

HALIFAXPUB00609
12/08/2010

HALIFAX
pp 00609-00648

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION HALIFAX

Reference: Operation E10/0268

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 12 AUGUST 2010

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Thank you, Commissioner. Commissioner, we have present Mr Brendan O'Reilly, Director General of the Department of Premier and Cabinet present to give some evidence.

THE COMMISSIONER: Yes. Mr O'Reilly.

MR O'REILLY: Good morning.

10

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

MR O'REILLY: Under oath, please.

THE COMMISSIONER: If you would swear Mr O'Reilly in.

<BRENDAN MICHAEL O'REILLY

[9.59am]

20

MR GORMLY: Mr O'Reilly, can you tell us your full name?---Brendan Michael O'Reilly.

You're the Director General of the Department of Premier and Cabinet?
---That's right.

Mr O'Reilly, I'm just going to take a minute to go through a little bit of your history if I may. You're a long-term New South Wales public servant?

30

---Yes.

I think that you started in your present position in January 2010 but prior to that you were Director General of the Department of Ageing, Disability and Home Care and I think that you were in that position for about five years. Is that right?---That's correct.

Prior to that, from 2002, you were Deputy Director General for the New South Wales Premier's Department where you were responsible for, I think, for obviously an array of activities?---That's correct.

40

And then prior to that, from '97 to 2000 you were Deputy Director General with the Department of Community Services. And I think you were, I see, the Director General for the New South Wales Department of Sport and Recreation for a period as well - - -?---That's right.

- - - from March 2000. Mr O'Reilly, we have and have read your department's submission on lobbying. Can I just take you to the specific matters that have been explored in some oral evidence over the last week

and a half. The first is to go to the question of the retention of notes that occur in lobbying events between a minister for example and somebody that may be lobbying him, whether directly or through a third-party lobbyist, peak body or an in-house lobbyist, it's that noting process. The evidence that we have at the moment is that while notes generally are kept that there isn't a uniform system and that at the moment if a department officer attends it's likely that the department will keep its own note, that will go on to a file. If a departmental officer is not present then the notes may be treated as more or less the minister's notes or a staff member's notes and will not necessarily find their way to a file or be recorded in a way that would enable them to be tracked back later to a particular event?---That's right. Normally, in the first case if the, if a departmental officer is at the meeting they do keep a record of it and normally what is requested prior to a meeting is a briefing note from the department as to what is the issue, what is the background to it, what's the current position of policy or whatever.

Right?---And possibly any contentious matters. That then goes to the minister's office, the meeting's organised with the minister and their staff. The departmental representative will attend those meetings if they've been asked through the briefing note. They keep a record because there's normally follow-up action that has to occur. When they get back to the department there is a file and a record kept of that.

Right?---In the case where a departmental officer is not there, you're correct in that often times the advisor will keep a record in a diary or, or whatever. If they want follow-up information, that's when the department is alerted there's been a meeting and that there is, these issues have been raised and can we get a briefing material on it.

Right. Mr O'Reilly, I want you to assume that there's been a substantial body of evidence in submissions, in interviews and orally here in hearing to the effect that the thing about which people are most sceptical when it comes to lobbying is the fact that it substantially occurs behind closed doors is the way it will be usually referred to. While one might accept that conversations can't be made public and that there is an entitlement for a minister to see anybody really behind closed doors, that is nevertheless the work of government and would ideally be recorded in some way that would enable it to be tracked back later through government information, public access, a FOI type arrangement or even by just request. If one were aiming to achieve a higher degree or a greater degree of transparency to overcome the closed door problem but still retain the importance of confidentiality of meetings, would you think that there would be any objection or any difficulty about in effect requiring that meetings with ministers by non-government interests be the subject of a fairly standardised recording note which would then find its way into a form of permanent government record, perhaps a departmental record or a ministerial collection of such meeting notes? I have in mind, and I'll finish this in a moment, I have in mind a note that would record the time, date and venue, attendees, purpose,

content, outcome of the meeting, perhaps one page. Can you see any basis for, all right, perhaps it's not going to be one page, but can you see any basis for objection to a process that would bring about a recording of meetings in that way so that subject to the various exclusions for confidentiality, commercial in-confidence et cetera, subject to those, there would always be a record of the meeting. No, I don't think there's a problem with that at all. I think that would actually be good practice. It probably is occurring spasmodically right throughout the system anyway. And it would be a good idea to formalise that. The only question I would ask is the difference
10 between purpose and content.

All right. I'd had in mind that in the definition or debates that have sometimes occurred in evidence, a decision has been drawn between those meetings sought by a minister with a group that perhaps in the past has lobbied him, and those that are sought by the lobbyist may have different intent. A minister may be calling on an interest to inform him or her about a particular issue, but a lobbyist may well be seeking a meeting with the minister to derive some benefit from government or a contract or a proposition. That, that was, that was all there was behind the purpose of the
20 meeting?---Okay.

But I take your point. It's really the content of the meeting and the outcome that counts, right?---Yeah.

And the purpose?---Yeah.

All right. Mr O'Reilly, in the register as it stands at the present time, you are required under the Code of Conduct to approve various changes. Can you
30 just tell us about how that occurs and the degree to which it impacts on you?---We have about 110 to 115 people registered. What the process I'm involved in and I do understand your interviewing our, an officer from our legal area that has the process responsibility side of it. Look, it's not great, a great imposition on my time. I think that the system that we have in train where the material is checked by the legal section with regards to the accuracy of the information to make sure that all the clients are listed, the lobbyist is registered, that the Stat Decs have been sorted out. When it comes to me it's almost a finished product. I look through the, the brief. It's a standard format brief that comes to me. If there's anything that's
40 different it stands out quickly. Otherwise it's a matter of course. But I do think that the reason behind, and I'm only assuming this because I wasn't in Premiers in cabinet at the time this came in, for the Director General to sign it, was that issue about perception.

Right?---And the idea being that no, it wasn't delegated to somewhere in the bowels of Premiers and cabinet, it was actually thought to be of a serious nature. And therefore the Director General needed to see it.

All right. Now at the moment, and I want you to assume there's no criticism being levelled in asking this question. It is to some degree a paper based system, that is people are required to submit in paper and you have to sign documents. I understand that your department has considered a, a more online registration system and has been withholding for the time being, to see how this area might develop, that is lobbying registration might develop for whatever other reason. If there were to be recommended and accepted that there be an online self registration system, I take it that that would require a custodian of some kind?---That's right.

10

Right. Would you consider that there's any problem for the Department of Premier and cabinet to be the custodian or would you seek to find another custodian? Just from a practical point of view?---Look, at the moment it takes probably the time, it would equate to one and a half people working on the area of the lobbyist register in a full time capacity, so to speak.

Right?---So as far as a work volume and depending on the recommendations that come from this inquiry at the moment it's not, it wouldn't be a problem and I think that if we can streamline it we would certainly be looking at that as well.

20

Right. Mr O'Reilly, can I take you to the content of the register. One of the most consistent comments about the register is that it does serve a purpose because it lets people know who third party lobbyists are and lets them know who their, let's everybody know who their clients are. A consistent complaint about the register which comes from third party lobbyists and from journalists on the whole is that it only picks a very small segment of the lobbying community and that even if it is intended to record only those who are represented of lobbyists, that is, people who have changed clients that may not be always obvious it leaves out lawyers and accountants who are said to do a considerable amount of exactly the same thing as a third party lobbyist. Would you see any objection to including in the register other representative lobbyists such as lawyers and accountants or perhaps planners or others?---No, and I do think this is the nut of the problem here. I can understand the third party registration issue and for perception as well as transparency but in my position and, and certainly in former positions I've held oftentimes you may be dealing with government relations people. Now, sure they're only representing a single client but they are in fact lobbying for their perspective. You also have peak bodies, particularly in the non-government organisation sector but, and I'll use disabilities as an example, there are a number of peak bodies that as certainly lobbying for policy considerations, funding, a whole range of issues and because they're not third party but there is an indirect link, they're representing their members and they may have 7, 800 members scattered across New South Wales so there is a blurring there, I believe if they were to be included and that would also probably include - - -

30

40

Churches and charities?---Yes, that's right.

THE COMMISSIONER: Trade union?---Yes, yes.

Employers associations?---Employers associations, absolutely, Commissioner. The number then becomes a lot bigger, I'd probably want to look at some of the modelling, how many we'd be talking about because of the impact that then has on what system you put in but I think there is a bit of blurring at the moment that certainly as far as an administrator goes I'd treat anyone who comes to see me as a lobbyist. The only difference is that
10 with regards to a third party lobbyist we have a clear procedure that before any appointment is made we want to know are you a registered lobbyist, who do you represent and what's the issue that you wish - - -

There's a considerable body of people in responsible positions both in government and the lobbyists who have testified before us who all say that in fairness anybody who lobbies should be on the register if that's practical. Would you go along with that?---I would. The difficulty is is defining who is the, what are they lobbying. But I think, Commissioner, - - -

20 You see, one way of dealing with that is to focus on the activities not on the individual so that anybody who actually lobbies can only do that if he goes on the register and that would mean, for that to work practically there would have to be an easy way of, an inexpensive way of going on to the register?
---That's right, it would need to be self-registration.

Yes?---And if that was to come in I would probably suggest that there needs to be a bit of a transition period because some people would not understand that they really should have registered and so there would be a bit of transitioning for, certainly for the first six months say until everyone
30 understood it.

