyhound Regulatory Authority, it was a government run body and the government made a policy decision to enable the greyhound and harness industries to regulate themselves like the racing industry does, with the stewards and the like. That involved redundancies and people would go from the public sector to the new private, private body. So we had representations from the, from the PSA, the Public Service Association, representing their members to try and get a better deal for their members in terms of the redundancies and things like that. So that's the main one we've had.

That is seeking the support of the minister to discuss the proposed new employer?---Yes.

40 Right?---Yes.

On, on wage rates?---And redundancy payouts and the like, yes.

All right. So apart from the different issues, are the methods of lobbying the same?---Basically I think that's a fair statement.

Well, it's a question?---Well, yeah, it's, we haven't had too many unions approach us - - -

Yeah?--- - - - so I guess it's difficult to make a fair, a fair answer but I, I would say yes, their intent is to make the government or to seek the government's, to make a decision in their favour so I suppose they'd be very similar, yeah.

10 Okay?---Yeah, that's fair. Now generally speaking have you found lobbying to be of assistance to your minister or to yourself? I withdraw that, I'm sorry, I mean lobbying by professional lobbyists or peak bodies as distinct from the direct interest?---I don't know whether the lobbying has, is, is beneficial or, or, or not but I would say that the meetings with the, getting the information at the meeting, whether it be from the lobbyist or whether it be from the, the CEO or the board member, getting that information is certainly beneficial.

20 What you after when lobbying occurs? What do you, on the government's side, after?---Well, we prefer no one lobby us but when we have these meetings we are after their point of view so that we can, we can gather all the information that we had so that when we make a decision we're fully informed of everyone's side of the argument.

I'm not sure if you're, when you say we'd prefer no one lobby us, I appreciate that you may have been partially joking there but what causes you to say that?---Oh, well, I suppose if you can, if you can make your decisions based on the fact that you as an office or as a minister go and seek meetings with people and seek all that information then, then you can do it that way rather than having different third parties - - -

30 Pressing on you?--- - - - pressing you all the time to make a decision and to, you know, try to make, rush you into a, pressure you into a decision. That's really all I meant, yeah.

All right. Well, a minister can of course go and get information and no doubt your minister does sometimes?---Yeah, yes.

40 How does that balance work, the difference between going out and getting the information on the one way initiated by you and receiving the pressure of active lobbyists on the other? How does that balance work?---I think with this portfolio, with my, my minister, we have a policy, well, it's not really a policy, but we have the view that we try to meet as many people as we can, meet as many of the stakeholders as we can and go to as many functions as we can to try and get a good understanding of the issues that are happening. I think in doing that and being so proactive it, whilst it does expose you to, to, to lobbyists who will then try and have a, have a further meeting it makes you I suppose more equipped to, because of the knowledge you have gained through these proactive exercises, you, you understand the issues and it makes you more equipped to make better decisions and also I suppose be aware of, be aware of lobbyists pushing

certain bandwagons because you've, you've been out there and you've got as much information as you can so I suppose it provides you with a bit of protection being proactive.

Would your minister, given his portfolios, generally meet with a departmental officer present when he's meeting with non-government interests or not?---It would depend on the issue. If it's an issue that is either controversial or something that we're not too familiar with then certainly we would have a departmental person there or if it, obviously if it involves
10 legal, if we believe there was going to any legal ramifications or if there's court cases, which there is a couple in our portfolio, then we'd, we'd have an officer there certainly.

When you get professionally lobbyists, that is capable third party lobbyists or a peak body lobbying you, I understand that the practice in New South Wales is not to start dumping paper on the ministerial table but that you may well get one or five page summaries, short summaries of whatever it is that somebody wants to lobby the minister about. Is that a correct assumption?
---I think so, yes, it varies from, from person to person. It makes more sense
20 just to have a short précis but in some situations you do get a very thick book but, yeah, I think your statement is, most of the time is pretty accurate.

So if somebody is going to lobby there might be this little bundle of documents so firstly perhaps a letter requesting or an email requesting responses by you or perhaps inquiries by you as to what the meeting is about, perhaps a written response to that so a little exchange of correspondence seeking a meeting and describing what it's about, correct?
---In our office we have what I colloquially call a purple, but only because
30 it's on purple paper, it's a meeting request form so that when a, when correspondence comes in via email we, if it comes by phone we usually request it come in writing so if it's by email or by, by Australia Post mail it will come in, the administration staff in our office will attach this purple, this form, to it. This form has, I have a copy of it here if you want, but this form will then go to the relevant policy advisor for that area and they will make their, their comments as to whether they believe we need more information from the department or whether it was okay for the minister to meet with these people. It would then come to me as the chief of staff, I would make my final recommendation and then would go to the minister just for his, his okay and then the, the administration staff would then
40 organise the meeting or, or decline as appropriate.

All right. So apart from the documents there will be the purple. Now, I would be grateful if we could see a copy of that, Mr McMahan?---Yeah, I'll just grab that out.

Then there will be the summary document that might be handed over at the meeting. Correct?---Yes, that's correct and once the meeting is agreed to, yep.

And hopefully there will be some notes kept by ministerial staff?---That's usually the, usually the case, correct.

10 All right. Are those kinds of documents kept together?---Yes. Usually the, the email or the correspondence that comes in will be attached to that, to that purple and it will be kept by the minister's PA in a file and then if further documentation is received at the meeting then that meeting would usually be, that information would usually be kept by the policy advisor with all that information as well.

In effect kept together?---Usually, yes.

Right. And what happened, in your office what happens to them then?---If. Sometimes it can go to the, most of the time I suppose it would go to the department for, for filing and for records and sometimes it would be kept with the policy advisor I suppose if it's a live, a live issue. It really does depend on the issue from issue to issue.

20 Right. All right. May I retain that, Mr McMahan?---Certainly, yes.

We're not tendering documents but it would be helpful?---I brought a copy, I thought you might want it.

Thank you. I just want to take you to a related area. Sorry, it's just slipped out of my mind for a second.

30 THE COMMISSIONER: While you're thinking, Mr Gormly, I might step in.

MR GORMLY: Please do.

THE COMMISSIONER: Mr McMahan, you, I'm sure appreciate that one of the main reasons for this inquiry is the perception that some lobbying activity is tainted by corruption?---Yes.

That doesn't mean to say that that's true but that there is a perception out there. Do you agree with that?---I think that perception is a bit unfair.

40 That's a different matter?---Okay.

I'm talking about whether it exists?---Well, it, I don't know whether I can answer that. I haven't seen evidence of it existing.

You haven't read the newspaper?---I don't necessarily equate reading a newspaper with evidence but I personally - - -

It's evidence of a perception because that's what people are writing about?

---It's what journalists are writing about, that's correct, yes.

But you don't think people, some people believe that?---Sorry, I certainly, sorry, I may have misunderstood you, Commissioner. I certainly believe that there is a perception out there - - -

Yes, that's what I'm - - -?---Sorry, sorry, yes, no, I do believe there is a perception out there.

10 I'm not saying for one moment that that perception is necessarily true but the perception itself is - - -?---Yes, I do agree there is a perception out there that that is the case.

Do you agree that that's not a good thing?---Certainly.

Have you any suggestions how that can be lessened, reduced or even removed?---I think if the character, I think if the character of the people lobbying was such that somehow as an industry they could remove undesirables from, from their element then that would be one way.

20

Do you think that's what causes the perception?---I think that the perception is caused by a mixture of a few bad eggs, perhaps a few bad decisions and by the way it's reported.

The perception has been, the perception does attach to some degree to your ministry by its very nature?---Yes.

30 Not because of anything that necessarily happens. I wish to make it quite clear that I'm not making any hint or suggestion that there is anything inappropriate in the way that your ministry has carried on but there is a perception. Would you agree with that?---Yes.

