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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 AUGUST 2010

AT 10.00AM

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MR GORMLY: Commissioner, we have present in the witness box Mr Mark Lennon from Unions NSW.

THE COMMISSIONER: Yes, Mr Lennon, good morning.

MR LENNON: Good morning, Commissioner.

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

10

MR LENNON: Under oath.

THE COMMISSIONER: Would you swear Mr Lennon in.

<MARK ROY ROBERT LENNON, sworn

[10.01am]

MR GORMLY: Commissioner. Mr Lennon, tell us your full name?---Mark Roy Robert Lennon.

20

All right. And what's your present position with Unions NSW? ---I'm the secretary.

All right. I think you've been there since October 2008?---That's correct.

And I think most of your working life has been in the trade union movement as organiser with the Tasmanian branch of Liquor Allied Trades Union, now Liquor Hospitality and Miscellaneous Workers Union and I think you also worked as a trainer at the Trade Union Training Authority, at the one down in Albury?---I was based here in Sydney in those days, it had offices in each capital city as well and I was based in the Sydney office.

30

Right. You've been with the Labour Council since 1988 and you've been a training officer, industrial officer organiser and assistant secretary before your present position in October two years ago?---That's correct.

And I think you come from a background in commerce and law at the University of New South Wales?---That's right.

40

Mr Lennon, can I just ask you some questions about the structure of Unions NSW. As I understand it it's a peak body organised on a state basis for some 60 to 70 trade unions. Is that correct?---That's correct.

Right. And between them all they are representing, I've got two figures, it's 600,000 or 800,000 workers?---600,000.

600,000?---Correct.

Thank you, all right. Now, that's part of an overall federal structure and I think Unions NSW is a body that's recognised within industrial legislation. Is that correct?---We are but we are not a registered trade union under the Industrial Relations Act in New South Wales as most of our affiliated unions are.

10 Right?---So we are, our legal status is unincorporated association. We have some standing and we are mentioned in a few sections of the Industrial Relations Act here in New South Wales but we are not a registered trade union as in, as other of our affiliates are.

All right. Well, would you accept in general terms a description of, of Unions NSW as a peak body?---Yes.

Right. And I take it that there are other state equivalents in the other states? ---There are.

20 Right. Now, Mr Lennon, Unions NSW has made a submission to the Commission based on the Issues Paper concerning lobbying, for which we thank you. Is there anything that you would like to say initially about the subject of lobbying or any aspect of it as touches Unions NSW?---Well, I think in the context of lobbying we've always viewed it in that broader sense of lobbyists being people who are out there representing third party interests for, on a commercial basis and it would be fair to say amongst our unions and membership generally, without any firm evidence, just anecdotally, to say that there'd be the sort of level of community concern out there about the role of lobbyists in that sense of, as defined that there is in the general community everywhere else.

30 THE COMMISSIONER: Sorry, there is the level of - - -?---Yes, I would - - -

The same level?---I would suggest but that's only anecdotal, Commissioner, but that's my view so I think in that sense our membership would welcome this sort of inquiry and, and happy for me to be here to make these views.

40 What is the concern?---Just generally the level of influence and who are these lobbyists. I think that's portrayed in, in the general sentiment that's being expressed in the community that the role of lobbyists seems to have increased and, and then so the question is of, of the lobbyists as I think in their own mind feel those who are working for third parties on a commercial basis, their role seems to have increased and there's, needs to be some way of ensuring how, what they are doing is properly regulated.

THE COMMISSIONER: Is that, if I could just ask you a blunt question and very broad, what do you think should be done about it?---Well, I, to us,

Commissioner, I haven't turned my mind to it other than the issue about Unions NSW.

Yes, but what do you think as far as Unions NSW?---Well, I think in, in, in general as a, as a society we have to be confident that our political process is working in an open and transparent way.

10 So if it was made more, if the work of lobbyists was made more open would that go some way to alleviate the concern, do you think?---Yes, I think so, the fact that the question is what's, what's, what do we mean by open and transparent is I suppose is the question.

Yes?---And who's - - -

I'm sure Mr Gormly will ask you a few questions designed to expose that? ---Yes.

20 All right. And then you can, we'll be really interested in your answers because your body is one of those that has been, not by name, by falls into a category of body that has been mentioned from time to time in this inquiry as actually doing the work of professional lobbyists but not subject to any of, of the requirements and, especially the professional lobbyists have said to us well, if they are going to be subject to more constraints or more requirements then they, they, they submit that all persons who do the same work should be subject to the same rules and that lobbyists should be defined not by reference to occupation but by reference to activities. Do you have any comment to make on that broad proposition?---Well, I think we've said in our submission, particularly in our second dot point, I mean, the issue has arisen and a level of concern has arisen because of the growth
30 of lobbying on a commercial basis.

Yes?---Unions NSW and similarly employer organisations that do the same sort of thing we do have been doing what we've been doing for well over 100 years. I was going to say, since, we've been around since 1871 and - - -

40 Well, I think lobbyists predate you by about 2000 years?---I could take that point, Commissioner, but I think as we've opened, you know, as, as our economy has opened up and become deregulated over the last 30 years the role of the commercial lobbyist has, has grown and that's why the level of concern, in a sense, in one sense we've had a more transparent and open economy, in the other sense, which has allowed more competition and then on the other sense there was a (not transcribable) to that, commercial interests have seen that they need to more effectively lobby government so we've seen this lobbyist industry grow.

And if one can focus on that concern just for a moment, would it be over simplistic to say the basis concern is that anecdotally one has numerous examples of persons who, because of past experience, have particular

influence with, with individuals in government who have power or, or bureaucrats who have power who are suspected to have met with those persons and where decisions are taken following those meetings which benefit people represented by the lobbyists and no one knows to what extent, well, what was said in the meetings and if the decision-maker was influenced and to what extent. Would you accept that that is basically the cause of the concern?---The perception issue?

Yes?---Yes, absolutely, I think is - - -

10

I'm not saying that anything untoward happens but there's a perception that it happens?---Well, the perception is that it happens or it could happen, yes.

You accept that that is basically the concern?---I think amongst the rural community, yes.

20

Yes. And amongst unions?---Oh, amongst unions, well, amongst unions as unionists representing unions, our view would be, as it has been for a 150 years that clearly the business interests, whether they're representing themselves directly or through a lobbyist have too much sway on governments of the day, whoever the government may be.

Yes. You would accept that the business interests have the same feeling about unions?---Oh, I'm sure.

30

And the real task is to give everyone an equal playing field. Would you accept that?---No problem at all, Commissioner, I accept that. The only contention we would have is it's very hard to get a perfectly equal playing field.

Absolutely. I mean that's, no doubt about that too. But it's in everyone's interest to try, to try properly?---Yes.

MR GORMLY: Mr Lennon, I want to take you back to some, some basics and we just move forward. Feel free to disagree with any proposition I'm going to give to you?---Sure.

40

There's been a lot of evidence already, we're in the last week of three weeks of evidence. A feature that has emerged about peak bodies is that generally speaking the membership of the peak bodies join up because they expect and want the peak body to be a voice to government. That would be true of your body as well would it not?---Yeah, that's one of our objectives in our rules as well as a few others. Yes, sure.

And I think you're operating from a principal that lobbying in itself in the broad concept is a perfectly reasonable, respective, democratic activity to carry out, that is everybody's entitled to approach government in an endeavour to persuade it of one thing or another?---Yes.