Thank you for raising it, it hasn't been raised before and it obviously is quite valid. How, what would you, what would you have in mind, are you able to say what you would have in mind for a transition period, what would happen in that transition period?---Well, of course no one in government would want to delay the opportunity for people to come and see them. Some people, and particularly the small organisations would not necessarily understand the new process.

40 Yes?---I mean, despite a mail out and - - -

So you would announce I and say it will only come into force in say six months?---That's right. But if the proposal that Mr Gormly put earlier on about the keeping of the, a pretty standard stock way of recording meetings, you could alert those people during that initial six months, you do need to be on the register.

The register. Yes?---And that way there'd be a learning exercise as well.

Yes. Mr Gormly, is it appropriate to suggest to Mr O'Reilly that there may be some other body that could deal with the registration?

MR GORMLY: Commissioner, I have raised it with him before, before we started this morning as a possibility. I don't think he's had an opportunity to think about it in any detail, but if I could perhaps, I'll raise it him. Mr O'Reilly, one of the, one of the issues that has arisen in the question of trying to introduce some practical transparency to the lobbying process, has been the importance of retaining the confidentiality of the meetings that ministers have and Directors General for that matter?---Mmm.

The best protection for that at the moment seems to be to maintain the confidentiality but of course make it subject to usual GIPA procedures, as I was saying earlier. One obvious office that suggests itself for the management of perhaps an expanded register, which would be an online self registration register perhaps, is the GIPA office itself or the Commissioner for Information, a person who's reasonably new in the job, we understand or it's a reasonably new office?---Yes. Yes.

And we're hoping that she will give some evidence next week about the ordinary GIPA procedures, not about this issue so much. In searching around for a practical inexpensive method of expanding the register without going to the Queensland model of, of an actual full time Commission office and so forth, it has occurred to us that the Commissioner for Information may be a suitable office. Can you see any, it would only be a suggestion of course, but do you see any objection or fundamental problem about that office being the custodian of a self registration lobbying register?---I think it would help in the perception issue of independence. Obviously, depending on what the recommendations come from your inquiry, it could well be, we would have to just do some, I'd hate to speak for the Commissioner, given that she - - -

THE COMMISSIONER: No, no, we're not asking you to?---Yeah. Okay. Because she wouldn't necessarily know what volume is coming through.

No, no.

MR GORMLY: It's a matter for government?---But, but as a principal, not at all. I don't think that is - - -

All right.

THE COMMISSIONER: And it has, it has another aspect that we think is meritorious in theory at least, and that is that that office is very used to dealing with GIPA applications?---Mmm.

To say, and very used to dealing with, with ruling on whether something is, is commercial in confidence or state security or, or not capable of being disclosed. And we've been told by many people that the mere fact of any, of a meeting could be, could fall into that class. Just the fact that the minister is meeting with a particular individual, may be a matter of commercial confidence or even a security issue. And one would not want to publicise that and one would not want to put that in a register. Now, it would be quite difficult I think for the, I think you may disagree, but for the department to, which may itself be involved in having to record meetings to then be the ultimate arbiter of whether the meeting should be disclosed or not whereas this is something that is bread and butter work for the information commissioner. So, and this is such an, it is such an important aspect of, of any change, that is the notion that, just the record that the meeting has occurred, that's all, but that's still very important, that it does need to have a, an effective and acceptable and practicable means of government saying we're not recording this and for the general public to think this is an independent decision properly made?---I, I agree with that.

Right?---Yeah.

20

MR GORMLY: Mr O'Reilly, can I, for the sake of completeness, ask you whether as an alternative consideration you would, you would think that there would be any benefit in the abolition of the register and replacing it instead simply with ordinary business procedures such as formalised note-taking and keeping of meetings? Would you favour an expansion over abolition or vice versa?---I think the register has had a positive impact and I think it probably does need expansion, particularly in the area of local government. I think that that is the one area that is lacking.

30 Can I come to that in a moment because it is a separate topic we wish to raise with you. Just to make clear, one proposal that's being considered for recommendation, it is that you would expand the register to an on-line self-registration system, that it may well have several panels, the third party professional lobbyist which might include lawyers and accountants and other representative-type lobbyists, there may then be a secondary panel or a second panel of peak bodies, perhaps charities because they seem to object to being cast into the same lot as the third party lobbyist, which probably says something about the standing of lobbying at the moment, but that in all cases you would cast on the lobbyist an obligation to maintain the register accurately but to include in it the date of a meeting that the lobbyist has with
40 a minister or perhaps a specified category of public officer, directors general and people who are in a senior position and the date. So the date and the identity of the officer but no other matters, that would be considerably less than for example the Canadian system but it would at least leave for the public and for the media an opportunity to track through using GIPA procedures or ordinary request to track through whether a meeting has occurred and then to make an application for a disclosure of that information in accordance with GIPA. That's the, that's an idea that's being

considered?---Just two points on that. You would probably want also for the ministerial office or the department to also need to record that there was a meeting to show there's the cross-referencing.

Right.

THE COMMISSIONER: But not on the register. This would be the separate recording by the department in its own records which would be subject to the GIPA application?---Yeah, okay.

10

What do you think of that?---Look, the only, my only, thinking out loud, often times you will have, be it the first category or the second category, meetings not only with one minister, it would be meetings with several ministers or several departments because often times the reason why a peak body or a lobbyist for a third party wished to speak with you is because they need to be able to bring a whole of government approach to addressing an issue so it could, could involve four or five departments and we just have to think through how they record - - -

20

MR GORMLY: Right?--- - - - that whole thing, that's all, it's just the impost of how much work's involved in that.

Yeah, well, we're endeavouring to minimise that, Mr O'Reilly?---Yeah.

Yeah. All right. Thank you for that. Let me take you now to the local government problem.

THE COMMISSIONER: Before you do that, Mr Gormly - - -

30

MR GORMLY: Yes.

THE COMMISSIONER: - - - there's the issue of codes of conduct.

MR GORMLY: Yes, yes. Mr O'Reilly, at present there's been a body of evidence which follows the following propositions and it's, I have to say, a very cohesive body of evidence. Firstly, codes of conduct are thought by everyone if they're in simple and clear language to be essential items. They establish a set of boundaries, a set of rules that everybody can follow and understand. Nobody seems to dispute the value of a code of conduct?

40

---No.

Secondly, so far as lobbying is concerned, the existing code arrangement is somewhat fractured. That is, that there's a code that belongs to lobbyists, there may be a code that belongs to the Department of Planning, perhaps for good reason because of the difficult area they work in, there's another code that may be said to attach to ministers, and that's not a public code at the moment and it doesn't directly address lobbying but there's some components of it that might and there are other codes on public officers. At

the moment those who are engaged in lobbying may see a code which affects them but they don't necessarily know what other people's obligations might be in relation to lobbying. There have also been some fairly consistent complaints that the fractured nature of the codes, which have built up over time, weakens their general impact so far as lobbying is concerned. There is, the Commission has been urged to make recommendations that would perhaps solidify a single code for recommendation to the government, which would enable not only there to be a clear set of rules about how lobbying is to work but which would also enable all components of lobbying to know whether each other stands and this seems to have a particular benefit at local government level I must say where you can place any amount of obligation on a, on a council officer but if a lobbying party doesn't have some kind of obligation themselves and doesn't understand what the council officer's obligations are there are problems and conflicts. Do you see any, firstly any utility but secondly practicability in making a more cohesive single code that relates to lobbying?---No. I think it, it, there's obvious benefits in, in that and it's also very transparent that if you're dealing with local government or dealing with state government it, there is a code that which you're going to abide by and the recipient of the lobbyist activity also understands that very clearly and there is a line.

THE COMMISSIONER: The suggestion is, Mr O'Reilly, that to get registration, to be registered the lobbyist has to undertake to abide by the code and if it, if there is evidence before the person who administers the register that the individual lobbyist has not abided by the code then they will be removed from the register and it's my preliminary view that that would be a good measure. Do you agree?---I agree.

MR GORMLY: Can I take you then, just following that same line, to local government and we'll perhaps expand from there. You'll appreciate that a great deal of the work of this institution over the years has related to local government?---Mmm.

There is a body of evidence which is fairly consistent, though not unanimous, that the principal area of difficulty at local government level is the small to middle and of the amateur developer rather than the bigger player. There are codes of conduct that are applicable to council officers usually within the councils and also in the legislation and there's a model code. Mr Haddad's Department of Planning code doesn't necessarily extend to local government at the moment but it's obviously a good code. The question that has arisen is how a practical system of registration of lobbying or people who wish to lobby local government could be put in place which might expand the category of lobbyists to include small to middle developers the chief benefit of which would be to have them adopt the code of conduct contained within which would be their understanding that they can't approach council officers except in certain appropriate ways. That's where the debate is up to at the moment, Mr O'Reilly. Sutherland

Shire Council has introduced a register, other councils including Tweed have codes of conduct. The question that arises is as to whether there is any utility in a, in effect a stateside local government register or whether councils themselves should maintain a register such that anybody wanting to lobby has to put their name down and adopt the code in the process. Do you have a view about the practicality of state wide as against local council registers?---Well, the first reaction is given the variable size of councils and the level of expertise and resources they have you'd probably have a state wide approach. And are you thinking of say planning consultants?

10

Yes?---You are, okay. So if, what obviously happens in, in a lot of areas is someone wants to build mansion next door to my home and I want to object to that because of, it could be that they're looking straight into our backyard or whatever, for whatever reason. The person wanting to build the mansion may well employ a planning consultant to help them work through the issues to get it through to council. I haven't got a planning consultant but because it's not my building but I am going to lobby very hard against this development and I even may get a few neighbours onside and, you know, it's, it's just one of those bally areas, it's just hard.