And for example just only yesterday I think it was or the day before yesterday there was some report on the back page or some remark on the back page of the Sydney Morning Herald about the Hotels Association and favours done to it?---Yes.

40 And that has nothing to do with, with any notion of corrupt lobbyists it has to do with the making of decisions in favour of a powerful group?---Yes.

And it may, as I understand it in the middle is silence, in other words, the decision is made, it's made in favour of the powerful group, it's made in the face of opposition, it may be a perfectly legitimate decision based on good reasons but that's not revealed. It's also not revealed who's been speaking to the minister about this issue. Do you think that's what caused, that contributes to the perception?---I think this perception is mainly, what has contributed to this is the way that the media has reported it, I say that in the, when we came to this portfolio we brought in some of the toughest liquor

laws that New South Wales and indeed the country has ever seen in relation to the top 48 hotels and since that time it's changed to a tiered system where there are a number of sanctions on the most violent hotels that have never, never been in place before such as mandatory lockouts before a certain time and the amount of alcoholic beverages people can purchase and serving in plastic after midnight rather than glass. Some of these conditions have been quite onerous on the industry and it's been done by the government because of the levels of assault and wanting to protect, protect patrons. The industry where losing money as a result of that and there's been a number of

10 examples in the, the Newcastle area and others where there's two separate sides of the debate, there's the residents who are opposed to the licensed venues and there's the licensed venues but a fair person would think looking at it could not argue that certainly since we've had this portfolio that we've actually been more, been tougher on licensed premises than before so I would say that, my view is that it's not necessarily always further reporting leading to that perception you speak of.

I'm not saying anything that disagrees with that. I mention that because on one view one way to reduce the perception is to make public more

20 information that leads to the decision that the minister makes. What do you think of that?---I don't have a problem with that. When journalists or even members of the public come to us asking for information as to why certain decisions are made we usually quite freely, freely give it, it doesn't mean they agree with it but we usually freely, freely give it. I don't have any objection to, to them having more information.

Would you have an objection to, for example, disclosing the fact that meetings had taken place, not the content of the meeting necessarily or not the contents of the meeting just the fact that the meetings have taken place

30 between yourself say or the minister or both on the one hand and interested groups or lobbyists who have made representations concerning the issue that led to the particular decision?---No, I wouldn't have any objection to that and, and quite often whenever the minister and myself are asked did you meet with these people we would say yes. I think if you're talking about the publication of a list I think something like that would also have to come with, with comment so that it couldn't be misconstrued because quite often people say, you met with this person, well, obviously that's why this decision was made and that's quite often not the case.

Would you have any objection to a register that requires such meetings, not informal meeting only formal meetings in the minister's office or onsite where members of the department are present as well and where notes are taken just for a register that requires those meetings, the fact of the meeting to be listed to who was present and who the lobbyist represented and of course it will be, you'd be free to make any comment that you wishes on it. Would you have any objection to that?---I wouldn't have any objection to that. But I think if such a system ever did come in, it should be beholden, a

responsibility of both those in government and those not in government, those in opposition, I suppose.

Can you explain what you mean?---Sorry, I mean that it should, it should not be just be the responsibility of the, of the people in government in terms of those making the decisions. I also think if we're going to go down that path, then members of the opposition, when they have meetings with those groups as well, because they will also formulate policy and they should also

10

But they don't, they don't make the decisions?---Not today they don't. But at one stage they may well make a decision. And they do have a vote in the chamber, in both chambers and in the upper house. Sometimes their vote is important. So I think it's important that all, if a system such as that is, is in fact put into place, then it should be across the board, not just for the ministers, because the opposition do sometimes make decisions.

From a, from a mechanical point of view or from a practical point of view would such a, such a procedure be onerous for you?---It would depend on the detail. I mean we use an electronic diary so in terms of that, probably not. But, there are already a lot of systems that we need to, to record things like that, so, yeah. But no, it's certainly doable.

Mr Gormly.

MR GORMLY: Mr McMahon, is your ministry often lobbied by backbench members of parliament?---Yes.

Is there some system for accommodating their requests for intervention or assistance?---Usually treated exactly the same as, as anyone else in terms of, in terms of our office procedures. I would still go through that purple process. And, no, unless it was an informal thing, if you're walking through parliament and can I pop in for five minutes. That's, that does happen.

Right?---But most of the time it would go through the same system, purely from an organisational point of view. (not transcribable)

And is that to come and see you or go and see the minister?---It can be both.

Right. All right. If it's to see you, I take it it's with a view to drawing the ministers attention to something. Is that the position?---Usually that's, yep, that would be the case.

This purple that's being introduced, is, is the purpose of the purple to enable a recording of a request to be submitted to the minister so he can determine who he wants to see or is it just a method of recording a request?---Both.

Who does decide who sees the minister in your ministry?---Well, ultimately the minister does.

Yes?---But usually after it's gone through the policy advisor and then through myself, we make a recommendation. But ultimately he makes the decision whether he meets with them or not.

10 Do ministers, I'm not just speaking of your minister here, but from your knowledge of other ministries and of general practice in the ministry, is the practice that a minister will see all requests, some requests or that he will leave it, he or she will leave it entirely to the chief of staff? Where in that spectrum is the usual practice?---I think, well I can really speak on behalf of the three ministers I've worked for.

20 All right?---But I know that my minister certainly likes to be involved and likes to see who, who he's meeting with before the meeting takes place. With the other ministers I've worked with, I haven't been as a high level as chief of staff, but I would say that most of the time they would, they would like to see what's going in their diary before it goes it.

What about a selecting from the list of people, this is an access question, Mr McMahon, too, I'm asking?---Yes. Right.

Does a minister see, generally speaking, a list of the people that seek his or her personal attention?---Well, yes, my minister does, because he sees all the meeting requests in.

30 Right?---Like I've said, we try to meet with as many people as we, as we can.

THE COMMISSIONER: How long do you spend with the person?--- Usually about 45 minutes.

MR GORMLY: All right. Let me take you to another matter?---Sure.

It's completely different, Mr McMahon?---Yep.

40 There has been a body of evidence about persons leaving the government ranks, either as ministers or perhaps senior ministerial staff, so (not transcribable) yourself?---Yes.

And then joining the ranks of the lobbyist afterwards, perhaps as a third party professional lobbyist going into a firm, either in a research position or perhaps, forgive the expression, but just for speed, in a door opening role? ---Right.

That is making use of the relationships that exist together with the use of that accumulated knowledge of how government works. You're aware that

there are various cooling off periods in New South Wales, it's 12 months, Queensland, two years, Canada, five years. Depending on the category. Do you yourself have a view about whether ministerial staff, I'm not asking about ministers now, whether ministerial staff would be handicapped or that life would be made unduly difficult for them if they were prohibited from joining the ranks of lobbyists just because they had or, you know, in the period immediately after leaving a ministerial staff position?---Yes, I do. Obviously, I have a conflict here, but, yes, I do.

- 10 Can you tell us about that?---Well, my personal view is that I don't know of any, I'm not aware of any other areas in the private sector where such a, such a restriction would exist. And that provided the person is ethical and provided, if their area of expertise is, is government or how government works, then I don't see why they should be restricted in performing that role for another entity. Obviously, there should be rules in terms of, I guess, insider trading for want of a better word and there shouldn't be any breaches of any cabinet information or things like that, but ultimately the decisions are going to be made by those who are, who are ministers or those who are
20 member who now works as a, as a lobbyist or a government relations person. So I, yeah, if that's their area of expertise, I don't have an issue.

Certainly. Even assuming that people act in an honourable, ethical way and avoid conflicts in the way you suggest would normally occur, you'd agree that there may well be a perception arise that somebody who leaves the inner sanctum of ministerial confidentiality and then moves into the private sector where information obtained in the ministerial role can be in effect sold, that that would be detrimental to good government?---In some
30 circumstances that would be correct.