And perhaps also to put views or informative facts or corrected where it appears to be going wrong, by the supply of information and so forth, so that there is a constant interplay between government and non-government. I take it that there's nothing about any of that aspect that you disagree with?---No.

10 Right. Now on that basis, it would seem that there is a very large number of groups in the community who lobby and the third party lobbyist, the professional lobbyist have had something of a voice here. We've had Mr Hawker and a number of other people along who, who are all third party professional lobbyists. And they've offered their views, but they don't seem to be any different and unless you disagree with it, they don't seem to be any different in principal from the lawyers and accountants who turn up to represent clients and speak to government and lobby on their behalf. But they're not subject to any control at the moment. The question, Mr Lennon, is, is really whether if there is to be a transparency in lobbying it would extend to cover other groups. Now, one way of doing that is to give some
20 body of material which would enable the old FOI application system to work, which is now the Government Information Public Access Act. A better and more sophisticated arrangement than the old one. That can only operate if people know that meetings are occurring, because that then enables them to make an application under this Act to see what happened, subject to various protections to cover confidentiality and so forth. On its face, would it be correct to say that Unions NSW wouldn't object to the public knowing when it has access, for example, to a minister or to a director general?---On its face, no.

30 Do you have reservations about it?---I do in the sense of only, and I can't, it's hard for me to actually sort of describe what they are, but on the face of it, it's something that I suppose as I said at the outset, we've looked at the question of lobbyists and who's a lobbyists in those sort of narrower terms of someone who's there for a commercial interest. We're doing what we've done for a 150 years and we'll continue, sorry, that's not quite right, 140 odd years.

Yes?---We will continue to do it.

40 Yes, of course. And no one (not transcribable)?---(not transcribable) sort of dragged into, it seems to me we, as employer groups as well, I think have been sort of dragged into a problem that's become an issue as I say, because of the changing nature of government and, you know, an open and transparent economy which has lead to this growth in lobbyists, commercial lobbyists.

Yes?---30 years ago none of us had really heard of commercial lobbyists, I'd suggest.

Mr Lennon, it seems that across the world this problem about lobbying is, has been noticed in much the way you've been describing. And there have been endeavours to try and regulate lobbying or at least expose it. And while it's true that the third party lobbyist is an obvious category, there are two particular reasons for that. The first is that the third party lobbyist often has in its ranks people who can use prior knowledge relationships in order to get access to government. That is prior parliamentarians and prior members of the public service. But it does seem that those kinds of people don't just end up in third party lobbying firms, they can end up in the trade union movement, employer organisations, charities and generally in any, and, and business in-house lobbying groups and generally in places where, if they have been in public office they can use their prior or be seen to be using their prior relationships and their government knowledge. Do you accept that that, that is a part of the scepticism the community has (not transcribable)?---Oh, absolutely. The issue about prior knowledge is someone who's been in government and therefore has prior knowledge is a concern, no doubt.

Yes. Now the prior parliamentarian in particular seems to be a problem because if they've had a cabinet position, they often are very senior. They've had an extensive amount of knowledge that being in cabinet and they will usually have whether on the left or the right, whether Liberal or Labor or whatever party, a considerable body of relationships that last life long. One way of dealing with that group of people may be to have cooling off periods. Do you, do you understand the - - -?---Yes. Like they do in the US, it think it's 12 months or something along those lines.

Yes. 12 months here in New South Wales, two years in Queensland, five years in Canada?---Right.

And that, that appears to have some affect on the currency of the knowledge they may have, but I'm sure you'd agree that it's unlikely to have any affect whatever on the relationships that those people will have, which are usually life long?---Well, I'm not sure about the last bit, politics is a funny game and relationships can change pretty quickly. Anyway - - -

Look, I accept that. But the people who perhaps have left a ministerial position but remain politically involved or partly involved are going to have ongoing relationships?---Sure. Absolutely.

Which are often however much you may be right your comments about politics, they can often be very loyal contacts as well?---Yes. I was probably thinking more along the lines of a former leader of the opposition here in, in Australia who became a journalist temporarily, for the last two weeks. I don't think he has much influence with the Labor Party any more.

That's probably right, Mr Lennon. That's probably right. But, but generally speaking it is a problem isn't it?---Yes.

Yes. All right. Well, if to one was were looking at a general structure for transparency in government and in lobbying, it's hard to cherry pick, it's better to have a system that makes all contact reasonably transparent as long as business isn't interfered with. Do you agree with that?---Yes.

10 When I say business I'm using that in a broad government sense. Can I just stop here then for a second and we just move into the kind of contact that unions have with government, which presumably differs depending whether there's a Liberal or a Labor government in power at the time. Can you, can you give us some idea of the amount of contact that there would be between your body and say directors general and ministers on a day to day basis in New South Wales?---On a day to day basis, we wouldn't be in contact with the minister's office or department head on a day to day basis.

Would or would not?---Would not.

20 Right?---But we would without a doubt during the week, it may be for whatever reason one or two times. So for instance, at the moment we're in negotiations about the new wage deal for, for Rail Corp and we're in contact both with the, the head of Rail Corp, Bob Mason and the premiers department about the issue on a, if not a daily basis this week, it would be two or three times a week.

Right.

30 THE COMMISSIONER: There's different kinds of contact of course. I mean there's contact which involves obtaining information, imparting information and contact that involves attempting to persuade or negotiate and I suppose different levels of people are involved in each category of contact?---Sure. Most, most of the contact we do over the phone would simply be about, you know, meetings, timing for meetings or- - -

Arranging meetings?---And when they can come back to us with certain information, as opposed to when we actually sit down to negotiate or talk about the information that may be available, that would be a formal meeting.

40 MR GORMLY: Yeah. All right. Would that be a meeting with a minister? ---It depends, but in the main it would be. Depends on the nature of the issue and where it's at, at what stage it's at.

Right?---But ultimately at some stage it may be a meeting with a minister, yes.

All right. So within your organisation, and I'm not endeavouring here, Mr Lennon, to pry into the way you do things, but just in terms of the practicalities, I assume that Unions NSW would have a reasonably strict

protocol about who it was that was going to represent the views of Unions NSW to a minister or to a director general or a head of a railway body?
---Yes.

Would that be correct?---That's right.

10 All right. Would that be a limited number of people?---Ah, well, within, within our organisation there's probably ah, ah, six or seven people who would have some direct contact with ministers at various times on issues, depending, we divide up areas of responsibility, so be it Workers' Comp or Occupational Health and Safety or railway negotiations or electricity.

Mmm?---So each of those persons would have contact. However, in the main, if someone's going to meet with a minister they'd advise me so I'm aware of it. And clearly there are times when there's a meeting with senior ministers and I'd be involved.

20 Right. And is this being coordinated with the unions directly involved as well?---Yes.

So that while Unions NSW may be a peak body in effect lobbying, forgive me for using the word, we use it liberally here- -?---Yes.

- - -but lobbying for a particular position, the fact is that each individual union may at times be doing the same thing?---They may, or they may be, yes, talking and, to ah, ministers or department heads about a specific issue that affects them and their membership.

30 So there aren't necessarily rules that require the individual unions to move through you for lobbying purposes?---No.

It would depend on the issue?---That's right.

Right?---Because we're not ah, you know, we're a peak body and unions are affiliated to us but they are autonomous organisations and have the right to make their own decisions about who they wish to meet and represent their members' interests before.

40 So in a sense, each union is probably a lobbyist as well at times?---Well, again we come back to the issue about lobbyists.

Sure?---But let's put it that they'll be out there certainly doing their best to represent their members' interests.