20

Yes. I understand - - ?---But in principle I can understand where, why it would be a good thing.

Mr O'Reilly, we've heard a similar argument from charities who say well, we may have a staff of ten or thirty people but we have hundreds of people out there who lobby for us?---Yep.

30

I understand the point you're making but if you were an interested party within local government legislation, it's defined area and a neighbour would be an interested party the proposal is that anybody who wishes to approach a council officer and persuade them of a particular view should at least sign a register which has the effect of causing them to read that they cannot speak to a local council officer outside the council about this matter, something as simple as that. What we have heard is that in small councils the planner is, that is, the council employed planner is likely to be standing in the queue at Coles with somebody who he's known all his life and is endeavouring to persuade the council that he should be able to build such and such. Now, the council officer might clearly understand that he can't talk to the person in the Coles queue about that matter but the builder at the moment doesn't have such a view, doesn't have such an obligation and because he lives two doors up as well and has known him for 30 years mightn't feel any restraint in talking to him or urging him or pressuring him in some way so it's the small council that can cause the problem. There does seem to be considerable utility in requiring those people to understand that they can't speak to a council officer. Do you see any problem about that?---I'm just taking, I'm just trying to imagine, you also have a state government employee who lives in a rural community and has the same problem where they're in the supermarket or whatever and because everyone knows

40

everyone in a small community oftentimes they will be asked what's happening about XYZ. Now, most it's the last thing they want to talk about of course whilst they're on their daily shopping, they often will just say look, can you get back in touch with me when I'm in the office and we'll sort through the issues you want to raise. So there is, it's just the public generally who often, not only local government but certainly state government employees as well in smaller communities will raise issues as you're walking down the street and I have worked in rural communities and I do understand that issue. The other one, what about a public meeting
10 where there may be a group of people who are wanting to protest about the establishment of a group home for people with disabilities. Now, oftentimes it could be the council or it could be the local member who will call a public meeting so that everyone can talk about the whole issues. Would they be tied up?

Well, it's, at the moment, Mr O'Reilly, I think it's, it's becoming clear that one has to draw quite a distinction between an elected person and not hampering their rights of access or right of access to them on the one hand and employed council officers who make determinations about zoning and
20 so forth on the other so that if there were to be a meeting called of that type it's almost certainly going to be done by an elected person, that is, the mayor or councillors and it's highly unlikely to be done by council staff. Council staff one can see might address a meeting of that kind at the request of a councillor and that may be appropriate but it doesn't seem to call for registration for lobbying, it would depend on the way it was structured I agree but it seems to be a problem around which one could work?---I can understand the local government one where it normally would be a councillor or the mayor who would be calling the meeting. In the state government side it's not always an elected official.

30 No, no, I agree?---Yeah.

THE COMMISSIONER: But whatever it is that person, as far as I'm concerned that's just part of democracy?---Exactly.

And one shouldn't interfere with that and shouldn't require any form of registration to take place before people call or attend such a meeting so whatever we recommend we've got to be careful to ensure that it doesn't cover that situation?---And that's all I'm suggesting, yeah.

40 MR GORMLY: Now, Mr O'Reilly, can I just get your view on this, this is going back out wide again. To some extent this inquiry was triggered by the history of complaints that are received here but also by a widespread, it would seem, public scepticism about how lobbying is carried out now. As one hears the evidence most witnesses will say that there is something wrong with the perception of lobbying that it seems to be a, to use wide words, a seedy activity or perhaps an activity that has an undercurrent or a suggestion of corruption in some way, undue influence, inappropriate

influence, preference, favour and yet when one hears what actually happens on a day to day basis it appears to be a reasonably professional helpful activity particularly when it's carried out by competent third party lobbyists. That leads to two issues. Firstly, do you accept that there does need to be or would you accept that there does need to be some changes to increase transparency as a means of overcoming the scepticism that people have about lobbyist? Do you think transparency is the answer?---Yes.

10 Right. Do you think there's anything else that might be the answer, an answer?---I think one of the hardest things anyone does, and it doesn't matter whether it's government or the private sector is change perception. And, I mean we've all heard, you never trust a used car salesman, but we all still buy used cars.

Yes?---Politicians only, you know, sit for 60 days a year, therefore they're not working. Well, we all know that a part of sitting in the house is only one aspect of their job. They work very long hours, but the perception - - -

20 THE COMMISSIONER: Can I add another example, judges are only in court from 10.00 to 4.00?---That's right. And a cup of tea public servants. I mean, yeah, it is, it is a really difficult thing to change perception. But I think governments local, state and federal have a, have a responsibility to the community to make things as transparent as possible so that you minimize or you can, you can show clearly that that perception is incorrect.

MR GORMLY: All right. Thank you. Now - - -

THE COMMISSIONER: Is the lobbying associated (not transcribable)

30 MR GORMLY: Yes, that's exactly the point, yes, Commissioner. Mr O'Reilly, at, at present there is no peak body, no organising body, no registration body for third party lobbyists. And its third party lobbyists that seem to be the main cause of the perception issue, in part because they have ex-members of parliament in their ranks, who appear to use knowledge and relationships. The absence of a, a peak body for third party lobbyists seems to be a, a gap in a good regulatory system because there's no means by which training or standards or statements of ethics or even public acceptability can spring from. The lobbyists themselves seem to think that
40 it would be a good idea and they also favour professionalising generally the activity. It's not possible to impose of course a body like that on a profession. It grows out of a profession, but the imposition of a piece of regulation that regulates perhaps a register or regulates activities will often have the effect of producing a body of that type. That would rather suggest that one way of dealing with the expanded transparency goal for lobbying is to move to legislation, but without having necessarily a Commission or a permanent person such as in Queensland. Do you, would you accept the view that moving to legislation might have the effect of producing naturally a peak body? I know it's calling on a degree of speculation, Mr O'Reilly,

but there are other ways of doing it. We're just wondering if you think that that would be a workable way?---I think it would encourage it.

Not necessarily cause it?---No.

All right. Okay. That's the end, Commissioner. I'm sorry, ah, yes. There are two, sorry, two matters, Mr O'Reilly. There have been an array of submissions made about contingency fees or success fees for lobbyists. They're banned in Queensland, they're banned in Canada, they're still
10 permissible here in New South Wales and in most jurisdictions. There have been competing arguments put about success fees, one is that it, it appears to reward the diversion of government from its ordinary path. Another is that it has the same sort of tasteless quality that success can have in the legal profession. But others say it's just market force. Is there a view, a government view that there is a problem with success fees for government lobbyists?---I don't think so. I think that in some ways for the, the client of the third party, that it's a way for them to lower their risk in that the risk lies with the lobbyist then to achieve. Now, someone could argue that, well that means the lobbyist will do anything possible to make sure they get the
20 success commission. But my dealings with, with lobbyists and my experience is that they, they are an, they are in general terms a very professional group of people. They do have their own ethics. They do attempt to operate in the best interests of the client and when they're dealing with government they're actually trying to understand where government is coming from and to understand the issues that government has to consider when looking at a change of policy or regulation or whatever like that. There's very seldom is there a single time when a lobbyist could have a meeting with a government official or an elected member of parliament where that decision can be made on the spot. It often requires a whole of
30 government. If it's a big issue and one that's about resources, you know government has cabinet, every cabinet minute is circulated to every minister for their written comments on whether they support it or not. In the cabinet room, issues are debated and argued. Often times a cabinet minute can be deferred because there hasn't been enough consultation with its group whatever. Often times it's, I think we meet, probably we meet with people who are against the proposal rather than for a proposal. And it's probably about two to one people who are against a particular proposal, is what a lot of time we, we spend. And they don't often have a paid lobbyist. But they have very strong opinions and maybe their presentation isn't as well as
40 someone who's had a third party lobbyist, but they're equally important, their views.

All right. There's two types of, of fee in question here Mr O'Reilly. One is the contingency fee which is a fee postponed pending successful outcome. The other is the success fee, which is a lump sum on top, so to speak. You can have \$300 an hour for the work you do, but if you succeed then there'll be \$100,000 in it as well. Or in Queensland in a recent case \$1.0 M or half a million dollars, something like that. Would you draw any distinction

between them? From a governments point of view?---We probably wouldn't know about it.

No. No?---Or it could be prohibited.

THE COMMISSIONER: And it wouldn't matter to you?---I don't think so because, because a third party lobbyist meets with you it doesn't impact on whether or not a decision is for or against. It's based on the, the argument and the case.

10

You don't think it would affect the objectivity of the lobbyist? Although I suppose there isn't a great deal of objectivity there in the first place?---Well, that's right. It's - - -

MR GORMLY: By their, their interest. Yes?---It's a little bit like the real estate agent.