- All right. Would you accept for ministerial staff any sensible, I'm sorry, I'll withdraw that. I've disclosed that I'm in favour of a cooling off period, Mr McMahan, but you're free to express your own view. Would you accept any period as an appropriate cooling off period for ministerial staff?---I really do think it depends on the circumstances, the portfolio and the nature of the work of it.

- One seeks a standard, a safe standard to cover all, because it's not possible to have cooling off periods that depend on circumstances?---I guess I'm
40 suggesting that my personal view is that one size fits all isn't necessarily going to - - -

Is the way to go?---going to work.

Would you, we have heard evidence here that if you put relationships aside, the currency of, of commercially useful information acquired confidentially in, in a ministry has a short shelf life anyway. Would you regard, for example, three or six months as being unduly onerous?---Probably not.

But I take it - - -

THE COMMISSIONER: Mr Chaney thought it could last for years.

MR GORMLY: He did, Commissioner. You appreciate, Mr McMahon that there are good cases for, for much longer periods?---Yep

10 Would you accept 12 months as being unduly onerous?---I don't know what the best timeframe would be. I suppose I can only speak from my own circumstances and by the way I have no, no desire to become a lobbyist in the future, anyway. But I, I guess, I come from the background where I'm an honest person and I feel that when the times comes for me to leave the employ of the government, that I would've had ten years of, of experience and skills working in government, across its various forms and provided that I don't go into an area where I can be exposed to be breaching those cabinet confidences before they become, then I don't see why, whether three, six or
20 twelve months, that I should be prohibited. However, I understand where you're coming from and I would say that three to six months sounds fairer to me than twelve.

All right. I take it you do accept that lobbying and judging from the biographies of people that have given evidence here over the last couple of weeks that lobbying is a logical career step for people in, at ministerial level?---It can be, can be - - -

You will have seen colleagues move in and out of the, between the ranks of lobbyist and ministerial office?---Yes, certainly.

30 All right. Now, can I just move briefly, I just want to do this briefly if I may to see if you have any views about an appropriate cooling off period for ministers. Have you thought about that topic?---Only so much as that the cooling period for ministers, my views that I recently expressed would follow for a minister as it would for a chief of staff or a senior policy person.

You see it more as a matter of personal integrity than perception?---Yes.

40 All right. We understand that there is a problem for the career path of former politicians as well as perhaps chiefs of staff after they leave parliament. Have you seen signs of that?---Not yet.

All right. All right. That's not an issue that you've had to observe or talk to people about?---Not yet.

We'll leave that alone. Now - - -?---Sorry, obviously people have said what will you go in years to come so, I've had those discussions but, but no, my position as chief of staff hasn't led to me feeling restricted.

I'm sorry, I, I was talking about ministers there as to whether or not you had been, and former members of parliament whether you had been exposed to the fact that former members of parliament do not have an easy time when they leave parliament?---Yeah, I have heard those, those stories, yes.

10 Have you heard any discussion that would be useful concerning what former members of parliament or to what extent former members of parliament need to rely on lobbying as a means of making a living or continuing to be, lead useful public lives after they leave parliament?---Yes, yes.

Yes, what, sorry?---Yes, I have heard examples of some of those and some people who were ministers who now work for different companies in a lobbying role.

I'll leave that?---Okay.

Now, there's one last matter.

20 THE COMMISSIONER: Just one question, Mr Gormly.

MR GORMLY: Sure.

THE COMMISSIONER: Mr McMahon, lobbying isn't the only thing that is available to people who've been in the political arena for a long time is it?---No, certainly not.

30 I mean, you can, positions are available simply to give advice on policy for large companies, they have departments now so I understand in that area in many large companies?---That's correct.

40 There would be a limitation but it wouldn't, how serious would the limitation be?---Well, I suppose a number, my experience recently has been that a number of companies in the private sector that aren't wishing, I mean, I know in our portfolio we talked about the Hotels Association for an example but there are a number of private sector companies not necessarily in my portfolio area that don't really understand how government works and to have somebody who served either as a minister or who worked in their staff working for that company so that they can be aware of how, how government works I think that can be beneficial to that company or organisation and sometimes that person, maybe this is a way of getting around the one size fits all cooling off period that person doesn't necessarily have to meet with the minister, doesn't have to be the door opener, they can be the person in that company that provides information as to how government works and they don't have to - - -

And advise on policy?---Correct. And perhaps if they don't, if they're not the ones knocking on the door then perhaps that may remove some of the perception referred to earlier but just suggest - - -

MR GORMLY: It wouldn't remove a perception of the saleability of confidential government information though?---No, no.

10 Yes. All right. So it deals with the relationships issue but not with the, all right. Now, before we move to local government there's just one more matter I want to raise with you, Mr McMahon?---Sure.

A question arises as to the degree to which lobbying activity can be recorded, by recorded I mean noted down for retention in government records. We've discussed what happens in a ministerial office, that is, if you're in a business environment then of course you can carry out business practice. It's been suggested that a considerable body of lobbying occurs in non-business environments such as at cocktail parties, various functions, industry events and so forth. In asking you this question I ask you to distinguish between generally chatting about an industry or generally
20 chatting about problems naturally lobbying for a government decision on benefit. Is there anything you can tell us about the degree to which any kind of decision making, lobbying or actual benefit seeking lobbying occurs in social environments?---Yeah, it certainly does. We have a number of functions representing the clubs industry and the racing industry, it's across the state, obviously there's a number of race clubs, sporting organisations, there's, the minister gets invited to a whole gamut of presentation nights, the like and almost every time you go to one of those there could be a parent or a volunteer or a CEO that wants to get into your ear about a particular issue that's a concern for them and normally the case would be we would listen to
30 their concern, there's usually lots of other people around, what I would try to do, what sometimes the minister would do if I'm (not transcribable) staff member is say all right, well, perhaps you should come and see me properly for a meeting and we'll, the staff member will pass over one of their business cards and then usually the next day you'd get an email with that request and then the purple process, the meeting process we spoke about would commence so usually it's a short chat and then refer off to the formal process.

40 Would it be fair to say then that if one excluded socialising from any kind of recording of serious lobbying activity you wouldn't really be losing much. What occurs at the social events is the, in effect, a florid application for assistance which then gets transferred to a formal meeting?---That's usually the case, yes.

I take it there wouldn't be much serious decision making going on at a cocktail party surrounded by other interests in any event?---That would be occurring (not transcribable)

You might hear a fair bit but you're not being asked to decide anything?
---Certainly. And we wouldn't decide anything at a function like that.

You wouldn't really be hearing anything in an environment where you could test it either I suppose. Would that be right?---That's correct.

And of course you wouldn't be hearing it with the benefit of departmental officers should you think that that was useful?---Correct.

10 Right. And you wouldn't have all the benefits of formality?---Correct.

All right. Can we turn now, Mr McMahon, to your local government experience which is now considerable. Can you tell us firstly from your experience of Hurstville Council have you found that political, that is, non-planning, non-architecture, non-building type lobbying is a frequent or an infrequent event? Do you understand what I mean by political lobbying? Persons who may be registered on the Register of Lobbyists?---Right. My personal experience is that it's been very rare that a professional lobbyist has approached me or councils to lobby unless it has involved a significant
20 development.

And does it then occur?---Yes, yes.

THE COMMISSIONER: It's a land development?---Yes, sorry, yes.

MR GORMLY: Is that a form of a bringing in the heavyweight component, that is, heavy guns for lobbying, I don't mean by that, that's a poor analogy. I don't mean by that that you're being pressured in some way but rather that it's being taken seriously so you'd go and get a lobbyist?---Yeah. Whether
30 they're official lobbyists or whether they're planning consultants or professional planning consultants. Usually they go through the general manager or the mayor, if they come through me I always, I try to refer them to put their request in writing so that a formal meeting or workshop can be held with the staff and the councillors. I'm particularly paranoid about that since the, the Rockdale inquiry and the guidelines that came in after that which were basically suggesting you don't, you try to avoid meeting with any particular developers unless there is a staff member present.