But using a broad view of the word lobbying in the sense of endeavouring to persuade or influence a government as to its either executive or legislative action, a union would at times be a lobbyist?---If you put it in those broad terms, I suppose yes.

All right. Well, just as on the other side of the, of the fence, so to speak, any number of construction companies might belong to a peak body that they want, you know, the urban taskforce, for example?---Master builders, yes.

Master builders, they may themselves individually lobby, lobby government?---Yes.

10 All right. In seeking to find the practical way, Mr Lennon, to achieve a degree of transparency that would enable the public and the media to know when meetings are occurring, without necessarily interfering with the content of the meeting, but giving them an opportunity to access the content through the Government Information's Public Access Act, would you see any objection in principle to requiring those who lobby government to declare themselves by having their name on a public register and declaring the date of contact by that body with government? Let me just follow that through for a second so you have an opportunity to think about it, but also so I can just fill out the process. The idea is not that the public would be told the content of the meeting, because there may well be good reasons for
20 confidentiality for one reason or another, but if they know the date and they know who's been contacted by whom or by which body at least, that would enable them, if they saw fit or had a need, to make an application for information from the government body. Now, they may be refused because of the categories in the GIPA Act or they may receive the information that they seek, but either way there's a process for them to get it. They can't get it if they don't know the meeting occurs. So the idea, Mr Lennon, is that Unions NSW and perhaps any member unions who did lobby would, among all of those other bodies, including charities, employer bodies- - -

30 THE COMMISSIONER: Large companies.

MR GORMLY: - - -and large corporations as well who want to step over that line and have contact with government, not be interfered with, not be stopped in any way or restrained or required to account for themselves, but would at least declare themselves publicly and provide the date of contact. Can you see a reason in principle why that would not be done?---Well, I, I accept the notion and I accept the openness and transparency of it, but I'm just concerned about, both for all parties, for ourselves or employer groups et cetera, the nature of government at times and how it works and if for
40 instance we're negotiating the rail meetings and we have to have a series of, as it gets to resolution, a series of quick meetings in a couple of days, do we have to ring and register that and the speed of it or contacts- - -

THE COMMISSIONER: It's intended to be a self-regulating online system, so you'd do it yourself. Somebody in your office would just record it on the Internet. You wouldn't go through government to do it?---Right. What sort of meetings, how often, the contacts.

Yes.---I'll give you an example. Last week with the present rail dispute we had a meeting of workers in our auditorium (not transcribable) to talk about where we were with the agreement. They wanted some points of clarification.

MR GORMLY: Who's they, sorry?---They is, there's about eighty- - -

I see?---?- - -eighty union members who are sort of our campaign committee for this campaign.

10

THE COMMISSIONER: But that's not a meeting with government?---But I had to go and make a few phone calls to government representatives just to clarify a few of the issues that were in the proposed document and then come back to the meeting.

It's not intended that they be classified as a meeting.

MR GORMLY: You're pointing to practicalities. Is that right?---Right.

20

You're saying that there may be practical difficulties about what has to be reported and what doesn't?---Has to, like, that's right.

Right. Mr Lennon, let's assume, I think as the Commissioner was about to refer to, let's assume that those practicalities are taken into account because nobody wants a system that doesn't work or one that's cumbersome, but if you were to do as the Canadian national government has done as an example and you limit the reportable events to oral contact that has been arranged, so it would not necessarily include telephone calls, it wouldn't include any kind of documentary activity because that can always be discovered anyway, there's an automatic record of it. The problem that the community seems to have is with undisclosed oral meetings between non-government and government. If, if there were to be a requirement that for example pre-arranged oral contact were a reportable event within say thirty days of the event, and I'm plucking a figure out of the air there for practicality's purposes, it would not require pre-registration of that meeting, that is, you wouldn't have to declare it straightaway or before it occurred, all that would be required is perhaps that there be kept that date of meeting, it would be a meeting between government and union and the date put on the register, full stop.

40

THE COMMISSIONER: And the name.

MR GORMLY: And the name, yes, the name of the, the name of the person met and the date?---My only, people know that Unions New South Wales, what our job is, they also know what (not transcribable) business is and what we do.

Yes, yes?---We lobby government, we're out there lobbying governments or in the broad sense we're, we're arguing on behalf of our members and I don't know that that's the issue of concern for the community at large. I, I understand what you're saying but - - -

10 THE COMMISSIONER: Well, the perception is I think that there is a concern because it's not known whether the union meet with a minister on particular occasions and that's not a concern that's directed against unions in particular, they would be equally concerned with employers groups, they are equally concerned, the perception is, that representatives of employers groups meet on unknown occasions with, with ministers and then things happen?---Yes.

20 So I do want to emphasise that our desire is to make an equal, a level playing field to use the terrible cliché but it's to play fair with everybody but to make everybody do at least the minimum to allow identification eventually of what occurred, not necessarily immediately but later and not in all cases?---I, I mean our submission on it, Commissioner, is clear, that we think there should be effective targeting of those who are acting on a commercial basis and we've sort of said the broader civil society, which includes unions, employer groups, charitable organisations, voluntary organisations, should be excluded. I accept, Mr Gormly, what you say what's happened in Canada but on contrast I see in Queensland they be excluded with us.

Yes?---Yeah.

30 But there is a, commercial basis is an ambiguous phrase. It might mean being paid for what you do, it might mean represent somebody so that a particular entity benefits commercially and that is financially or even by way of a way of life and earning money?---Sure.

40 On one view there is very little to distinguish between the two?---I accept that. I suppose what I, I also (not transcribable) if I, if I was to as a result of changes in government to employ a former minister of some sort I, I'd have no problem that that person had to be registered as a, and was working full-time for us, that person would have to be registered as a lobbyist because of the reasons you've outlined. I just I suppose have some general issue with the fact that, as I said, and I take your point, Commissioner, that lobbyists might have been around for 2,000 years but not in the same extent that that's become a issue in the last 30 years and we've been doing what we've been doing for - - -

My understanding is that in ancient Greece and Rome they were of enormous concern?---Right. Yes, and I accept your point but in terms of - - -

And provided sources of great corruption?---But in terms of the issues you hear in New South Wales (not transcribable) around the developed world for the last 30, 40 years and there's a great book by Robert Reich, a former secretary for labour under Bill Clinton, Supercapitalism, and he outlines the growth of the sort of transparent open-market economy in the last 30 years and why the lobbyist industry has grown in the US in the last 30 years to massive - - -

10 Well, lobbying in the United States as I, when you read the literature, is a terrible problem there and it's out of control really and our, I suppose our challenge is not to let that happen here?---Sure.

I mean, it doesn't, it's not, it's not like that here but we should make sure it doesn't happen that way?---I acknowledge all of that. I suppose in answer to Mr Gormly's question I would say, as I said in my opening remarks, I'd welcome a more open and transparent system. Us having to record every meeting - - -

20 MR GORMLY: Yes?--- - - - with ministers would I think practically be difficult is the issue as it would be for employer groups as well.