20

Mr O'Reilly, the last matter that I have is on post separation restrictions for members of parliament and senior public officers. At present in New South Wales it's 12 months, in Queensland it's two years and Canada it's five years. The argument is that, the debate as it's been seen at the moment is that there are two components dealt with by that. One is the information held by the person about current government business and current government activity. The other is the relationships issue. It seems to be widely accepted that a period of cooling off will generally deal with the currency of government business, because it moves on and information becomes stale relatively quickly. And I'm going to ask your view about how long that is, generally speaking. It also seems to be generally accepted that while a cooling off period does nothing whatever to end relationships, it does do something for perception about the use of relationships. Is that a body of evidence with which you'd agree?---Yes, I think so. If I could take an example, the thing we have to be careful of is if it's a minister and a minister leaves parliament and moves into a paid lobbyist role there is an issue about their currency of knowledge but not only of the portfolio they just left but because they were a minister it's any portfolio because of the cabinet process. You are aware of what decisions are being taken and the reasons why and that he may be the Minister for Health but it could be related to a planning matter or it could be relating to a sports matter or a disabilities matter, it doesn't really matter. They are privy to that information and good ministers read cabinet minutes and understand what the issues are and so it's only the last portfolio. There has to be consideration about any portfolio. You've then got the complexity that ministers, and it could well be that, or a member of parliament and they finish work, they still have to make a living and certainly since the superannuation changes they, they don't have money in reserve or a pension that's coming to them from the day they leave. It's, it's, you know, the same as the rest of society with regards to nine or ten per cent. So the way around that might be because I think there is an issue about restriction on

30

40

trade or whatever. It may well be that they could be employed in a, in a lobbyist firm where they do the preparatory work and assist that firm in being able to present their case but they don't attend any meetings and they don't get involved with the direct discussions for some period of time. That's the only way around it otherwise I think there would be an issue for a politician who is ethical and aboveboard and hard-working who happens to leave politics to suddenly say well, you can't work in a whole range of areas, that they may have their own family and financial commitments.

- 10 Parliament seems to be, from this point of view and looking at the lobbying industry, seems to be somewhat constrained now in ordinary termination of employment arrangements, that is, that the, much of the debate that's occurring about parliamentarians lobbying, and they are the cause of much of the odour that surrounds lobbying, is being driven by the fact that there are insufficient post-parliamentary financial arrangements in place for members of parliament. I appreciate that may be a difficult matter for you to express a view about, Mr O'Reilly, but it does seem to be a significant problem. Can you agree with that much?---I think if there was an arrangement brought in there'd be a huge perception problem with that as well. People who move into office based on the fact that they could be out of a job in four year's time, that's the risk they take. I, I think to try to get around the problem of earnings and capacity not to work over a certain period of time by way of some sort of redundancy payment or something like that, look I think there'd be big issues there.

All right. Well, can we - - -

- 30 THE COMMISSIONER: Bringing back the superannuation is not an option?---Not, not for me it's not. I don't, look, I think, there was a reaction when, when it occurred at the federal level, I think the leader of the opposition at the time, Mark Latham, actually said we're doing away with this. I think the public thought great, you know, to have a politician at 30 years of age being on a pension for life was outrageous and the public reacted to that very, very well saying, no, the superannuation has to stop and politics being politics, it was adopted and because there is, there is a serious perception that exists in the community that politicians are, to finish up after two terms in government and be on a pension related to salary for the rest of their life, the public would not wear that.

- 40 Yes. Thanks, Mr O'Reilly.

MR GORMLY: Mr O'Reilly, can I just take you then to precise periods. Do you consider that the current cooling-off period of 12 months for parliamentarians or for ex-ministers is an appropriate period?---Yeah. I think the business of government moves so quickly 12 month is reasonable.

What about for senior public servants, directors general and people in, in positions as senior as that? Do you see any room for a cooling-off period?

---I think the only difference I would make is that for a senior public servant predominantly because they don't have, they only have access to the material related to their particular department, certainly the cooling-off period for any, so if it was the Director General of Planning, absolutely 12 months, the Director General of Disabilities, it could well be 12 months -
--

10 THE COMMISSIONER: But only relating to that department?---Yes. But for instance in my case where I am, I do attend the cabinet meetings I think it would have to be across all those portfolios.

MR GORMLY: Yeah?---Because I am privy to information.

20 Sure. What about, Mr O'Reilly, we heard some evidence yesterday from a number of chiefs of staff, including some relative junior people, the view expressed was that it would be an imposition on someone of that age and stage in life when they're a junior and relatively young chief of staff to start imposing 12 month restrictions on movement to the ranks of the lobbyist when they've only been a ministerial chief of staff anyway. It seems to us, however, from the evidence that chiefs of staff wield considerable power when it comes to access and when it comes to lobbying who they'll see and sometimes seeing lobbyists in place of the minister. Do you have a view about whether or not a cooling-off period is required for ministerial staff and if so for how long, bearing in mind those kinds of considerations?
---Look, I think the same would apply. If, I can understand the argument about a junior member of a ministerial staff but if, if they're thought to be that good that a lobbyist firm or an organisation would want to pick them up as lobbyists, I think their argument, they defeat their own argument.

30 All right. Work in another area?---Mmm.

Mr O'Reilly, thank you. I have nothing further.

THE COMMISSIONER: Mr O'Reilly, we know how busy you are. Thank you for coming?---No, thank you.

We're very grateful for your wisdom today. It really is helpful. Thank you?
---Thank you, Commissioner. Thank you, Mr Gormly.

40

THE WITNESS EXCUSED

[10.58am]

MR GORMLY: Commissioner, may I next call Mr Rob Donaldson.
Mr Donaldson.

MR DONALDSON: Good morning.

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

MR DONALDSON: I'll take the affirmation.

THE COMMISSIONER: Would you be seated, Mr Donaldson.

MR GORMLY: Mr Donaldson, can you tell us your full name?---My name is Robert Thomas Donaldson.

10 And you have, I think since June last year, been the Assistant General Manager at Shoalhaven City Council?---That's correct.

Correct. And I think that throughout your working life it would seem you've been involved in local government. Is that so?---That's right, yes.

Before you were in New South Wales I think you had periods in the City of Holdfast Bay which is in South Australia?---That's correct.

20 Right. And not that far from Adelaide I gather?---The city of Holdfast Bay is part of metropolitan Adelaide.

All right. And I think that your original tertiary training was in urban planning?---Correct.

Right. Now, Mr Donaldson, we have so far invited witnesses to make an opening statement about lobbying or aspects of lobbying as they might bear on their area. Is there any opening statement that you would like to make? ---I'd like to do that if that's okay.

30 Yes?---What I'll first do is refer to the letter to the Commission which is, which is under my name on behalf of the council and that was dated 22 June, 2010, that was in response to the issues paper that the Commission had, had published. I'd highlight and perhaps add to a few, to the key points in that submission and under three topics, Local Government and Lobbying, the Definition of Lobbyist and then Public Policy and I'll read this if that's okay.

40 Yes, of course?---Local Government and Lobbying. Lobbying of council staff is extensive by parties such as development applicants, landowners and consultants. In relation to development applications, preliminary development proposals, land rezoning proposals, council projects and council budget and works programs however our council does not experience lobbying conducted by people who formally declare or describe themselves as lobbyists nor could we specifically cite examples of lobbying leading to corrupt practice. Local government faces increasing legislative and community expectations for engagement both generally and in the context of specific decision making. Insofar as engagement is required to consult, involve and collaborate with stakeholders is natural the participants will want their input and view to be influential and to help shape local

government decisions. Examples of decision making where local government engages with communities and stakeholders include decision making in a statutory capacity, the setting of a variety of local policy and the allocation of community resources through business planning and budgeting decisions. Councillors do from time to time lobby their own council primarily in exercising their role as an advocate for a constituent or a stakeholder or a community group consistent with the statutory role of a councillor. A council would not be regarded as a lobbyist given that they are not paid for this activity. It may be useful to consider the following. In the context of the formal and open engagement processes that accompany much of local government's key decisions when might activity in the nature of a grassroots movement and Astroturf process or the participation of consultants or professional lobbyists be regarded as lobbying. On the definition of lobbyist we've made the point that any regulation of lobbying activity will only apply to defined categories of lobbyist and therefore it's possible that not all lobbying may be regulated depending on how wide that definition is when adopted. A wide definition of lobbyist would capture many currently unregistered lobbyist, for example, some development applicants, many consultants and others acting on behalf of interested parties and representatives of advocacy and interest groups however simply including those categories of persons potentially would result in some people being inadvertently treated as lobbyists when this might not be justified on the basis of their activity they seek to undertake. While the role of the consultant is essentially technically based and usually conducted within the framework of a professional code of ethics the consultant dealing with local government is understood to be engaged and paid by a party with an interest in influencing a decision outcome. In practice it can be difficult sometimes to define a clear line between the activity of a persuasive professional consultant and the activity of lobbying since both are directed to influencing the decision maker. Indirect lobbying is also sometimes evidence in New South Wales conducted through media campaigns, partitions and conduct at public meetings however we cannot cite any known New South Wales examples of Astroturf lobbying. Public Policy. We believe the public perception of lobbyists, i.e., paid people to influence public authority decisions generally is low and that the average citizen would prefer that responsible authorities simply took professional advice, apprised themselves and took account of the facts and made sound responsible decisions rather than be subject to the influence of lobbyists. It would be logical that any regulatory system for lobbying should extend to local government. In any regulatory system there would be advantages of ensuring proper rules of engagement between the lobbied and the lobbyist however the balancing of this objective against local government objectives directed to openness, engagement and procedural fairness presents a major challenge. Lobbyists should be prohibited from giving gifts or other benefits, the practice of gift-giving should not be allowed in a local government business context. Again in a regulatory system a lobbyist should disclose to the regulator who they lobby, when it occurred, the issues lobbied on and any outcomes. So too should the public official record the

occurrence of any lobbying with similar detail to be provided to the ultimate decision maker. Any incentive based monetary payment for lobbyists such as success fees has the potential to create a higher corruption risk environment than a fee for service approach however it may be difficult to reasonably extend practical interventions and controls so far as to entirely remove this risk. Appropriate training of public officials should be the responsibility of the head of the relevant public sector organisation. Thank you.