40 Right. And that's as a councillor?---Yes.

THE COMMISSIONER: That can, that's quite practical?---Well, it's practical in the sense that when they, when they ring me or write me a letter I can certainly do that or when I run into a small scale developer in my local shopping centre buying a loaf of bread, that's sometimes unavoidable and if they wish to pursue it further I usually say well, write to our director and we'll see if we can set a workshop up with, with everyone. Being a local councillor if there are local people and I live in the area, that's often unavoidable.

MR GORMLY: Does that work, tell people that?---Most of, well, it has to work because they always, they're not always happy with my response when I say that because they think I'm fobbing them off but I, I try to do that as a matter of course.

10 All right. Well, standing, standing in the queue at Coles with a small scale developer wanting your assistance in something sounds as though it's the approximate equivalent of talking to a minister at a social function, it gets converted to another place for a more formal contact?---Yeah, that could, that's, that's a fair analogy but I would say that I am more paranoid because of the guidelines that were put down by ICAC as a result of Rockdale that I make sure that that process is undertaken so that's - - -

So the laying down of a protocol so to speak, such as emerge from ICAC - - -?---Yeah.

20 - - - actually makes the line clearer?---It makes the line clearer for developers, it makes it much harder for me when it comes to objectors.

Because, because of that fobbing off issue?---Yes. It's a much, much harder to tell the little old lady when she's objecting to a, a block of units going up next to her house that I can't come and talk to her one on one because guidelines suggest that an officer needs to be present when I'm talking to her to avoid any perception issues. They don't understand that. A developer does because it's his job but, you know, I try to use commonsense with that.

30 Sorry, I'm just thinking my way through that. So do I understand the position to be this, you, you're a councillor, you're not the mayor, you don't hold any other position in relation to Hurstville Council?---I'm chair of our service delivery committee which is engineering, parks and the like.

Sure, but that's a councillor role?---Yes, correct, yes.

40 All right. Do, do you, please feel free to express this view, do you accept or reject that there is a benefit of the kind of restriction on you now being consulted by a local constituent on a problem which requires you to have someone else present?---I accept there is certainly a benefit when it comes to talking to a developer. I think that it is quite, it becomes more difficult for me to manage in the absence of clear, strict guidelines when I get approached by, by objectors and the reason I, I guess I should clarify what my understanding is of the, of our responsibilities post Rockdale and post Wollongong to an extent, that when I was first elected in '99 I came to, to office as a result of a campaign, one of the issues was fighting over development and protecting our, our local suburbs from high-rise development. So I felt compelled when an issue would come up, when an application for a block of units would come up that I didn't agree with when

it was first proposed and the neighbours would say oh, this is terrible, this is, this is happening, what are you going to do about it? In the early days I felt that I was able to speak my mind and say I, I agree with you, that's why I was elected to, to stop these types of developments in these locations and I am going to fight to, to stop this from happening. I'm now, my belief now, from what I've been told or garnered since, since Wollongong and Rockdale is that I can't make public, I shouldn't make public statements like that before I have the benefit of hearing both sides of the argument and reading the officer's report and then having the debate in the council chamber. That
10 means that I've had examples where if I've expressed an opinion, either a developer would say, well, you've got a prejudiced opinion, you've already said you don't want this development to occur and I feel that I should be able to express my opinion in that way but I understand why those guidelines were brought in. My understanding is those guidelines were brought in to prevent a councillor telling a developer she'll be right mate, don't worry, that'll be okay without having, having all the information before them. But when it comes to the objectors and something that I feel strongly about and I think I don't agree with that, I now am very careful the way I speak to, to objectors in that I, I don't say we're going to kill this
20 thing or we're going to stop it, I just, I just point them in the right direction and give them a view of my personal feelings without being specific to that development application.

All right. Thank you for that. I'm just going to move slightly into the area of council staff. I take it that you would accept that there is no good reason for, I withdraw that. I take it you'd accept that restrictions on council staff meeting with developers other than through a business-like, in a business-like way, it's good to, I'm sorry, it's late in the afternoon, Mr McMahon. The gist of it is this, it is better for council staff to meet in a
30 business environment when they are meeting with developers?---I agree.

Are you familiar with Mr Haddad's protocol for the Department of Planning?---Yes.

That is the one that requires that meetings be in a council office, department office or on site and no other place, that there be another person present and that notes be taken and retained?---Yes, I am.

Right. Do you endorse that protocol so far as it relates to the Department of
40 Planning, that is, do you accept that that's a good protocol?---Yes, yes I do.

Do you, would you accept that a protocol of that type would safely be applicable at local government level not to you but to staff of a council?
---Yes, yes.

Is it your understanding that that is substantially in place anyway?---Yes.

THE COMMISSIONER: What, in the local council area?---Well, in my council I am pretty confident that, with the exception of on-site meetings that have been resolved by the council that yes, that notes are taken and (not transcribable) office environment.

MR GORMLY: But what about the, the lobbying that occurs that is by persons with expertise. Can I take you to planners, builders, architects and others in - - -

10 THE COMMISSIONER: Lawyers.

MR GORMLY: And lawyers, and lawyers, yes, in, in that category who may have technical expertise to proffer to a council but who are clearly in the lobbying role, would you first of all accept that proposition?---Yes.

Right. From what you've seen and you have seen the wide range of lobbying, is there any distinction in principal between what a lobbyist does for a client at local government when they're a planner or an architect, and what a lobbyist from a third party professional lobbyist does at state
20 government level?---In terms of the, the approach, no I don't think there's a great deal of difference.

Do you see any benefit in having some form of registration system that would apply at local government level which would require of those who wish to lobby local government that they declare themselves by having their name entered on a register and by acceptance of a Code of Conduct which would govern their relations with council staff?---I can't see any harm. I don't know if the benefit would be that great because that system's still not
30 going to stop the bad eggs.

The bad eggs have been fairly continuously identified in this inquiry as the small to medium developer. Is that consistent with your experience? That would include the amateur developer?---Yeah. Not necessarily. There are more small-time developers so therefore by burden of the actual numbers that might be true but I don't think that there's much of a difference from my experience.

Between them and what?---Between small, medium and large-scale
40 lobbyists in terms of the bad eggs.

We've heard here, Mr McMahan, a fairly consistent view that the large developer by reason of its own bureaucratic structures and it's sheer size is often not at local government level a bad egg. Is that a view with which you'd disagree?---No, no, sorry, yeah, no, I do agree with that, that most of the big-scale ones that we've had are more professional.

Do you see yourself any means of controlling the direct or active lobbying of what we might describe then as the broader category of bad eggs, but

perhaps the keen developer, of controlling misconduct on their part in the course of lobbying council staff?---What do you mean, in terms of my role?

Well, not your role, do you yourself offer any view about how the lobbying of, well, small to medium developers- - -?---Yes.

10 - - -can be controlled so as to exclude or minimise the risk of corrupt conduct?---I think, I suppose having, having two people in the room when the meeting takes place with, with notes taken. I think if there's two people in the room, well then obviously there's, there's a witness if someone's bad
- - -

Ah hmm.---?- - -hopefully the other one's not.

THE COMMISSIONER: Mr Haddad's system probably is a reasonable way to go for councils?---I think so.

20 MR GORMLY: What about in addition, I agree with you about that, Mr McMahon. What about in addition a prohibition on council staff from discussing any act of council business outside that protocol? I'm thinking of the queue at Coles?---It's a developer certainly. I guess once again, the only, and in principle I think that's a good way to go. I guess my only issue with that is that similarly, we try to involve our, our, our directors and our senior staff involved with the community activities so some of them live in the area- - -

30 Of course.---?- - -so I guess once again it's the issue of, if we get a number of community groups that want to lobby against something and I guess they, they, if they know who they are they'll, they'll try and approach them, but in terms of a developer, then, yes, I think you're correct.