30 Yes. Mr Lennon, let me assure you that you're not the first to find themselves sitting there hearing this possible proposal put to them and agreeing in principle but expressing concern about the practicalities of it and we're very alive to that but can I just put these propositions to you. We have heard persuasive evidence really from all players in the commercial lobbying field, what you're calling the commercial lobbying field, that the complexity of government and the detail of modern policy and putting it bluntly the ignorance of each of the other, that is, the ignorance of the community about how government works and the ignorance of government about how particular areas of the community work have been one of the principal drivers of the development of the modern commercial lobbyist because we are told they are generally people who have a detailed knowledge of the workings of government but they also sit down with their client and work out their particular problem and match it in effect with government needs and government policy so that they become a broker to some extent, a marriage broker and we hear detailed stories about people who attend on government wanting something but without a lobbyist and completely ineffective. We hear that peak lobbying bodies such as yours do understand government very well because they've been doing it for, as you say, 130 years and they keep their eye on the policy ball but many can't do that so they hire people to do it for them and it's a very persuasive argument, Mr Lennon, I have to say but, at least to me. But it does seem that the, the distinction between you're calling the commercial lobbyist and somebody who may be pushing a philosophical or spiritual view in the case of a church with a particular view or some body with a philosophical barrow to push, and I don't mean that in a derogatory sense, becomes a group very difficult to distinguish from the commercial lobbyist. Everybody is pushing

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hard, everybody is very keen and everybody is meeting in private with government and it may be that government is suffering the damage. So while we appreciate the practicalities and you're referring to would you agree that at least in principle if one can overcome the practicalities and not make the system onerous that it, there is no good reason in principle for not making it transparent?---Well, given that I've accepted the need for transparency I can't argue against that, Mr Gormly, yes.

10 THE COMMISSIONER: Can you make any suggestions as to the practicality?---Well, I, and I'm just thinking, Commissioner, along the lines of, and it doesn't happen that often but it happens occasionally, a piece of legislation's before the parliament and it might be before the upper house and so it's at a crucial time and basically, you know, there are meetings taking place with us and with employer groups in the house, in various rooms and people are shuffling from meeting to meeting and there's nothing untoward, it's just the nature of the beast and it's the nature - - -

20 We're not suggesting that you've got to record those meetings immediately or even within a week but perhaps within a month?---Sure but, you know, some of those meetings could be the minister's had five minutes with us and he's down the hall or she's down the hall having five minutes with the employer groups and come back for a minute to check on something with us and then down the other end to check with them and so, where, in the process of, of trying to list all that we might forget, we might forget a few of those minutes.

30 Yeah, but why don't you, if you had a system which said on 15 January X, Y and Z had a series of meetings with (not transcribable)?---Well, if it was along those lines it'd be easier, yes, rather than us having to record each one.

Yes. I mean, we're, I mean, recognising that at times of intense negotiation there can be a series of meetings on a day not lasting long, without committing myself, it seems to me to be entirely reasonable for the entities involved simply to refer to a series of meetings on a day?---Sure.

40 Provided the people who are present are noted but the number and time of the meeting would not, would not be essential but I, and particularly if the other limb of our, I don't think Mr Gormly's got to it yet, but the other limb of the limb of the proposal which does involve government recording not exactly what was said but making a minute of the meeting, that would be there and that would be an independent record of the number of meetings or the times in which the lobbyist in the broad sense or let's say the entity that has people employed as lobbyists, they would not be required to make this record but there would be a record of it if government was doing its job? ---Right.

MR GORMLY: Would it be fair to say that you would expect that meetings that were held with government by a union or by you would be minuted by government, just in the ordinary course?---Yes.

Has it been your experience, I'm not asking you to point to anyone in particular, has it been your experience in the past that meetings between unions and government that are in the nature of persuasion are minuted?
---Ah- - -

10 Do you see minute-takers?---Not in the formal sense, not always, no.

That's been consistent evidence, Mr Lennon. We hear that sometimes they are and sometimes they aren't. But that's your experience as well?---Yes, yes. But generally there's obviously advisers there who are taking notes, whether it's formal minutes- - -

You'd accept that looking at it from a government point of view or from a community point of view, there really could never be a basis for a government officer to be meeting anyone that is not minuted?---Sorry, I- - -
20

You'd accept that any meeting between government and non-government would generally be minuted?---Well, I think there should be a record of the meeting, yes.

Yeah, yeah?---Yes.

All right.

30 THE COMMISSIONER: Not verbatim record, but a record of- - -?What was, yes.

- - -the principal aspects?---Yes.

Especially of the outcome?---Yes.

MR GORMLY: All right?---Our experience of most meetings with ministers is the final outcome is, we'll get back to you.

40 Yeah. But that's an outcome, isn't it?---It is, yeah.

Yeah. All right. Now, Mr Lennon, you would appreciate that this is really drawing a linkage between the Government Information Access Act on the one hand and the community on the other, so that we're filling in the process. Do you understand that?---Yes.

Do you have any reason to think that if minutes that you held with government, you or, or member unions held with government, which were appropriately minuted because, or recorded because they're government,

meetings with government, that they would be then stored by government and made available through the GIPA Act? You have no reason to doubt that that would work well or that there would be any difficulties from a union point of view if that occurred?---Oh, again, I had a, can I just make a general point?

10 Yes?---I had a friend of mine who worked for government and he made the point that the whole freedom of information should make it very difficult for governments to actually float an idea about a, just nothing to do with lobbyists, just governments developing policy and to sort of float an idea that maybe we need to build X railway line for way of example or something or do X, because that was then subject, that document itself was subject to freedom of information laws and then if it becomes public it gets blown up in the media as a government idea and he'll have to deny it and you can't have a genuine public debate or governments can't have a genuine debate internally about some issues and that- - -

20 THE COMMISSIONER: Well, that could be subject to commercial in confidence?---No, sorry Commissioner, it's nothing to do with companies or anything, it was just the government, if someone in policy decides, in transport to develop a policy paper, just to float some ideas about what they might do with transport was the concept, the danger is they, they're wary of doing that because if it becomes public then all of a sudden it's all over the papers and everyone has to deny it and you can't have a genuine discussion internally about good transport policy. That was just an example.

30 Mmm?---And that's only my concern about all of this in that regard, whether having everything in every meeting with every group that meets with government minuted and documented, allows for an open discussion internally amongst the groups.

It's a balancing issue really?---It is, it is. You know, if we want to suggest, and just by way of example, if we were to suggest something to a government minister and the government minister says, that's outrageous, we say no, the fact is that it could become public that the union suggested this in the first place and it's all over the, don't know what it is or something but, you know, that's our concern. We'd be circumspect in what we say and what say and what we're prepared to put, if you- - -

40 MR GORMLY: On one view, Mr Lennon, I appreciate what you're saying. You're saying that by publicising any idea you can in effect stop people from wanting to produce an idea.---(not transcribable)

Can I just tell you that so far as this inquiry is concerned, what's being dealt with is the process of persuasion or lobbying and the problem that you refer to is one that is really embedded in the current Government Information Access Act anyway. If there is a record of that kind and it can be located it's going to happen independent of anything that happens here?---Oh, I

understand that, but then I was just, as a general point about freedom of information I was just making that point that how do we find a balance with these meetings where groups are meeting with ministers, whomever they may be, will they feel free to sort of express ideas without it necessarily then at some time in the future risk will it become public and embarrassing the organisation?

10 Yes. Yes, I understand?---Look, I've got to be honest on this record. There are some of my union colleagues in meetings totally, you know, unsolicited, will say some things that, that afterwards we have to sort of, that's ridiculous, we'll call you in, you can't say that.

And it's been said out of lack of experience or something or- - -?
---Experience or lack of information or, that's right.