10 Thank you, Mr Donaldson. Just before we get down to some lobbying questions can I just ask you some questions about the Shoalhaven area and the council itself?---Certainly.

Shoalhaven is, what, three and a half hours south of Sydney driving?
---About three hours, yes.

Right. And I think it encompasses principally the city of Nowra and various surrounding towns, Bomaderry, what else is there?---The main southern areas would be best described as the Nowra, Bomaderry settlement, the
20 Ulladulla, Milton area and an area that's known as the Bay and Basin so there's a number of smaller townships based around Jervis Bay and St Georges Basin. They're the three major urban - - -

Right. So you would extend down to the commonwealth area?---Pardon?

Shoalhaven then would extend down to the commonwealth area around Jervis Bay?---Correct. Yeah, includes Jervis Bay, the length of the city is about 160 kilometres north, south, the very common description is 49 towns and villages so it's quite, quite a large number of settlements. It's had a
30 reasonable period and a continuing expectation of urban growth around, mostly around those three major townships.

Right. And its population?---About 95,000 people as the standing population and some of that's, that's, that's over 300,000 people.

Right. All right. Thank you. Now, Mr Donaldson, I just want to go straight to the question of categorising those people that you would regard as lobbying local government?---People who undertake lobbying? People who undertake lobbying as defined?
40

People who undertake lobbying, yes. And what I'd like to do is to exclude from it for the purposes of the discussion, I appreciate you don't in your submission but for the purposes of discussion to try and exclude from it unpaid property owners who are lobbying in their own interest and to move from there to those who may be lobbying you for occupational reasons and if I can just example that with planners, lawyers, builders, architects but possibly engineering companies who want to carry out engineering works. Would you add to that list yourself?---That's a reasonably comprehensive

list, there'd be a range of other specialist advisors, specialist consultants, traffic engineering for example, environmental advice and in our case in particular we've got, we've got quite a lot of endangered species and, and other environmental specialist issues that come up in the planning assessments so there's quite often environmental specialist advisors.

10 Right. Now, is that a group that you would be prepared to adopt as what we might call the professional lobbyists for local government?---That's, that's a real challenge and I hope that's come through in, in, in what we've said in the submissions. I think you can't escape the, the statement that the role those people undertake is, is, is for a client in some fashion. I should also say sometimes a council or other agencies would engage the same sorts of advisors to give what, what the agency would seek as, as independent objective advice about an issue and a potential decision. But in so far as they are engaged by a client on one side or another of a, of an issue, then the role must be to work for that client and to the extent that they present to the council at some point in the process. Then that would be on behalf of the client and I don't think you can escape the fact that in doing that, based on the, on the definition that we have of lobbying, in doing that, they, they
20 must be lobbying.

As Mr Haddad of the Department of Planning has told us once they're unlikely ever to put a view to you that is contrary to their clients interests?--
-That's right. They may put views of that sort to the client directly in a different form. And if that was the case, presumably they wouldn't front to the public authority.

30 Right. So it's advocacy? Putting their clients case at their best, at its best. Advocacy and lobbying?---That's, that's one, that's one role that, that professional advisors and consultants and in this case, let's call them lobbyists, it's one role that they play.

All right. Now I think your view is that a lobbying registration system should extend to local government?---Our view is that if there was going to be one, then yes, it should.

40 All right. Do you, what do you see as being the, the merit of a lobbyist registration system, as it would affect you at Shoalhaven?---Let me say first that we're always conscious that there's a never ending, a never ending addition of layers of accountability and, and of process and due diligence to, to local authorities. And so we're wary of adding new functions that, that don't serve some purpose. I would've thought in this, to answer your question, the, one of the primary values would be, and outcomes, would be simply consistency. So what we said is if there is going to be a, a system of regulation, a system of control, then it doesn't make sense not to apply to local government. There are important decisions made in local government and, and certainly they're very important decisions to, to the local communities and local stakeholders. The, in terms of our operation or local

government operation, fundamentally I put in the context of, of civil society and governance. And one of the things that's, that's really critical is, is community confidence in, in the decision makers, whether they be officers acting on delegation or whether that, whether that be the council or some authorised subsidiary of the council. And so I would've, I'd suggest that the primary benefit is, is, would be an addition to, to the confidence to stakeholders, the confidence of communities in the governments capabilities and the openness of their local authority. There's a parallel process that you could draw with the current process that happened with declarations of interest, in which if you attended any council meeting and committees meetings, you'd see, you'd see a regular consistent process of people recognising and declaring interests at various levels and, and endeavouring to act accordingly, whether that be to simply declare or whether that be to declare and leave the meeting. And this, the recognition of, of lobbying activity at the point where decision making is, is to occur, would add, would add another layer to that kind of openness and that kind of transparency.

10
All right. You'd see it ultimately then as a, as a transparency measure?
---Primarily.

20
Yes. Mr, Mr Donaldson, one benefit of a register is that you can by requiring people to put their name on the register you can also require them to adopt a Code of Conduct in relation to lobbying. Do you think that that would be of benefit? That is you impose on lobbyists a body of knowledge and a body of rules about how they should behave in relation to, to local government?---Short answer, yes.

30
We have heard that council officers on the whole have a pretty good understanding of what they can and cannot discuss outside their council offices. And that they, generally speaking, have a pretty good understanding of rules that would require them not to discuss current applications with, with applicants or opponents outside offices. Has that been your experience?---I think that's generally true. Clearly there's some point in everybody's career when they're in their first and when they have their first contact and if that happened to be a, that happened to be with, with somebody who perhaps sought to take advantage of the experience, there's some, some risk of, of the system and the application of ethics not being as, perhaps as strong as it, it would normally be. But broadly, yes, I think that's, I think it's reasonable to summarise that local government
40 officers certainly in my observations in New South Wales are very conscious of, of probity and, and proper behaviour.

It's equally been said that those who lobby council perhaps don't have the same degree of understanding of the obligations on council officers not to discuss things. What would you say to that?---Look, again, it depends on what that persons exposure or experience has been. I think it's probably, I'd describe it more like this. An advocate, a proponent, a lobbyist would be inclined to go into territory that they perhaps might understand is marginal

or might understand is territory they shouldn't be going into, but do it on the basis that, that the officer or somebody else will, will tell them when they've gone over the, when they've gone over the line. And that it's somebody else's problem to actually decided what's appropriate to be, to discuss in, in whatever form it is. I don't think it's necessarily a matter of not understanding, it's a matter of being prepared to test the system.

10 There's been evidence that the greatest risk at local government level to impropriety or corrupt conduct comes from the small to medium developer and perhaps to some extent the amateur developer rather than the bigger player or the professional advisor lobbyist like planners and architects and so forth. Is that something with which you'd agree?---With respect to corruption?

Yes?---It's difficult for me to say from, from direct experience that, that sounds like a reasonable statement. But I couldn't say that, that my experience would, would precisely verify that.

20 One proposition we heard from an experienced Mayor, former Mayor was that the introduction of professional lobbying, professional lobbyists, whether specialised in a field or political is that they can act as a, a keeper of the gate or a keeper of integrity when dealing with clients and can in fact act as a barrier to corruption between a client who might otherwise be corrupt and a council office. He, he added, however, that he didn't think that it was practical to impose the need for professionals because it added a layer of cost. Is that a kind of view with which you would agree?---Yes, I think, I think, particularly the first part of that, of your summary there, that, that certain, certain kinds of clients who, who might not, who might want to use, use the system or approach their dealings with public officials in, in ways
30 that they may think were appropriate or they're at least prepared to try, that, that if there were, if there was a professional lobbyist, a professional advocate acting on their behalf, a certain (not transcribable) risk of corruption arising from that would, would be removed. I think that's a, I think that's a fair statement. I think it's also fair to say it, it would be very difficult to impose that as a requirement.

You certainly wouldn't want to discourage it though?---No, I agree.

40 Have you ever had a, a political, that is a registered lobbyist active on any project in the Shoalhaven area? Do you understand what I mean by that kind of person, in effect, a political lobbyist?---I personally haven't experienced that and I, I did a quick check with, with some senior colleagues yesterday and the response that I got was limited response but essentially no, I'm not aware of any. I had one response from one of my colleagues that, that said look, we had some dealings with, with a person about a policy issue and, and it's been subsequently suggested to me that they were a lobbyist. That's about as far as I could go.

All right?---I really don't think it's a, it's a high activity area?---Right.

This is the last matter from, I think, Mr Donaldson. You're familiar or no doubt have some working familiarity with the model Code of Conduct for local councils?---Yes.

Right. It's a very, it's a very long and detailed document, much longer than one might normally encounter in a Code of Conduct, would you agree?
---Yes.

10

Do, do you find that the length and detail of that Code of Conduct, and I appreciate that it serves other purposes, do you find that that model Code of Conduct is sufficient or useful or helpful in local government work or does it have, suffer from any difficulty?---Look, I think as a general statement it's, it's useful and it's helpful. There's always a dilemma in using and managing and applying that kind of document and that is that a document that was, that was shorter, briefer and, and set at a higher level on the basis of principles would inevitably lead to interpretation being required, that typically would fall on the, the chairman or the mayor at the time and/or the
20 general manager or some other senior staff. They're often uncomfortable exercising discretion or making, making decisions around, around how to apply a principal and so it's, I think it's natural that there's a tendency for further detail to be expounded and for reasonably clear guidelines to be provided and my observation is that, is that, for the most part that, that's effective.

All right. Thank you. I'm just reminded Mr Donaldson to that, are you familiar with the Department of Planning protocol for meeting with lobbyists, that is Mr Haddad's - - -?---No.