Well, we have to bear in mind too that we're not just dealing with areas the size of Hurstville but small country councils as well?---Yep.

Would you accept, Mr McMahon, and I'm not trying to cross-examine you into this, it's a request for a view- - -?---Yes.

40 - - -that if you did have a bilateral arrangement, that is, you can impose on council staff, don't talk to developers, but if you have a register, the signing on of which obliges you to accept a Code of Conduct that you can thereby also say to the developer, if you see council staff, you shall not discuss council business other than in these prescribed places?---I think that would be helpful.

All right. Because one of the problems for council staff, especially in small council areas, is that the developer may be the person who lives two doors up?---Correct.

And you can injunct as much as you like the council staff member but pressure from a developer who is under no such restraint may be substantial?---Correct.

But if you prohibit that developer two doors up from talking to council staff in the queue at Coles, you at least have both sides being told the same thing? ---Correct.

10 All right. Well, I appreciate that you may find that a register at council level is perhaps onerous or substantial, but from that point of view, that is requiring everybody to behave in a certain fashion with clear rules and perhaps sanctions, that there would be a benefit in a local government level register?---Yeah, there could be. I suppose you'd have to take into account third parties as well, but yes.

When you say third parties?---Well, if you live two doors down from, if the developer lives two doors down from the officer they may talk to his neighbours or have someone else talk to the officer.

20 Yes, yes?---And those people may not be captured on the register.

Yes, quite right?---That's why it certainly would not be a harmful device, I just question whether the benefits that you seek would be achieved, but there would be some benefits, I do agree.

I suppose another way of doing it is to attach a form of undertaking to every DA or every building application that's made or granted, there be a provision that the developer sign that. That's another alternative, would you agree?---Yes.

30 You're as unenthusiastic about that as the register?---I suppose I'm convinced, and mind you, no one has ever offered me a bribe, but if someone is going to be corrupt, then I think they're going to be corrupt and they're going to find away around whatever system you put in.

Yes. There are other ways of catching people who offer bribes. I'm really thinking of the - - -?---Or putting pressure, yes.

40 - - -standards of conduct against which people can be judged or which might perhaps prevent the grey areas of conduct?---So when I say bribes, or, or inappropriate pressure.

Mmm.

THE COMMISSIONER: There are a lot of people on the borderline and rules like that might keep them on the right side of the borderline?---That's a fair statement, yes.

MR GORMLY: All right. Mr McMahon, that's been very helpful and perhaps I've done more of the talking than you have but we do test out ideas. I'm grateful, Mr McMahon. Commissioner, I have nothing further for Mr McMahon.

THE COMMISSIONER: Thank you for coming, Mr McMahon, and thank you for your evidence. It has been very informative?---No problem. Thank you.

10 We will think about it carefully. Thank you?---Thank you.

THE WITNESS EXCUSED

[3.05pm]

MR GORMLY: Our last witness today is Mr Tony Pooley so I call Mr Pooley to give evidence, Commissioner.

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

MR POOLEY: Affirmation please, Commissioner.

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Mr Pooley, can you tell us your full name?---Anthony Robert Pooley.

10 Right. And you're the deputy chief of staff of the Premier, the Honourable Kristina Keneally?---That's correct.

You've been in that position since last year I understand?---Correct.

All right. And prior to that you were her chief of staff in her role as Minister for Planning and Infrastructure. Is that correct?---That's correct.

And also Minister for Redfern/Waterloo?---That's correct.

20 Right. And before that in her portfolio as Minister for Ageing, Disability and Home Care?---That's correct.

And I think before that you were Director of the Officer of the Director-General, the Department of Ageing, Disability and Home Care?---Correct again.

Right. And you've been Deputy Lord Mayor of Sydney?---That's correct.

30 A councillor of the City of Sydney and a mayor also of the South Sydney City Council, correct?---Yes.

And prior to that you have had senior policy advisory roles in community and related services roles?---That's also correct.

Thank you. Mr Pooley, is there anything that you would wish to say at the outset on the subject of lobbying, I make this on the assumption that you're familiar with what this inquiry is about?---Absolutely. Listen, I know it's a been long day for everyone so I'll just make the brief comment that - - -

40 THE COMMISSIONER: We would welcome any comment you would make?---Sure. Could I just say that if we accept the definition of lobbying that is in the issues paper that ICAC has released in relation to this inquiry there have been very few meetings I have had in any of those positions over the last 15 years that would not constitute lobbying of some kind. I simply wanted to make that point.

You must've participated in the department's response to our paper because that is the very strong point that is made in it?---I have to say I didn't

participate in it, it came through my desk but it was written by the department.

No, that's a fair point and I've been thinking about it ever since I read it.?
---Sure. And I am aware that's a point they made but I, can I be so bold, Commissioner, to say that I would've said that had I not seen the department's response.

It's a fair point to make?---Sure.

10

The, a riposte is that we are not after, we don't think, I think it's fair to say that we don't think that the ordinary social meetings that take place between partitions and senior government staff and lobbyists should be regulated or even preliminary meetings relating to the fixing of appointments or general discussions that don't leave or have no bearing on particular issues?---Can I say I just think it's pretty impossible to do that. Can I give some personal (not transcribable)?

20

Yes, you can certainly say that. I understand that. But there are perhaps ways and means of, Mr Haddad's protocol is one way of dealing with that?
---Absolutely. And - - -

So what's, isn't that a way?---That's absolutely right. Sorry, I thought you had broadened that discussion to talk about the kind of occasional social interactions that one has.

Yes. So, yes, no, no, just say that those don't apply?---They don't apply.

30

I'm sorry, I didn't make myself clear. What I am saying is, one way of dealing with the breadth of the lobbyist problem that you raise is to confine the regulation only to occasions of the kind, generally speaking, that is the subject of Mr Haddad's protocol?---I'm in furious agreement with that suggestion.

40

MR GORMLY: Mr Pooley, there are of course, I too noted that comment in the, in the paper. There are in the issues paper of course, two definitions. One was a definition of lobbying, which accepts that lobbying has an impossibly large array of potential, any form of contact, legitimate or illegitimate from any source in the community, institution or individual, constituent or commercial interest, all of that falls into the realm of lobbying and there's no suggestion in this paper, as I read it, that there is an endeavour to apply controls or regulation to all forms of lobbying or to start trying to categorise it in such a way that you would cherry pick. There, there is a second definition though in the paper which was much more the focus, not only of this paper, but of the Code of Conduct which was the lobbyist who engages in lobbying for, in return for payment or as part of their employment. It was really the industry of lobbying or the activity of representational lobbying that became the focus of the paper. Do you accept

that?---I certainly accept that. And I didn't mean to suggest that the Commission didn't understand that distinction.

Yes?---It was the first broad definition that I was referring to. But I certainly am conscious of - - -

10 THE COMMISSIONER: Well, well I think, there's, I think it would be safe to say that we can put your concerns aside and there isn't really any intention to use a definition as broad as that?---I understand it. And I know you've had evidence to that effect, up until now. I was simply making a point that using the broad definition is really an equivalent way of saying that is the business of government.

20 On the other hand we have had many people who said that the work that some lawyers, accountants, engineers and other advisors do and the work that in-house lobbyists do and the work that some people employed by trade unions, employers, organisations and other, charities, all fall under the same rubric as lobbying?---I agree with that entirely. And, and I would go further and say you can tell the difference between somebody whose business is lobbying from any of those organisations you've just identified and you know, the average person on the street who may have a view and shares that view with you. It's pretty easy to make the determination, distinction, I should say.

MR GORMLY: Can I direct your attention then just, we'll go straight to the register if I may?---Sure.