20 Yeah. All right. Now, Mr Lennon, I want to take you to another matter. You will appreciate that when Mr Nathan Rees, then Premier, brought in the register, it was followed shortly afterwards by a prohibition on third party lobbyists being members of government committees or boards. They were obliged to elect either being on the register as a third party lobbyist or being on the government board. And there were some resignations of experienced able people from government boards because of it. Now, do you have a view yourself, I'm sorry, I'll withdraw that. I notice that you and other members of the trade union movement regularly not only sit on government committees and boards but are sometimes in effect required by legislation to sit on government committees and boards because they may be the voice for that particular sector of the economy or the community. There are two views, Mr Lennon, about the problem of people who lobby sitting on committees or boards. One is that you can't lobby and in effect be on a government board?---Sure.

30 The other is that you allow rules of ordinary conflict, ordinary rules of conflict to apply so that if a conflict arises, people declare and behave in an appropriate fashion. There seems to be an air of unreality about suggesting that trade unions, if they are lobbying, would not sit on government boards and committees. I take it that those of your members who do sit on government boards or committees are all trained in the declaration of conflict issues. Would that be right?---Trained?

40 Well, told about it?---They're absolutely aware of the code that they, that government has, as you know, clear guidelines in this regard.

Yeah. Do you see any practical way of prohibiting members of the trade union movement or for that matter, employer bodies, from sitting on boards or committees?---Well, I wouldn't like to see that occur. I think it's in the interests of good governments to have representatives from various industry groups on many of these boards. The WorkCover board I sit on ah, and we have a mix of skills on there and I think that's a good thing. But I agree

wholeheartedly and, that generally if you are on a board that you shouldn't be involved in any discussions with ministers about issues involving that particular area.

Do you have a view about third party commercial lobbyists sitting on boards or committees?---I think that was a good move, yes.

That they should be banned?---That they should be banned, the conflict was- - -

10

Can you tell us what the reason is for that position?---Oh, again I think it's perception. I think it's too difficult to, from the public's perspective to see that there's a line drawn there.

20

THE COMMISSIONER: There is just an inherent conflict of interest that you can't get out of?---That's right. But in the case of Unions NSW, can I just give you an example, is, you know, workers compensation in the main, because I sit on the WorkCover board, if we're dealing with workers compensation, then it's the assistant secretary who deals with the issue in terms of lobbying government, not me, because of my role on the board. Now sometimes, and I met with the minister the other, two weeks ago on the issue, but generally last week there was a meeting with WorkCover and it's not appropriate for me to be involved.

MR GORMLY: All right. Well, you endeavour to, you endeavour to separate the roles?---That's right.

But that's because you perceive that there can be conflict?---That's right. Yep.

30

All right?---I have an obligation as a board member, which is different to my obligation as a union official in regard to workers compensation. And therefore I have to take my role as a board member first in this regard, that's where I'm, I'm there as a representative on the board and there's a consequence if there's discussions about workers comp as an industrial issue with Unions NSW which should be handled by someone else.

40

Does the same apply with the employer representatives on WorkCover? ---There were. There is, not at the present time. They've just made some re-appointments to the board.

I missed that?---I'm sorry. At the present time the ministers just made some new appointments to the board.

Oh, I see. But there is, there are spots so to speak for employer representatives on the WorkCover board?---There aren't formal spots for any particular group. But in a sense there's been some (not transcribable)

Traditionally there's been (not transcribable)?---Yes. That's right.

And does that apply to the insurance industry as well?---They have, one of my work colleagues is from the industry, yes. But I don't know their full background, so I don't - - -

I appreciate that. But would it be fair to say that the, that the WorkCover board and boards like it endeavour to find a spread of representation across the community?---Yes.

10

The relevant part of the community?---Yes.

Right. So it's a stakeholder board so to speak?---In that sense, yes.

Right. All right?---Well - - -

20 THE COMMISSIONER: That would inevitably give rise to conflict of interest of a kind for everybody at some particular time?---That's, sorry, let me just, it's not, it's a board that understands that it's a complex industry and there are various facets of it and that - - -

MR GORMLY: I'm not disagreeing with you Mr Lennon, I appreciate that it's a stakeholder board and it's therefore a representative board?---But I'm not, no, because I'm not there as a stakeholder. I'm there as someone who's got a particular background that therefore is important for the good governance of workers compensation in this state. That's my perception, the way I take my role. So I'm not there simply to represent the interests of (not transcribable).

30 I understand?---I'm there to represent, do the best for the community at large in terms, and the state at large, in terms of what is the appropriate way to run a workers compensation system and what is appropriate (not transcribable) for the board.

All right. I understand the distinction. You're not there as a stakeholder, but nevertheless, you and other members of the board would be drawn upon for their knowledge and experience - - -?---Absolutely.

40 - - - of different areas?---And you'd have to have a cross section of knowledge and experience to be drawn upon, that would allow for the, whatever the entity that you're on the board of, whatever it's area of operation would allow for that to be able to make proper consideration of matters at a board level.

Right. So that to the extent that there are conflicts arising for anyone on the board, the conflict rules apply?---Yes.

All right.

THE COMMISSIONER: Mr Gormly, if you've finished with this topic - - -

MR GORMLY: Yes.

THE COMMISSIONER: - - - I just want to go back to the register.

MR GORMLY: Yes, certainly, Commissioner.

10 THE COMMISSIONER: Mr Lennon, just come back to this register and
the position of bodies such as yours, one of the proposals is that there be a
separate panel for bodies such as yours, that is you're not professional
lobbyists. They would appear on the register. And the persons, those
persons employed by say for example, Unions NSW who, who do see the
minister or senior bureaucrats for lobbying activities would have to register,
would have to appear publicly on the register and would have to sign a Code
of Conduct before being allowed to register. So the point of the registration
is to inform the world who on behalf of Unions NSW or the employer group
or the church or whoever it is, is going to see the minister, and also to
20 ensure that those persons are bound by the Code of Conduct with the
sanction that if they don't comply with the Code of Conduct those
individuals, not the body but the individuals could be removed from the
register. And the point of all of that is that there is this view that there
should be a) openness, b) coupled with some kind of provision for ethical
conduct and c) a sanction against those who, who do not comply with
ethical conduct. What are your views about that system?---Sorry,
Commissioner, I'm just thinking, because there's a lot in your question
there.

30 Yes, there is?---But I'm thinking through. I mean - - -

Just take it slowly. I think it's an important issue. I'll just finish the story?
---Sure.

When it comes to sanctions there has to be an independent body to
administer them. At the moment the register is in the hands of the Director
General of the Premier. There is a suggestion that it be moved to an
experienced and properly qualified independent government agency that
deals, say for example, with the GIPA Act, so that there is a degree of
40 confidence in these decisions. That's the, that's another limb of the, of the
idea. It's, the whole point of it is to give some teeth to this notion of ethical
conduct and openness?---Yes, I understand. I suppose I go, we're still
dealing with, somewhat struggle with our threshold, with our threshold issue
about who falls into the, the view of lobbyist as we put in our - - -

Well, the lobbyist would be defined as a person who undertakes lobbying
activities. Lobbying activities would not involve making arrangements for a
meeting, conveying information to the minister, it would involve those

persons who would have formal meetings with the minister. I mean that's putting it very generally?---Sure.