30

Can I just outline it for you, it may sound familiar to you in any event. Mr Haddad has introduced a protocol which requires the following, that meetings with departmental officers and planners, and lobbyists, must occur either in Department of Planning offices, the offices of a local government body or on site and in no other place. Secondly, that a lobbyist is not to be met unless there's more than one departmental officer present. Thirdly, that any meeting that occurs must be minuted and that the minute or record of the meeting must be retained in a permanent departmental file and finally there are, there is a protocol for noting down the time and content of
40 telephone contact with lobbyists. Do you see a protocol of that type as being one which could practicably and usefully be applied in local government when dealing with what we have been describing as the expanded category of lobbyists, so including planners and architects and so forth?---Look, I've seen a reference to that, to that, that code and the short answer is yes, I think, I think a similar kind of protocol would be, would be useful. I suspect it would, it would add somewhat to the levels of documentation and the levels of, and the requirements for recordkeeping, some of what, some of what you just summarised simply involves how you

manage the, the interface and how you manage the dealing and I doubt that any of that would, would represent a concern from a local government officer (not transcribable).

10 THE COMMISSIONER: Would there be staff problems in having more than one person meet with the professional lobbyist or would that, is that some that generally happens anyway?---You, you certainly couldn't say it happens all the time but I, I don't think that would be an unreasonable imposition, I don't, I don't see that being, being something that would be, be a significant resource requirement. What, the key issue I would suggest in terms of resource requirements and demand would be the, the, around the requirements for recordkeeping and the extent of that and how, and how formal that needed to be. That's, and hopefully if there was a, if, if there were issues and there was a concern about creating additional workload and, and, value-add for, for the effort I think it would be around the, the level of, of documentation and the, and the formality of that.

20 That might just depend on the level of detail in the document?---Correct. It would be dependent upon the protocol to some extent. Having said that, I, I haven't worked in, in the planning areas for example in, in Shoalhaven but my understanding is that, is that the, the documentation of those kinds of, of interfaces is, is reasonably substantial anyway.

The proposal is that that apply to all departments, not just planning?---I don't, I don't think that would be an issue, I think, I understand that.

Yes. Are you going to raise the issue of a register, Mr Gormly?

30 MR GORMLY: Yes, yes, I will, Commissioner.

Mr Donaldson, do you have, were you present during the evidence of Mr Brendan O'Reilly when I was asking questions about the use of a register at local government level?---No.

40 There are being considered the possibilities of maintaining a register for local government which would either be a single register state-wide, probably on-line with self-registration requiring the adoption of a code of conduct or alternatively a system where local governments themselves keep their own register, maybe a register that would be kept in a, in a foyer perhaps or an on-line register entered from a terminal in a foyer?---Ah hmm.

Or something of that sort but which would also involve the adoption of a code of conduct. Do you have a view about whether such a scheme would best be a state-wide, single state-wide scheme or a local, a local scheme where each council kept its own?---Look, in simple terms I think it would be better if, it would be better if it was a common scheme. It, that sounds to me like the kind of thing that would, that could, would lead to significant duplication, potentially variations in practice and variations in the, in in

how it was implemented across, across the councils. A number of, quite a number of people would, would, in terms of lobbyists however, however they're defined would find themselves registering many times if, if they needed to do that at each individual council so I think it would be, if, if there was a, a process like that it would be better if that was a single local government industry scheme, industry arrangement.

10 THE COMMISSIONER: It would mean that the council officers could only deal with anybody wishing to undertake lobbying activities when that person is registered so that that would mean that the council officers would have to know what a lobbying activity was?---Sure. Well, what, what you asked me if there was such a scheme would it be better if it was run individually by each council or done as a, a single scheme.

Yes. I'm just explaining that the register is not in a vacuum. There's a point, there are several points to the register. One is that, that only persons who are registered would be able to undertake lobbying activities with the council officer?---Yes. And what I've highlighted I think already, is that it, it is a significant challenge to, to strike a - - -

20 (not transcribable) by a lobbying activity?---To strike the right balance in, in, in determining who should be in such a register and, and therefore who councils should be able to deal with, either having checked the register or without being identified as lobbyists. The challenge is who is indicating they're lobbyists.

Well, would you accept that the challenge is defining their activity and not the lobbyist? Because for the reason that it doesn't matter what you call the person, an accountant, a solicitor, a lobbyist, it doesn't, that would be
30 immaterial in deciding whether or not the council officer would have to check the register?---That's right. And that's - - -

So the council, it is, what is this person cheating to ask me about, is the question?---I agree. And that's, and, and I raised that point in, in my statement.

And is that a difficulty?---It has its challenges. It - - -

40 I'm sure it does?---And I'll give one example.

(not transcribable) the greatest challenge is to make the definition as simple and workable and as practicable as possible?---I agree.

MR GORMLY: What's the example you were going to give?---I'll give an example and that is that the, the transactions and the dealings between council officers and, and advocates or lobbyists can sometimes start on one basis, but the territory can shift.

Yes?---And so council officers in particular and we could be talking about council elected members as well, could find themselves part way through a discussion, a meeting, a series of emails and all of a sudden realise that the territory has moved. And that's, it can particularly happen where the, the conversation begins and the interface begins on the basis of an inquiry.

10 Yes?---I'd like to understand what the issues might be with this piece of land or I'd like to understand what the councils considerations might be if it was going to undertake this (not transcribable) project. And whether that, whether that's done as a ploy or whether that's genuine, that, that discussion can quite often move on to being, to being focused on the interests of the, of the advocate.

MR GORMLY: Well, the power in a lobbyist, the power in a council officer might be as it currently is with New South Wales ministers, that, and Directors General, that they can simply say, well, look I can't deal with you any further until you, until you register. And to register you just have to go on line, it'll take you two minutes to do it?---That's, that's the kind of identification, that's the kind of, the kind of process that, response that
20 would be needed when that, when that point is reached and identified.

Yes?---Can I just add one other, one other dimension to that and that is that I can't speak for other agencies and other, other levels of government, although I, I hear observations from others, and that is this, that local government is particularly conscious and officers in local government at all levels are particularly conscious of a, of a concept that, let's just simply call it customer service. And that can sometimes mean don't behave in a way and don't say things and don't do things and don't put people to any trouble so that they'll complain to somebody else.
30

All right?---Avoid the complaints. Avoid having to, to have to, to have to answer why you, why you pulled that person up and stopped that dialogue and sent it off on a different path. So there's a, there's something of a contradiction there in terms of establishing that kind of requirement. And it would be significant training and I use the word ethics before, I think it probably comes back to that again. It'd be some significant training and, and ethics frameworks development. I suspect it would need to come with those sorts of powers and obligations on officers in particular. So -- -

40 MR GORMLY: (not transcribable) the problem, the very, the very significant problem at local government that you have to both be courteous and public spirited towards people who will also become extremely angry and rude if they don't receive what they're after. Is that, is that the kind of issue you're referring to?---That's right. That's correct, yes.

Right. Being both a service provider and a regulator at the same time?
---Correct.

Yes. All right. I understand that point, Mr Donaldson. It's a good point. Commissioner, I don't have anything further that's going to be helpful.

THE COMMISSIONER: Mr Donaldson, thank you very much for coming and thank you very much for the information you've given us. I can assure you we will, we will take your warnings to heart and look at them very carefully?---Thank you. You're welcome.

10 MR GORMLY: Commissioner, we have Professor Coghill in the hearing room. So I seek to call him if I may. Professor Coghill if you could come forward.

THE COMMISSIONER: Professor Coghill, would you care to give your evidence under oath or do you wish to affirm the truth of your evidence.

PROFESSOR COGHILL: Affirmation, please.

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Professor Coghill, can you tell us your full name?---
Kenneth Alastair Coghill.

10 All right. I think that you, I'm sorry, I've been calling you Cog-hill, Coe-gl,
my apologies?---There are two pronunciations. My family says Coe-gl.

Thank you. Now, I think that you are currently the Deputy Director of
Education, Post Graduate Education at the Department of Management of
Monash University?---That's correct.

20 All right. And I think you therefore have overall responsibility for masters
courses and the department, the department's implementation of the
principles of responsible management education?---Yes. Within the
department, that's correct.

All right. You're a member of the faculty of education related committees?
---Yes, I am.

But you're currently a member of various bodies including the International
Political Science Association, International Association of Institutes and
Schools of Administration, the Australasian Study of Parliament Group and
I think an array of other groups. Is that so?---Yes. Including one, the
Accountability Round Table, which is - - -

30 All right. Of course, sorry?---a, a non-government organisation of people
who act in a voluntary capacity on matters of accountability.

Right. Your, your doctoral study was in Ministerial Responsibility and
Accountability in Queensland, Victoria and Western Australia?---That's
correct. The three jurisdictions.

Yes. And although, I think you started off with the unlikely qualifications
of veterinary science. Is that so?---Yes.

40 But moved into other activities. You've also served as a councillor on the
Rural City of Wodonga?---Yes, I did.

And you've been a member of parliament of the Victorian parliament?
---That's correct.

I think in fact you were the speaker?---Yes, for one full parliamentary term,
I was the speaker.