30 The, the register as it stands at present covers the third party professional lobbyist, but not the, the groups that, I withdraw that. But not all representation are lobbyists. It would appear that lawyers and accountants do exactly the same thing as the professional third party lobbyists do. They act for a client, but at present they have the benefit of approaching government to lobby on behalf of what (not transcribable) at least so far as the public is concerned, on behalf of an undisclosed client?---No. Sorry.

40 The professional third-party lobbyist must disclose their client. That seems to be a discrepancy. Would you agree with that?---I would agree with that and there is, you know, you've mentioned lawyers and accountants, I would add to that in-house lobbyists where you do know which client they are representing because they are employed by that client or by that company and in my experience there, there are, you know, many, many tens if not hundreds of those people engaging with government and they represent mining companies, construction companies, large, you know, equity houses, you know, there's no limit to those kind of - - -

THE COMMISSIONER: Do you have an, do you have an objection for the register, for a requirement of those people be registered?---I don't have an objection because it is clear when somebody representing company A

employed as a government relations person, employed as a marketing and engagement person, I mean, it's clear that they are going to represent the interests of that company so I don't have an objection and in a sense it's a bit self-defeating for company A's government relations advisor to be on the register and put their company down as their client when in fact they're engaged by the company and it's simply an expectation that they will represent the interests of the company.

10 The, just so that you understand one of the things that are, on one view is attractive about this is that one could say that you can't get on the register unless you sign a Code of Conduct and that if you breach the Code of Conduct you're off the register and that, on this view, and I'm not saying it's, it's the Commission's view, but it is an arguable view, it would be a good idea to expand the register just for that purpose alone?---And I would agree with that absolutely. The more we formally ask people that engage with government to understand the rules of the game the better it is in my opinion.

20 MR GORMLY: We're all in furious agreement on that too?---And I just see that as an obvious way and - - -

THE COMMISSIONER: And in many ways that would be enough for, as far as the register is concerned, it has to, I mean, it would change, it would change the whole scenario, wouldn't it?---I think it would significantly advance it. In my case if I and I ask staff of the minister or premier that I am working for to sign the Code of Conduct I don't think there is anything unreasonable in asking people that professionally engage with government at any level to sign the same or equivalent Code of Conduct. I just think that - - -

30 MR GORMLY: It makes sense?---Absolutely.

40 Yes. Mr Pooley, we are struck here and it's probably not a surprise to you in any way, but we are struck here by the degree to which people say on both sides of the lobbying fence that there are very high levels of complexity in dealing with government that ordinary proper complexity in dealing with government and there are consequentially very high levels of ignorance in the non-government sector about how government works, what government needs and how to pitch a case so to speak that is useful to government. It's, it's the justification for the existence of the third-party lobbyist, the in-house lobbyist, the peak body. Effectively what they're saying is that you need lobbying skills and government knowledge if you want to properly deal with government. Does that strike you as, as - - - ---Absolutely. Plainly it doesn't on every occasion require the assistance of professional government, professional lobbyists but government is complex and I'd go further and say different levels of government are also very complex and they require a specific set of skills and that can bring a lot to both sides of the, of the case, both to those people receiving the lobbying as

well as the lobbyist representing the interests of a client. I would absolutely agree with that.

Right. We have also observed, because we've had many more interviews than we've had witnesses, we have also observed that there is a degree to which personality plays a part in whether lobbying is useful. We have for example heard from former ministers and former Premiers who say, I don't understand why anybody bothers using a lobbyist, and we heard today that there are ministers who can't abide the presence of a lobbyist on the one hand, whereas the majority view seems to be that a skilled and professional lobbyist who understands government and understands policy requirements of government is very useful to government. Do you, may I ask you this. Do you think that the view that lobbyists serve no useful role and that a minister would prefer just to see the direct person, may be an older view, that is an older-fashioned view?---I would think it is. What you don't know is what degree the lobbyist has already worked with a client till they get them up to a point in which they can make a presentation to government. So I have certainly been in numerous meetings in which a principal brings a lobbyist but you can tell within the first five minutes whether the principal is capable of answering engaging and presenting in relation to the particular matter that, that they've come to see you or the minister about. What you don't know is what has preceded that before they come to a meeting with the, with the minister. And that's, but I, I would generally agree with the view that it's more an older-style view that there is no business for lobbyists in, or that lobbyists should have no business engaging in, yeah, in meetings in between principals and ministers.

This is an opportunity to test some other things with you, Mr Pooley. Thank you for that.

THE COMMISSIONER: Before you do, Mr Gormly.

MR GORMLY: Yews.

THE COMMISSIONER: Just two questions on the general position, Mr Pooley. The complaints about lobbyists which are rarely, complaints of misbehaviour, I'm now talking about misbehaviour by lobbyists, seem to be confined to a very small minority, but they can be I think categorised into three. One is improper use of influence, and that's not what I want to speak to you about now, because it's pretty, I mean we all understand what's involved by that, but there are two others that have been mentioned, not a lot, but they have been mentioned and I just wanted to ask you about whether you think that they're worth saying something about or regulating, because they're quite easy to regulate really. The one is the lobbyist who says that he's acting for someone when he isn't. And is that something that you've come across?---I can't say that it is something that I'm, I can, off the top of my head, recall an incident. I don't know if this is linked to your point, Commissioner, but I've regularly been in the situation in which a

lobbyist has been through the process of organising a meeting, it was quite formal process with a minister on issue A, but takes the opportunity as the meeting is wrapping up to introduce issue B, C and D, which is not the agreed purpose of the meeting.

That can be easily dealt with?---Absolutely it can. But I'm not conscious of meetings in which the lobbyist purported to represent people that they weren't representing.

- 10 So it's not worth bothering to try and say that you've got to produce a letter from your client?---That hasn't been my experience, I have to say.

The second area which seems to be more prevalent is the practice on the part of some lobbyists to exaggerate to the client the success that he's had with the minister or the senior government officer so that you would get the lobbyist coming along and having a meeting and then saying, and this is one example that I read about that some witness gave I think outside the inquiry, is that the lobbyist will say to the client, "Just step outside the room for a moment." Ten minutes would go by where the lobbyist and the minister
20 and the others there would exchange only pleasantries and the lobbyist would come out and say to the client, "Well, I have some secret information that I can't disclose to you but I can assure you we're really well on our way and you're very lucky to have me as your lobbyist?"---I'm sure that practice is very widespread. Not the, I, I, we would never allow a principal to leave the, I mean the minister would never allow a principal to leave a meeting in the, in the meetings that I've been involved in, but it's not, it wouldn't be the rarest occasion where a lobbyist has arrived with a planned meeting with the principal but allegedly the principal is suddenly unavailable on that day. And so in order for the meeting to go ahead, it is just with the lobbyist and
30 therefore you never know exactly what they're relaying to the client. And I would further add that there are some people in the lobbying world, I mean, I can't give you any evidence of this, but if I could be so bold as to say, who are so annoying in terms of their constant contact that you can't help but feel that they are paid on the basis of the number of phone calls or meetings they can get with ministers, ministers' staff, phone calls. I mean, you know.