But that's the idea?---With the idea of a register and a public document, I suppose I, I mean we're on the public record legally saying we're out there a) with government about issues, so it's on the public, we're in the media often arguing, not necessarily Unions NSW, but unions at various times, we're arguing with government. It was fairly evident back in 2008 that Unions NSW was arguing with the government about electricity
10 privatisation, so, I suppose in the sense if you're saying we have to formally put that on a public record, given that we're out there publicly proclaiming it anyway, makes no difference in that regard. I suppose it comes back to the question then about, your other issues about the practical effect of that and the meetings and the Code of Conduct. Just in my own mind then you know, we have as I say five or six officers who at some stage may meet with ministers as various times over a period of six to twelve months on a range of issues could be anything from meeting about transport issues to the integration of the government related appeals tribunal into the Industrial Relations Commission. It's a plethora of issues. And I just have to be clear
20 in my own mind, you know, then we would have to make it very clear now that it is only this five or six, who they are, and they're subject to the Code of Conduct and the necessary training that will occur as a consequence.

Yes, but you all the time, we would be thinking of ways and means in which to make this whole thing easy and simple so if the, if the register is a system of self registration online, you could take off and put on people subject to them signing the Code of Conduct, hopefully in the easiest possible way? ---
---Yes, I accept what you say there, Commissioner. I just, in our submission and people would say, you know, there's a difference between Unions NSW
30 or Australian Business Limited and the local netball club who wants to lobby and the question is too who, how far down the government chain does this go, is it to lobbying your local MP about an issue.

Well, an Australian netball club might want to open a club in a particular area where people don't want a club, there's a great deal of lobbying and difficulty, a great deal of lobbying going along there and a lot of interests are involved?---Sure.

I mean, that's the kind of thing that we've been told about often, that hiding
40 behind, I don't mean in a pejorative sense?---No, I understand.

But concealed within the notion of an organisation established only for altruistic purposes is, is the idea that those altruistic purposes can at times conflict with another person's altruistic purposes and should they be secret even though they're altruistic and sometimes they conflict with other people's commercial purposes?---Yes, I accept that.

MR GORMLY: Mr Lennon, a couple of times you've referred and I agree with you to the fact that commercial, that there's a benefit in commercial lobbyists being registered because one then knows who they are, you know they're being paid but also their client is exposed, there isn't a hidden lobbying member and you've referred to that by saying when Unions NSW goes to see the government everybody knows who they are and that's true. If Westfield's or Leighton goes to see government through their government relations people everyone knows that they're going there because it's a Westfield's or a Leighton's issue that they're going to be seeing government about. Can I suggest though that with unions, in particular even more perhaps than employer groups, a reason for putting the lobbying up front or perhaps making it more transparent is that unions because they are not just financial or commercial bodies interested in money often lobby on other issues as well. Employer groups do too but unions in particular might lobby on social issues or political issues so that the range of lobbying by a trade union is much wider and much less clear, for example, than it might be with Westfield's who are going to be lobbying about a shopping centre. Would you accept that in the interests of transparency at least that there is a justification for requiring unions more than some other bodies to engage in this transparency process because they could be lobbying on any number of things about which the public will never know? Do you accept that?---I think, I think just to draw us into that sort of neck of the woods is a bit unfair, I mean, you'd say the Catholic Church would just lobby who knows.

Absolutely?---There's a number of institutions.

I agree with you?---And I'm not taking out against the Catholic Church, I'm a paid up member there as well, but I, I just think that, for instance, you mentioned Westfield.

Yeah?---Well, I don't know, I don't have any experience but I'd be very surprised if Westfield didn't lobby the state government about occupational health and safety laws for instance in this state.

Yes.

THE COMMISSIONER: Or even taxes?---Yeah, well, that, yes, absolutely, there'd be a range of issues, planning laws clearly.

Capital gains tax, there are many issues?---That's right and I'd put - - -

And I'm with you there?---Just to draw us into that net per se (not transcribable) and in the main (not transcribable).

MR GORMLY: All right. Can I put this way then, that there is obviously a very serious community benefit in knowing who is lobbying government, that is, with a commercial lobbying or the lawyer or the accountant, it does become critically important that people don't get to go and see ministers for

a fee without there being a disclosure at some point along the way as to who they're acting for, that that is important, isn't it?---I understand that the public's concerned on that issue, yes.

But likewise even if you know who the body is and in whose general interest they're acting it becomes a matter of public interest and an issue of transparency that the topic on which the lobbying has occurred, whether it's a union or Westfield's or the Catholic church or any other body it becomes a matter of public interest that at some stage people are able to know what they are lobbying about. Would you agree with that?---Yes.

Right. Can I take you to another and completely different topic?--- I just want to add - - -

Yes?--- - - - say thought that because we are a public institution that's in, is in the public eye, I mean, most of the things we are out there lobbying about are, you can go to our website and see what our campaigns are and one of the things we're lobbying government at the present time and that is we think there should be an additional public holiday in New South Wales and it should be the first Monday in August and I've been on, in the media about that publicly and it's an open and transparent campaign.

I've looked at your website and I understand that's to bring it in line with the other states, is that so? That New South Wales is down a public holiday day?---That's right. Well, we have a couple of arguments, that's one of them, yes.

All right. Well, I understand that point and I accept that you may well make known most of what you do but that wouldn't necessarily be true of a large number of other lobbying groups, would you agree with that?---No.

At the present time the new Government Information Public Access Act requires or is starting to require government officers to expose large amounts of information mandatorily?---Yes.

All right. Just give me one moment. Just give me one moment, Mr Lennon, I just want to make sure that I've, yes, Commissioner, I've covered the material I'd like to cover.

40 THE COMMISSIONER: Thank you, Mr Lennon. Thank you for coming and thank you for - - -?---Could I just make one last - - -

Yes?---I'm sorry, one last point I wanted to touch on.

Please do?---Is clearly in terms of our relationship with the state government, you know, we have two roles. One is, as pointed out, we are representing the interests of working people and lobbying the government for changes to law such as public holidays will affect all workers across the

state and then the second role of (not transcribable) we represent or what we generally do is, in areas such as railways and electricity, that the relevant unions negotiate with government in the government's role as employer and so it's no different in that sense to the role we play with private sector employers in negotiating, it's an industrial relationship, not a political relationship in that sense and whatever the outcome I think we need to draw, of the Commission's inquiry we need to draw some distinction there. I spent last week some time with the unions and with RailCorp and with the minister for transport negotiating where we are with this wage negotiation with RailCorp but it was simply about an industrial negotiation and what they wanted their workers to trade off and how much money we wanted as a consequence, the normal - - -

So are you saying that industrial negotiations should be excluded from this? ---Well, I just think we need to make that distinction clear in our role with government.

Well, I understand that you have that distinction but I mean is that your submission, that the, that industrial negotiation meetings should be excluded from this regime?---Well, I don't see that as lobbying as such, that's not a lobbying role that we're playing there, Commissioner, we are playing a industrial negotiation role, we're not lobbying the government, we are sitting down and negotiating with them about a fair outcome of wages and conditions in their role as an employer, not in their role as a legislator or regulator. There is no outcome from that, those discussions that will impact on changes to law in this, or regulation as I understand it in this state. It's a simple matter of them saying here's what's available in the budget and here's what we're prepared to pay and we're saying that's not enough, the usual industrial negotiations.

Well, that's a new idea to me and I'm not going to say for, like I haven't obviously thought it through but that kind of negotiation in theory is subject to the same problems as lobbying, isn't it? I mean, it's the kind of thing that, although it is simply a negotiation between employer and employee, because they are so many employers, employees involved and because of the nature of the employment such that it very often affects the way of life of the community at large there is something to be said for requiring the same degree of openness there or is that wrong?---Well, I could accept, see your perspective but I just want to make it, if we're talking about lobbyists and what lobbyists do in that sense and we're not there, when we're negotiating with government to improve wages and conditions I don't personally view that as lobbying, that's not a role, we're in there negotiating.