All right. Now, Professor Coghill, you've provided a submission for which we thank you. Can I focus on some, I'm so sorry. Now we have so far been always offering to witnesses called an opportunity to make a preliminary statement of some kind about lobbying or some aspect of lobbying that they may be interested in and of relevance to this inquiry. Do you wish to make some preliminary comments?---Well, just very briefly and they really just go to the heart of the submission which I'll put to you and I think there are two major elements. The first is that I think the objective should be to regulate the activity of lobbying and registration of lobbyists is simply an indirect contribution towards that objective but secondly I think it's very important to see this as an area which requires behavioural change rather than simply regulation and sanctions for breaches of regulation, in other words, that it should include such things as voluntary codes of conduct and a professional association if the lobbyists so choose to form such a body and training in ethical conduct and the requirements of regulations concerning lobbying activity for people who may be involved in at, at either end, either the recipients of lobbying activities or people who are undertaking lobbying activity.

20 MR GORMLY: Professor, would you accept the, as a general proposition, that while lobbying may be a fundamental part of the democratic process and not something to be lightly regulated or interfered with, that it nevertheless appears to have about it an odium at present in Australia and it seems elsewhere, that suggests or that implies that there is something mildly or possibly corrupt or inappropriate about its operation?---I think that there is some odium of that nature and that it arises from some particular types of lobbying activity. To my mind it's perfectly legitimate for people to lobby to advance their interests, the difficulties arise where are power asymmetries and attempts to improperly influence decision-making.

30 How, how would see, well, what would you see as examples of the kind of conduct that causes problems for the reputation of lobbying?---I think it, many cases concern government decisions on land use and contracts and the like where a government has the authority to change land use for example where that very decision can create a huge change in the value of a particular area of land. That potential change in value creates an enormous incentive for the potential beneficiaries to do everything in their, in their power to take every opportunity to try and have a favourable decision.

40 Do, do you see in general terms the answer to those problems lying in the area of transparency?---Transparency is part of it but it's, it's a necessary but not sufficient condition if I can put it that way.

What would you see as the other components of resolving the problems around lobbying?---I think that there has to be the opportunity for sanctions to be taken but if I can go back a little. I think that we have a underlying problem in Australia with the opportunity for donations to political decision-makers, whether they be candidates or political parties or

incumbent elected members to receive political donations which are of great assistance in campaign funding so that my underlying concern is that we do not have the type of regulation of campaign donations and campaign expenditure which exists in other jurisdictions such as Canada which by their very nature immediately go to reducing the risks of, from lobbying.

10 May we take it that you're a supporter of the view that campaigning should be publicly funded?---Yes, I'm, I think the Canadian model is a very good model. I think the model proposed by the New South Wales parliamentary committee in its report in March this year is, is an excellent basis for a new Australian standard.

20 All right. Just before we move away though from, from issues of the perception of lobbying, you said in your submission that the former Victoria Premier, Mr John Cain, had at one stage banned contact with lobbyists. Can you tell us what you know about the history of that or how that came about? ---It was very early in John Cain's term as Premier which began with the election of his government in 1982 so in effect it was one of the initial conditions under which he led that government. Now, I'm unable to confirm that that ban was maintained throughout the period of his office up until 1990 but certainly there was a very strong understanding amongst ministers and amongst the public service to be very wary of people lobbying on behalf of clients.

30 Have you any idea whether there, that degree of caution arose because of events or, or incidents of apparently corrupt conduct in Victoria or was it something else?---Look, I, I can't be precisely certainly but the government came to office in the context of a land deal scandal in which there had been changes in land use under the previous government and it was alleged that there had been impropriety in those cases. So that was the context.

All right. Well, it seems that time has moved on since then and that the professional lobbyist has not only come to be part of the scene but seems to be accepted as providing useful public services to those who wish to use them. Is that, is that first of all a description you'd be prepared to accept of the change in lobbying?---Well, certainly that change has occurred, yes, I do accept that.

40 You appear to have scepticism about the value of the lobbying profession? ---My concern is the potential for it to become a corrupted process. I do accept that for some people advocating their particular cause they may not have the in-house skills to represent that cause in the best possible light so in those circumstances I think it's not unreasonable that such parties should be able to call on professional expertise to assist their case.

Professor, there's been some slight evidence of a non-quantitative type which suggests that lobbying very significantly expanded in recent times by which I suggest people seem to mean the nineties and in the early years of

this decade but that it has levelled out in its growth, now I'm referring here to people who lobby professionally whether as third-party lobbyists, in-house lobbyists or perhaps even peak bodies but certainly the third-party lobbyists. Are you able to say anything about your impressions concerning the growth or slowing of growth in the lobbying ranks?---Look, I really don't feel that I could make an informed statement on that.

10 All right. Now, at the, at the present time you appreciate that there's, there is being considered as a possibility an expansion of the existing register system in New South Wales. A proposal, professor, is that the register be converted into a electronic on-line self-registration system which would expand the categories of persons required to register to, in effect, not only the third party lobbyists but anybody who derives income directly or indirectly from lobbying activities so that would include the in-house lobbyist, the peak lobbyist and lawyers and accountants and others in a similar category and I'm thinking firstly of state government level and that that register would contain the name of the body, perhaps those who worked in the field in that body, the names of clients if they're third-party orientated but together with the date and identity of meetings that the lobbyist has with
20 those in the government sector, not necessarily the content of the meeting but that there would on the other side of the process be imposed an obligation to maintain as part of ordinary government records a proper record of each meeting so that there could be freedom of information, access through the new GIPA Act, to government records subject to the usual exclusionary categories and possibly too subject to the non-publication of some meetings on the register if there is a good reason for not doing so. Does that strike you as a system which would meet the requirements of transparency in a way that would help to remove some of the odium related to a fundamental activity like lobbying?---I think that the model I would like
30 to see would have a different emphasis. It would have essentially the same components but the primary record would be the record of lobbying activity and the secondary record would be the lobbyists with the features that you described.

THE COMMISSIONER: The details of this are in your submission, your later, I don't know how many submissions you made, is this the only one? ---Only one submission, that's correct, yes.

40 Yes, yes, on page 13 you've got ten points which you list?---Yes, yes, Commissioner. So- - -

They are much more detailed than the points that Mr Gormly suggested to you. Professor Coghill, do you think that these suggestions are practical or do you think that they are an optimum position?---Well, both, if I may, Commissioner.

Well, before asking you about that, I think we, the kind of register that Mr Gormly suggested to you has to be seen together with another proposal that

has been made to the Commission and that is that all meetings between a lobbyist or defined as a person undertaking lobbying activities, so you can regard that in a pretty wide sense, that is not limited to a particular category at present but just by reference to activities, that any such meeting should have to take place in the minister's office or in the chief of staff or director general's office, be attended by more than one person and that notes be taken of the meeting and that the notes be stored in a reasonably accessible place and be available for what used to be called FOI applications, now GIPA applications and so that you've got the point of that being that much
10 of the information contained in records of that kind and may I say in your suggestions on page 13 of your proposal, is information that could be regarded as commercial in confidence or even relating to the security of the country, but anyway, information of a kind which would not be made available were it to be subject to GIPA considerations. Now, if you look at that combined system containing as one limb a minimal set of, a registration containing a minimal set of information but including the names of the lobbyists, coupled with a Code of Conduct that each has to undertake to get onto the register, together with this other system where the meetings have to be recorded and are kept in a place where they would be available on a
20 successful GIPA application, would that not go a long way in meeting what you propose?---It would go a long way. Can I say on the issue of commercial in confidence, from my experience, which includes six and a half years sitting at the cabinet table in Victoria as parliamentary secretary of the cabinet, that the whole issue of commercial in confidence is in my view often quite unnecessary - - -

THE COMMISSIONER: I understand that.---?- -as, as is cabinet secrecy.

I'm fully aware of that and share that. But that's not, that's a problem that
30 can be resolved by having the right person be the arbiter of that issue. The best we could propose would be a completely independent and trained person, assuming that to be the case?---Yes. I'm still of the view that the ten aspects that I've listed in my submission are appropriate to be on the public record and if there are cases in which there are genuine issues of let's say national security or the safety of criminal investigations and prosecutions, then clearly those would be cases where it would be appropriate for there to be some withholding of particular details. When it comes to purely commercial matters I'm much less convinced that there are often genuine grounds for withholding information about lobbying.

40 Well, there are two other matters, before Mr Gormly takes up the baton, that I would like you to comment on your list. There are many detailed questions one could ask about them but there are two general ones that I would ask you. The first is, would you accept that if all this information had to go onto a register and the register was a broad register encompassing every kind of lobbyist you can get, that is a person undertaking lobbying activities, ranging from professional lobbyists to lawyers, accountants, employees of unions, employers' organisations, charities, large companies

with large in-house lobbying departments, that there would be an enormous mass of information that would make it, it would defeat the whole objectivity of transparency and easy access? That's the one comment? ---Yes. Look, I understand that point that you're making. I don't believe that that is a problem with modern software applications where you can obviously have a cascade of information which you access, starting off with the, the very briefest reference to a particular lobbying activity and then going down by links to the particular details that you may be interested in, such as payments that might have been made to a political party.

10

But what about the time that each lobbyist would have to take to complete the register, especially people who very occasionally do undertake lobbying activity?---Ah, well- - -

What kind of imposition would that be?---I don't believe that it would be an unreasonable imposition to protect the public interest, which is essentially what we're here about. And if a lobbyist is, is concerned to have the public interest exercised in his favour or her favour, then I don't believe it's unreasonable to ask them to present this information.

20

And the third question is, don't you think that there would be an overwhelming mass of GIPA applications?---(NO AUDIBLE REPLY)

If this had to be, if this was the rule, can you imagine how many applications there would be if you were, especially if you were dealing with commercial organisations and large commercial organisations who would do everything in their power to stop this kind of information coming out?

30

---The great mass of this information would by default be on the public Website automatically and it would only be in very limited circumstances in my view where this information would be withheld on some legitimate public interest grounds.