And do you, I'm sure you haven't really bothered to think about this because it hasn't been necessary for you, but do you, are you able to offer any suggestions as to how this can best be dealt with? Because for my part,
40 it's one of the reasons for the low regard that some people have of lobbyists because they just, they're just annoyed with them for this because they're not so stupid as to, you know, and the result comes through, they've been promised a lot, they've paid a lot and they fail?---Sure. There were two strategies that we consciously used when I was working for the then Minister for Planning, were that we would say in relation to phone call contact, particularly phone call contact, which seems to have, seemed to have no purpose other than, how is our application going, was to commence the phone call by saying, "I just want to indicate that we'll be recording the fact

that this phone call has occurred and that goes onto an ongoing list.” That was one. And the second one in relation to lobbyists that were constantly seeking meetings with minister or staff to, quote, “Get them up to date” or to “Get your head around this particular project”, was to say, and the current Premier, former minister, was very clear that we would say to lobbyists and principals that wanted a meeting with the minister in relation to a, for instance a planning project, that, “You would be aware if we meet with you we will also meet with the opposition to your project.” Particularly if that was an identifiable group, and with most of those large projects there is automatically an opposition. And so the minister was very clear and she would say that up front in the meetings, you know, “Appreciate you coming in, you’ve got you half an hour’s worth and you’d be aware that we’re also meeting with the local Residents’ Action Group which I understand is opposed to your project.” I don’t know whether that helped.

This is again really a matter for the minister and not a matter for regulation?---I think that would be difficult to regulate.

Yes. Mr Gormly?

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MR GORMLY: Mr Pooley, one of the things that we’ve heard some evidence about is the process of note-taking, that is the recording of formal meetings between a lobbying group and a minister. Some of this evidence was relevant to the process of trying to in fact lay a trail so that there could be a following of information over a period, mainly through FOI or through the new GIPA, but in a way so that there was a trail that could be followed, but without making the release of information contemporaneous or in some way that would interfere with the proper carrying out of government business. It has seemed, and there has been explored, the practicality of at least informing the world that a meeting has occurred with a minister, no content, no subject matter, and then requiring that those meetings be properly minuted, not recorded, but at least minuted, and that those minutes then form part of government records so that a decision can be made in accordance with the GIPA Act for release in due course, should that be sought. So that in that way if one saw a decision in the community, a member of the media, they can go and at least see on a register that there has been a meeting between that interest and the minister or a lobbyist on behalf, that an application can then be made in proper form through the GIPA Act and that ultimately some detail of that meeting can be publicly known, all of that being no more than a transparency measure and all of it being in accordance with current government procedures, just as long as there’s enough information there to allow that process to be followed. Now, apart from the issues of practicality and cost and administrative burden on the various parties that are involved in putting the date and the name of the minister on a register, can you see any objection to that process?---I can’t see any reason to object to that process whatsoever, it was the process we followed when we were in the Minister for Planning’s office. There was at least one note-taker, sometimes two, the advantage, apart from the obvious

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advantages that you're detailing there is that people have a habit of taking away from meetings ideas or inferences not shared by other people at the meeting and the value of being able to reference contemporaneous notes with people from previous meetings is of an exceptional value on an ongoing basis so it's both a practical advantage as well as a transparency chain of, of communication advantage as well. It's simply, it makes good sense.

10 THE COMMISSIONER: And the recording of the fact that there was a meeting, would you have objection to that or - - -?---No, certainly not. I think it makes sense. I think in relation to the perception that does exist and which I know the Commission is wrestling with about this element of influence for, by lobbyists and certain ex-politicians and that kind of thing, I think the advantage of the recording of the meetings would show that in, in, I'm only talking about my person experience, but that in fact ministers often meet much more often with objectors to proposals simply because by weight of numbers they are out there than they do with proponents of, of proposals and it is as relevant that the minister has met with the lobbyist and the, and the proponent for a project as it is that they've met with local residents and
20 the local council and the local action group, all of which oppose the proposal.

And what about cost? Are you able to, it's probably an unfair question and please don't answer it if you think you can't, but do you think that the system that is, we've been discussing would impose an unreasonable cost on government?---I don't think it would be. In my experience there was never occasion where the minister for planning met with a proponent or a lobbyist without a department representative being there, that's the matter of, that was a matter of course process, should the department person be running
30 late, the meeting did not commence and so there is always at least a staff member from the office and a departmental rep at every meeting and, now I'm not, we're not talking about transcription here, you know, people don't take shorthand but the - - -

A minute?---The purpose of the meeting, who was present, the time and date and particularly whether there was any agreed outcome, particularly as it related to timelines or further investigation or additional information to be examined. I don't see that as a drama.

40 MR GORMLY: All right. What about, Mr Pooley, at the moment we understand that the current register is something of an imposition on the director general or at least I interpret it this way, on the Director General of the Department of Premier and Cabinet, in that if there's even a change in the personnel or a registered lobbyist the director general personally must sign a form approving that change and I can understand why that may have been a good idea when it was introduced. It does seem to be a problem now. Would you agree with that?---Well, I couldn't speak on his behalf but I would understand, I have some knowledge of the change in personnel that

occurs in former lobbyists and I would imagine that would be an annoying task.

Right. Now, another matter that the Commissioner was referring to a moment ago in terms of cost is this possible idea and I'll just outline it for your comment, that instead of the current, well, as a supplement to the current register one would have a process of self-registration where there was a sanction for not maintaining accurate records or accurate details on the register and that it would consist of, in the case of third-party lobbyists, the entity, the lobbying entity but not necessarily the names of individuals, the client for whom the entity lobbies, the date of any contact with a minister on behalf of some particular identified client and the name of the person seen, the name of the minister seen. Now, assuming that that's a self-registration process someone would still have to oversee it and possibly act as the, well, perhaps an entry gatekeeper but also as a, a guardian of the system. You may, in addition, instead of limiting it to third party lobbyists but including lawyers and accountants and so forth, you would also have separate panels that would include those others who approach government for benefit, have them name the entity and the date and name of minister contacted but no other details.

THE COMMISSIONER: Possibly, possibly the identity of the persons who actually do the lobbying for them.

MR GORMLY: Yes?---And the question is do I see that as a disadvantage or that - - -

No, as an unacceptable cost to government?---I don't. I think there is, I just need to emphasise I think there is extraordinary value, if we are requesting professional lobbyists to provide that information that we should also extend it to the people that are not on the register but are formally lobbying government and I think that's a value because it provides the whole picture.

THE COMMISSIONER: And it's fair?---And it's fair, absolutely. There is no reason why a local mayor should not make representations to a minister in relation to for instance a proposed development but they are not going to be captured under the current lobbying register even with the extension but it should, we should be aware that ministers are seeing people across the board, both in favour and against proposals. So for the purpose of completeness I think that is the way it needs to be. People will complain I might add but - - -

Yes, well, you never do anything without people complaining?---Correct.

MR GORMLY: Let me take you to another matter, Mr Pooley.

THE COMMISSIONER: Sorry, can I, one last question on this. Do you have any objection to charities being on this other panel?---They should

certainly be on the other panel, charities, non-government organisations regularly lobby government and I was in, I've worked for three ministers in a portfolio which many people wouldn't normally associate with the business of lobbying and there are large and small non-government organisations that are coming through the door every day to effectively lobby.

10 MR GORMLY: Well, we have heard anecdotally that, that non-government organisations who may often be in a charitable role, whether directly charities or not, can lobby pretty hard too, what we gather?---Absolutely correct.

Mr Pooley, another area we'd seek to ask you about is the lobbying by backbenchers that occurs at the moment. We accept that backbenchers are there for the purposes of lobbying for their constituents and various interests, we gather that some ministers make arrangements within their office to look after that kind of request, that is they'll allocate a staff member to ensure that those applications are properly dealt with you, do you see any utility from the point of view of public transparency in, or even any ability to track or register in some way the lobbying that's done by backbenchers? You'll appreciate that it's an issue that's arisen in this institution in the past on other occasions?---Sure. I would just suggest that it is a more difficult thing to track because backbenchers by their nature have access to the minister in a whole range of circumstances where there are no staff and that is - - -

30 THE COMMISSIONER: You can't change that?---You can't, before or after question time in the house there are holy areas which, for which staff are excluded appropriately so but you cannot prevent a backbencher either of the government or opposition walking across the floor of the house to have a word in the minister's ear, they run into them in the dining room, they run into them in the hallway, they run in, so I would just suggest to you that is a much more difficult thing to regulate simply because of the frequency with which that occurs.