Well, would you regard a public holiday as part of that?---No. Our argument about public holiday is different 'cause that involves changes to legislation and it will impact across the state and, and that's- - -

So are you distinguishing between legislation on the one hand and employment conditions on the other?--- I am. Well, no, I'm, no, I'm, legislation, public holidays involves legislation.

Yes?---Okay. But employment conditions for a specific group of workers, in this case- - -

10 Yes.---?- - -railway workers, where we're negotiating directly with their employer is, is a different matter as I see it. It just so happens the employer happens to be the Rail Corporation of NSW or Railcorp, which happens to be a state government entity.

But I mean that is a prime example of working conditions that affect the whole community because of the strategic nature of the employment?---The same could be said if we're negotiating with Caltex about the outcome at the oil refinery at Kurnell and the consequence of that is that we win a wage increase and petrol prices go up, that affects the whole community as well, Commissioner.

20 Yes. But that's- - -?---And by the way, I don't, don't, don't think that's going to happen soon so, but that's my point.

This is just thinking aloud?---Sure.

30 Once it affects the community in that way, would not secret meetings between unions and the government or between employers and the government that affect the outcome give rise to the same perception as arises from what you accept as ordinary lobbying activities?---Well, I'm not suggesting all these meetings that we have with regard to negotiating is a secret. For instance, last week our meetings we had were again- - -

But some are?---For sure.

Some may be?---Sure. But secret, secret has certain connotations. They're just regular meetings that you have from time to time.

Secret means simply, I don't mean to give it connotations?---Sure.

40 It just means meetings that are not disclosed to the general public?---Sure.

It's those, it's the meetings of that kind that give rise to the perception in ordinary lobbying activities. Isn't there a danger that if you're going to exclude those meetings from labour negotiations, where large numbers of employees in areas that affect the public as a whole, that that too would give rise to similar perceptions?---I can see your perspective, Commissioner. I'm just raising this as an issue to say, because- - -

No, it's a valid point that you raise and I'm exploring it with you?---Sure.

I'm trying to understand what the implications are if we accept your distinction?---Sure.

And is there a danger in accepting that distinction and is there a rationale for doing, the rationale you give is that one has to distinguish between legislation on the one hand and an ordinary- - -

MR GORMLY: Contract.

10

THE COMMISSIONER: - - -contract for employment on the other?---Yes.

But I'm querying with you whether the ordinary contract of employment, when it relates to all the workers in a particular industry in a state which has strategic importance, is rationally to be distinguished. It may be and it may not be. So I mean I'm really asking you if there's anything more you have to say on the point?---Well, no. I, I just wanted, just didn't want to leave here without any, we've made, we've touched on the point in our submission I think, in our last two points and I just wanted to make that clear- - -

20

Yes.---?- - -that it is an area of concern for us that we see what the role or the interactions we have with government on two different levels. There's one where we're lobbying them about changes to legislation and there's another one where we've got the relationship with them as the employer.

Well, let me come at it another way. What objections would you have to all your activities of both kinds coming under the same regime that's been put to you?---Ah, well, I just, again, I, I, I mean, most of our negotiations, for instance industrial negotiations, wouldn't take place with a minister on a regular basis. It may involve a minister at some stage, as last week with Railways that occurred, but generally we're with chief executives of Railcorp or chief executive of one of the distribution, electricity distribution companies or a DG of a department, but ultimately, depending on the nature of the beast and where the, where we get to in the negotiations, a minister may have to come into the negotiations. Now, maybe that's where the distinction is, 'cause that's when we're allegedly lobbying government. It may change from negotiation to lobbying in some people's minds at that stage, but I just think that section, without trying to be too definite, we've got a lot of union members who have as their employer the state government and the nature of that relationship I see as different to one where we as Unions NSW are making representations to changes to legislation.

30

40

Yes, thank you.

MR GORMLY: Commissioner, I am so sorry, there is one short matter, Mr Lennon. Have you, has Unions New South Wales itself used an external or commercial lobbyist at any time?---Ah, not to my knowledge, and I may

stand corrected on this. I've been there twenty years. To, not, not to my knowledge to a state government. We have recently, we own some property around the state and we have recently had a consultant who's done some work on us, for us and made representations to Auburn Council about that piece of property.

Right. That's a planning-type issue?---It is, yes.

10 Right.---So it was not, nothing to do with industrial law or something and ah, we, and he would be more, well, looking at the background paper, he's more a technical consultant.

Yes. All right?---But he actually went to the council meeting for us to make our representations with regard to the zoning proposals.

20 I take it in the comments that you've made in your paper then the submission to the commission, underlying it is an acceptance that there is a role for the commercial lobbyist, it's just that you prefer the register to be restricted to them. Is that right?---That's right.

All right? And thank you, Commissioner?---Thank you.

WITNESS EXCUSED

[11.18am]

MR GORMLY: Commissioner, I call Ms Deirdre O'Donnell, the Information Commissioner.

30 THE COMMISSIONER: Ms O'Donnell, would you care to give your evidence under oath or do you wish to affirm?

MS O'DONNELL: Under oath.

MR GORMLY: Commissioner, thank you, Commissioner. Ms O'Donnell, your full name is?---Deirdre Ann O'Donnell.

Thank you. And you're currently, I think you're the inaugural New South Wales Information Commissioner?---I am.

10 Right. And you have been appointed under legislation and in particular the Government Information Information Commissioner Act 2009?---Correct.

Right. And I think it's your role to administer the Government Information Public Access Act 2009?---Correct.

Right. There is also I think a float, perhaps more than a float, a proposal that you would have, carry out the additional role of privacy. Is that- -?
---It's, it's more that my office, the, the Information Commissioner's office and the Privacy Commissioner's office should merge to an Information and
20 Privacy Commission. There will be a separate Privacy Commissioner who will be the champion of and responsible for the Privacy Act. I will remain the champion of and responsible for the GIPA Act.

Right. All right. Thank you. Where is that proposal up to at the moment?
---A bill was introduced at the last sitting of parliament and I imagine there will be further discussion at the next sitting of parliament.

Right. Thank you. Now, I'm just going to take you through a little bit of your background and then ask you if you'd like to make any kind of
30 opening statement (not transcribable). Now I think that you prior to becoming the Information Commissioner for New South Wales were the Telecommunications Industry Ombudsman for about three years. Is that right?---That's right.

And I think from 2002 to 2007, you were the Ombudsman in Western Australia?---Correct.

And I think in that Commission as in your present Commission, you had fairly wide investigative powers and the powers of a Royal Commissioner?
40 ---That's correct.

Now I think you were also the State Records Commissioner in Western Australia?---Yes.

And you have been a member of the Western Australian Integrity Coordinating Group, the Energy Ombudsman for Western Australia and I think that you have, you in addition sit on a large number of or have sat on a

large number of committees and boards and so forth?---Probably not a large number, but certainly I have sat on committees and boards, yes.

All right. I think you come from a background of an Arts education and French. You've got an MBA and a Masters in Commercial Law from Melbourne University?---That's right.

All right.