So the issue is not whether it's legitimate or not the issue is whether people would allege that it's legitimate?---The default position has to be that it is on the public record unless a case is accepted that it should not be on the public record.

40

But if it's on the public record and it shouldn't be the damage would be done?---There would be very few cases in my view where that damage would be done. I think the cases which might arise would be national security or criminal prosecutions both of which are pretty clear-cut and commercial in confidence and I think it would be a fairly simple matter to make a judgement as to whether a claim of commercial in confidence was genuine. And remember that at least in the experience with which I'm familiar it's more often been government which has alleged commercial in confidence than the commercial enterprise.

MR GORMLY: Professor, there are just two areas that I want to, two areas I want to discuss with you. The first is to put to you a proposition for your comment also arising out of your ten points and I'll be frank with you, Professor, they're difficult to, to absorb as a requirement for a register but the particular proposition I put to you is that as we go down through your points one to ten one sees some, a surprising amount of detail called for about the particular lobbyist rather than the activity. For example you require them to disclose an Australian, you know, the ABN to disclose prior contract, I'm not sure whether you're referring here to the client of a lobbyist or to the lobbyist itself but I'm not sure it matters for these purposes. Contact details and website address, things that bring home registration precisely to the people involved and to the entity involved. Can I suggest to you and it's not a criticism, Professor, I assure you, that it appears to reflect a view which can be picked up in the, in the first two paragraphs of your introduction that you perhaps share quite strongly the view that lobbying is an aspect of democracy which is what you would call unproblematic but perhaps a necessary evil rather than an actual positive expression of the democratic process. Is that a fair comment? You don't like lobbying much?---I think that that's probably overstating it but I do find some instances of lobbying and, and some types of lobbying offensive if I can put it that way.

All right. So if we just look at those items there, I mean, even to call for the ABN is a significant call because while it is a piece of public information actually declaring an ABN for a business entity tells you little or nothing about the registration for lobbying purposes particularly if there is a cluster of business or company names that may involve a trust for a deceased member of a deceased shareholder or a trust for some other purpose, it's entirely legitimate taxation arrangements it can be quite difficult to call for the ABN and think that anything useful will come from that but I suspect if you're suggesting that because you, you have in mind pinning down who the lobbyist is. Would that be right?---Can I come back to one of the underlying motivations for this and this is actually to assist the person being lobbied as well as the public so it's, there can be a significant problem for whether it's an elected councillor or an elected member of parliament or a minister or a, a departmental official to actually know what the associations are of a particular person who's asked for an appointment to discuss a particular matter. So a significant part of the motivation but certainly not the sole motivation of these ten points is to assist the person being lobbied to identify who it is that, what their associations are of the person being lobbied.

Right. Now, I appreciate that - - -?---Doing the lobbying, I'm sorry.

Yes, I understand. I appreciate that that issue, the identity of a client for whom the lobbyist is lobbying has been a significant issue in the United States. Here the evidence we've heard is that generally speaking a minister is not much interested in talking to a lobbyist until they've got past a very

preliminary question so who are you acting for, you know, who are you here lobbying me on behalf of and it does seem a fairly obvious question. Do you see a mischief somewhere about the non-disclosure of who somebody is lobbying for?---I suspect that it's not a frequent problem but I think it's important that there are safeguards to ensure that the, the interests being represented are properly identified.

10 Right. Well, I can assure you we're in complete agreement about that, Professor Coghill, that it would be a mischief would it not for government to think that it's been lobbied by one interest when in fact it's been lobbied by another interest altogether?---Indeed.

All right. Thank you for that. Now, the next thing is, Professor, at local government level and I think you've had some experience at local government level and you were present I think also during Mr Donaldson's evidence - - -?---For part of it, I came in during his evidence.

20 Right. Did you hear that portion of the evidence about whether or not a register might usefully be introduced for those who register, for those who lobby for professional or occupational reasons being kept onsite at a council so that there would be one register for each council or a state wide single register? Do you have a view about that?---Look, I think ideally there would be a national register in fact but I can see that there may be some circumstances in which let's say a particular business only operates in one locality within one municipality and in such cases it might be appropriate for the national register or a state register to be supplemented by a local register and that the requirement for activities, lobbying activities by that local lobbyist need not go on the state or national register but would be required to be maintained locally.

30 It is a feature of local government that those who lobby it are often highly localised, for example, planners don't function terribly well outside the area that they know very well. Would that be correct?---Well, my own experience was slightly different to that, I was a councillor at Wodonga at the time the Albury, Wodonga development commenced in the early 1970s and because of the scale of development it did include planners and other experts coming from outside the locality. That expertise and the number of experts required simply did not exist locally so I've experienced both.

40 I was in the Bathurst, Orange development area at the same time, Professor, and I did see the same thing but generally speaking would you agree that planners, builders in particular at local government level are often fixed to their area pretty much?---I think it, it varies significantly across states and my experience is confined to Victoria. My, the electorate I represented in the Victorian parliament was an outer Melbourne metropolitan electorate and there were developers and others involved who had a metropolitan Melbourne interest so outside of the particular municipality, Werribee it was called at the time and for that matter some people from interstate who

wanted to get in on the development scene in this rapidly developing outer suburban area.

10 All right. Now, the last matter, Professor, I think unless I'm passed a note, the last matter is on page 12 of your submission. It's about ministerial responsibility and I was just wondering if you could assist us with one particular and fairly narrow area. It relates to the relationship between a minister and the department for which a minister is responsible. At the present time the way it works in New South Wales and I assume it's the same for Victoria and probably all parliamentary institutions is that a minister is not really regarded as part of the department though it may be the head of it and may keep separate files from the department and may in fact entertain complaints and so forth about the department which he would then be expected, he or she would be expected to deal with.

20 Nevertheless, could you, are you able to say anything about the modern practice of the relationship between a minister and the department for which they're responsible, such that they can call for information if they need it or want it?---I'm unaware of any change in, in principle or practice whereby a minister has the right to call for any information held by his or her department, if that's what you're getting at.

Yes. Yeah. All right. There are limitations on, are there not, on the degree to which a minister can direct what happens in a department. Is that, is that correct?---Not, not generally. Statutory authorities can be a different matter, but a department is the minister's instrument. That's how the minister exercises his executive authority, by issuing instructions essentially to his department.

30 Right. But what I'm endeavouring to explore is perhaps the lines drawn between the minister and the director general. A director general of course can control the intricate detail of what happens in a department, presumably by convention perhaps a minister does not?---Yes. And it did change a little with the, what's called new public management, with the managerialist approach to the operation of government and under the managerialist approach, and I haven't examined the New South Wales legislation so I can only comment from a Victorian perspective, but in Victoria the sort of reforms made during the Kennett government period placed the head of department as the manager of the department, so that all of the instructions and recruiting and all of those matters were handled under the authority of the head of department and the minister simply dealt with the head of department rather than with subordinates in, at least that was the formality of it, rather than with subordinates within the department.

The reason I ask, Professor Coghill, is that I just wish to explore with you at least management theory level or executive theory level about how notes or records of meetings kept by ministerial staff might or might not legitimately and ordinarily be conveyed to a departmental file?---The minister's office,

sometimes termed his private office, tends to operate as something of an oyster in that it can take in any information from the department that it seeks, but it is under no obligation or requirement to transmit any data, any files, any knowledge which it has to the department.

It would be I take it something of a misfit to suggest that all ministerial records or records of meetings, even if they were also departmental matters, would automatically go to a departmental file?---They would not automatically go to a department file, no.

10

But it couldn't be required either I take it. Would that be right?---It's hard to say under what authority they could be required.

Right. Well, legislative authority might be one?---Well, if, if there was legislation, certainly that would, that could bind a minister but I'm not aware of any such legislation.

But it wouldn't, I suppose what I'm asking you is, in terms of how a minister operates with his own department, it wouldn't be a good fit anyway. Do you understand that to be part of the oyster theory?---(NO AUDIBLE REPLY)

20

That is, it's not workable to have ministerial documents automatically go to a departmental file?---I think that, I think that's correct, yes.

Because they're essentially working in different realms, even though the minister is there for the department?---Well, the department is there for the minister, I would put it.

30 Yes?---Now, Sir Humphrey may have a different view.

Yes. So, so necessarily if a departmental officer is present in a ministerial meeting, the department may have its own record but a minister too may have his or her own record?---That could occur, but I think it would be unwise for the two not to, to check to see that their, the two are reconciled.

40

So there really ought only be, for purposes of ordinary government regularity there ought only be one record?---There ought be one agreed record. Now, it may well be held in two places, it may well be held in the ministers office and the department, but it could create significant difficulties for the department and the minister if there was some inconsistency between those records.

Well, there always would be some degree of inconsistency, I suppose, wouldn't there? And that's the source of the problem?---Well, one would hope that the departmental officer and the ministers private office would seek to compare notes and ensure that there was consistency. And, and if

some inconsistency later emerged, that they attempt to, to reconcile those differences.

All right. Yes, thank you, Professor Coghill. Commissioner, I have nothing further.

10 THE COMMISSIONER: Thank you very much for your thought provoking submissions, Professor. They will be carefully studied and thank you very much for coming all this way. Your, your attendance has been valuable to us. Thank you?---Thank you very much for the opportunity.

MR GORMLY: Commissioner, I have no, I have no further evidence until 2.15.

THE COMMISSIONER: Very well. Thank you. The Commission will now adjourn.

LUNCHEON ADJOURNMENT

[12.17pm]

20