40 I would like to ask you another question that is not directly related to what Mr Gormly has asked but I'm not sure whether you know and if you don't want to answer it anyway that's, I'm not asking you to answer it but do you know of any practice where backbenchers ask questions on behalf of all, ask questions or lobby on behalf of people for money?

MR GORMLY: That if the backbencher is paid.

THE COMMISSIONER: If the backbencher's paid?---Sorry, I'm unaware of any such occasion. No evidence, no anecdotal advice in relation to that, no.

MR GORMLY: Can you think of any argument by which it is currently justified?---I can see no occasion in which a public official paid for by the state or local or federal government should receive a payment from a third party to represent their interests. I can see no reason why that would occur.

Could it fit within the category in your mind of being an inappropriate receipt of a payment?---On the face of it I would suggest that would be an inappropriate receipt of a payment.

10 Right. Mr Pooley, I'll take you if I may to the, we're able to do this quickly because we've been through a lot of evidence on these topics and it's helpful to have your views. To the issue of cooling off periods for post-parliamentary personnel it's a live issue because in some of the earlier evidence a finger has been pointed squarely at ex-parliamentarians as being the cause of the perception problem in third party lobbying, that is, they are the people with the contact and they're the people with inside information so to speak. It seems, and we would seek your view on this, to be both unreasonable and unnecessary to exclude them entirely from the ranks of lobbyists. Is that - - -?---Yeah, that's my view. I mean politicians pick up a
20 a range of skills which are not dissimilar to those that are employed in the business of lobbying. I think it would be an unfair imposition to prevent one class of people particularly given the changes to the superannuation arrangements which means that we are able to move in to a series of ex-politicians that don't have that backup that their predecessors had and to prevent them from a, from a kind of work which is available to other people.

Those changes in superannuation arrangements seem to be having long lasting effects, Mr Pooley, by the sound of things or potentially long lasting effects in that people who come out of parliament are seen invariably to
30 have done so either rapidly or after a period of such intense activity that they can't make other arrangements but to have a cooling off period becomes an aggravating component. Would you agree?---I'm sure for some people it would be an aggravating component. I would suggest to you that there is value in, if only for a perception reason in a cooling off period I don't think it will, it will forever eliminate the idea. If you were a minister for instance 12 months ago and you are lobbying in that area for some people there will still be a perception of influence but I would suggest that the currency of government now is such that within six months the whole world can have changed in your particular area of expertise. Things can
40 change pretty rapidly and six months out of the day to day engagement and you might be, you mind find that the, you know, personnel will have changed within the department, arrangements what was previously considered a good idea by cabinet is no longer considered a good idea. It changes pretty rapidly now I would suggest.

Well, a period of six or twelve months then is going to cover the currency of information. Can you think of anything or do you think there is anything that can be done about the undoubted perception, adverse perception that

arises from the use of personal relationships to give favour to the clients of a lobbyist if it's come from an ex-parliamentarian?---I can't think of a way you can get away from that perception, I can't think of a way, I think it's overrated but I, I cannot think of a mechanism whereby you can get around that perception.

10 We've heard differing evidence about access to ministers. Ministers, ex-ministers will say I have an open door, anyone can come and see me particularly if they're from perhaps the further past than the more recent past. On the other hand if you speak to perhaps smaller players in the lobbying field they will tell you that getting an appointment with a minister is no easy task, that they're busy people that when you do get an appointment it's usually for a very short period and you can sometimes not even get a reply, I'm not intending to be critical here but not even get a reply or if you do you may be postponed depending on the issue at the time but that if you get a lobbyist who has a relationship the door can open in a very short time. Now, that does seem to raise the spectre of preferential treatment for those who have been in parliament. Is there any way to manage the appointment making process for ministers such that the source of the request can be not a factor?---Well, all I can suggest is that the position that we adopted was whoever requested a meeting with the minister needed to put that request in writing and needed to identify who was coming to the meeting and what the purpose of the meeting was. That process was religiously followed whether the initial contact was from a former prime minister, a former premier, a former minister or someone we had never heard of including from the local action group, the local, you know, some, some constituent that alleged a lifelong friendship with the minister. If they didn't put the request in writing it wasn't processed.

30 I have no doubt that's true, Mr Pooley, it's really the perception one deals with?---That's, that's, that's, that's the difficulty.

40 Yes?---And I wouldn't pretend that there are situations, I mean, former ministers have the mobile phone numbers of current ministers, can't pretend that they don't, there's no direct contact made, that they, you know, contact, that they have contact in social settings but the only thing we could think of to formalise that across the board was the request, it could be an email, we weren't making people put pen to paper but a formal request stating who was going to attend, what the purpose of the meeting was needed to be received regardless of what phone contact had occurred and I would regularly be told by the minister that A, B and C had contacted her directly and I or another staff member would contact that person and say you need to put the request in writing.

THE COMMISSIONER: And do you think that that system could be applied across the board in all departments?---I can't see any good reason why it couldn't. In my experience dealing with a range of portfolios it was, it, it would be applied in all of those.

Would that be an unpopular suggestion?---There's always people that will take offence and will, will suggest on the basis of their lifelong friendship with the minister - - -

That's not interfering with that though?---No, no, exactly but, but I think there's a discipline that is, that is advantageous simply managing a diary, if you have that information upfront then at least you have a sense about what the meeting is.

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Yes.

MR GORMLY: Just one last matter, Mr Pooley. It's been suggested on a number of occasions in evidence including, perhaps led by Mr Bruce Hawker that education, further education, qualification, professionalisation of the lobbying ranks is going to be of benefit to everybody and that one way that that can be achieved is by there being a professional body for lobbyists which might carry out the same sort of centralised controlled education process that other professional bodies carry out.

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It's difficult to impose a body like that, they grow out of an industry but it would seem that legislating and imposing regulation is a way that can encourage the development of a body like that. Is that, is that a proposition you'd accept?---I think a professional body for lobbyists would over time be of assistance to both the industry and government and it's a formal point of contact and it could operate in exactly those areas you've identified, education, you know, providing updates to members about changes in regulations, all of those kind of things. I think it is a difficult ask to make it compulsory, we don't demand it of the building profession, we don't demand it of the development profession, we don't demand it of doctors, we don't demand it of lawyers.

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We do of lawyers?---My apologies, plainly I don't know much about lawyers. But most other professions - - -

THE COMMISSIONER: And we do of doctors too I think.

MR GORMLY: Yeah?---Well, I don't think everybody has to be a member of the AMA.

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No?---I think you could be a member of the Doctors' Reform Society so, but maybe it is compulsory to be a member of - - -

THE COMMISSIONER: As Mr Gormly says, it's go to grow out of, it's got to be a request growing out of the people themselves?---In the industry plainly, yeah.

Psychologists have done that I think?---Sure. Physiotherapists have got one. I mean, you know, there's no shortage of professional associations that, that, you know, retailers, small retailers - - -

Chiropractors is another one to my knowledge is the, the legislation has, has come up as a result of their own request?---Sure.

10 MR GORMLY: The application of a statute can have a binding effect, it can have a, all right, you're nodding, I think you - - -?---Sorry, yes, I - - -

You accept the proposition that perhaps the application of a, a piece of legislation that imposes coverall requirements while not imposing an association may well produce one?---Absolutely. I think that is more than likely.

All right. And that supports a view for minimalist legislation anyway?
---Sure.

20 Thank you, Mr Pooley.

THE COMMISSIONER: Mr Pooley, thank you so much for coming here and I know you're a very busy person but your evidence has been extremely valuable to us, thank you?---I appreciate it.

THE WITNESS EXCUSED

[3.52pm]

30 THE COMMISSIONER: The Commission will now adjourn.

AT 3.52pm THE MATTER WAS ADJOURNED ACCORDINGLY[3.52pm]