10 THE COMMISSIONER: Welcome to New South Wales?---Thank you, Commissioner.

MR GORMLY: Now, Ms O'Donnell, you I think have met with us and I think you had explained to you some of the issues that we would like to question you about today or discuss with you today. But is there anything that you would wish to say by way of an opening or preliminary statement before we start?---Perhaps I might make three points, Mr Gormly, if that's okay. First of all I thought it would be worth going through the role of the Information Commissioner, I think it's directly relevant to the sort of
20 discussions that you're having to (not transcribable). And if that's all right with you I'll just quote from my Act, because one of the wonderful things about the GIPA Act is that it makes the role of the Information Commissioner and the Information Commissioner's powers abundantly clear. So, under Section 17 of the GIPA Act - - -

Now, can I, I'm sorry - - -?---May I? I'm sorry - - -

- - - to interrupt you - - -?---Yes.

30 But I think, Commissioner, could I hand up a volume that has in it two of your OIC that is Office of Information Commissioner leaflets, which set out ways to access government information and how to apply the public interest test. I know you've issued many, but I put those two in together with a copy of the, of the Government Information Public Access Act and a copy of the Act which establishes Ms O'Donnell's position.

THE COMMISSIONER: Thank you.

40 MR GORMLY: I hand up that volume. Sorry to have interrupted you Ms O'Donnell, if you - - -?---No, that's, Mr Gormly, that's fine. So just I'll make the points quite briefly.

THE COMMISSIONER: What section is it?---So Section 17 of the GIPA Act, Commissioner.

Yes, thank you?---Okay. And I'll really summarise this in a way that I'm summarising it for agencies and the public at the moment. The first role of the Commissioner is to promote the object of the Act, awareness around the

Act and that it exists and that there is no unenforceable right to accessing government information by the public. The second role the Commissioner holds is to assist and I always hold that very, very, I value that verb very strongly, to provide assistance training to agencies in complying with the Act in making sure the Act is adhered to and it's object achieved. I have a review function under Section 17, which is in respect to access applications. To review aggrieved persons appeals for a review of an access application or decisions of agencies. And then I have a more (not transcribable) feedback role as I describe it to report on the effective function of the Act and the outcomes that have been achieved. So that's my role under the GIPA Act. And then under the Government Information Commissioner Act, I also have the equivalent to the Royal Commission roles. I have powers to receive investigations, to conduct, to receive complaints to conduct investigations, to report to parliament about the outcome of systemic issues and, and to refer matters to the, the Supreme Court if I see cause. So that's in essence the role of the Information Commissioner. It's a very new office. We've been in operation since 1 July, so a lot of testing is yet to come. And so far my focus is very much on promoting awareness of the Act and then new regime. And the essence of the new regime and I suppose the key difference between the old FOI regime and the current regime is that the focus is on opening up government information to the public so it has a focus on the presumption being that all government information is open to the public unless there is an overriding public interest against disclosure. The touch stone is public interest. This is different from the old FOI regime where there were categories of exempt information. Now the touch stone is public interest and tests under public interest. So I'll stop there.

Thank you.

MR GORMLY: All right. Now, I'm going to take you, Ms O'Donnell to the workings of this Act in a little bit of detail if I may. Commissioner, in the volume, the first, I think the first document you have is Ways to Access Government Information. It's a very good document.

THE COMMISSIONER: Yes.

MR GORMLY: I'm just to use that as a platform. Ms O'Donnell, at the present time this Government Information Public Access Act has four different types of release of government information. Is that correct?
---That's correct.

The first is that a strong focus on this Act is that government departments are mandatorily obliged to make information available automatically?
---Yes.

That is without request, but simply to start exposing information?---Correct.

And I think that there are requirements in the Act for that to be notified and made available through a website?---Yes.

And in fact every government agency now will have a website on, which usually I think, Public Information. Is that so?---It could be Access to Information. There's a range of titles with access in the, in the descriptor.

10 Right?---Although, Mr Gormly, some very small agencies may not have a website, as, even have a website for example, some local government authorities, although to the best of my knowledge everyone does have some form of website.

Right. All right. This Act of course covers local government as well?---It does.

20 And once one enters the Right to Information component of a website, there may be an array of different categories of information which could include government contracts, local policies, a disclosure log and any other information that might fall to be published in the mandatory category?
---Correct.

Mandatory release category?---That's right.

And I think that there is also a proactive release in the sense that even if it's not mandatory there is a, a procedure in the Act which would encourage state and local government agencies to make information available on the internet, though perhaps sometimes at a cost, if that needs to occur?---That's always possible, yes, under this Act.

30 Right. There is then a third category and I'll deal with these two together. The third and fourth categories formal and informal, I think that the informal release can be the release of information by a government body when somebody simply rings and asks for it?---Yes.

Or contacts and asks for it?---Yes.

40 So there's no formal application required, you can simply ask for it and the government department is authorised to release it?---Correct. And authorised is the verb. And the most common example is personal information held by a government agency about oneself.

Yes?---Yes.

All right. And then there is the process of formal application which people can be advised to make so that a judgement can be made about whether information is to be released or not. Or alternatively, if people make a formal application, they can still be provided with a release of information informally?---Yes.

That you don't need to go through the whole formal application process if, if government thinks that they can just provide the information?---One of the benefits is seen as that communication about what is the nature of the citizens request and how easy is it for the government agency to provide that information.

10 All right. So this is really a radical movement away from the old Freedom of Information Act and there is a general intention in the Act and requirement in the Act that public information be made available and pushed out into the arena or made available on request but subject to certain categories?---That's correct.

20 All right. Now, to see the categories, I think we first of all go to the next page. Commissioner, there's a document there that's headed How to Apply the Public Interest Test. I think in fact what we've got is three processes for making determinations under the Act. The first is that where there's any doubt the assessing officers must weigh the public interest in favour of, against weighing the public interest against release of the information. Is that correct?---Yes, yes.

And I think they are expressly required to ignore any factor which may relate to embarrassment to the government or any similar consideration? ---The essence is public interest as you've stated.

Right, all right. And where the release in the public interest outweighs non-disclosure or where they're evenly balanced then there will be disclosure?---Yes, because the presumption is in favour of disclosure.

30 All right. So that that's the single public interest tests that are applied. If there is a determination made by a department against release there can be a review by you. Is that correct?---That's correct.

There can also be an application to the ADT?---Yes.

Or the two can occur together?---I can't review a decision that's being considered by the ADT.

40 Yeah, but they can make the applications at the same time and whichever occurs first (not transcribable)?---Okay. Yes, yes, there would be nothing that would stop that, that's always true.

All right. But you can't, you can't second guess the ADT?---Correct.

Right. All right. Now, there is, on the back of that page we then get two other categories. The first I think is to be found, well, perhaps the easiest way to look at it is to find at the bottom of the column on the left-hand side, Commissioner, a heading Presumption Against Disclosure in Some Cases. I

think there are 12 categories where there is a presumption against disclosure and it's conclusive. Is that correct?---Yes, yes, in schedule 1 to the Act.

And schedule 1 sets out in some detail what is summarised on this document in short form so that where there are overriding secrecy acts of parliament there will be a conclusive presumption against disclosure?---Ah hmm.

10 If there's cabinet information, this is the second category, executive council information is the third, there will also be a presumption against publication?---Yes.

Correct, all right. Now, can we move then to the next category which as I understand it is the table to section 14 and section 14 provides that there is to be a conclusive presumption in an overriding public interest against disclosure for schedule 1 but then in section 14 to which we've just looked at, in section 14(2) we get a table, public interest considerations listed in the table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there's an overriding public interest against disclosure?---Yes, so it gives a much simpler regime as you said earlier.

So that there is a conclusive category of seven heads set out in this table? ---Yes.

And they are the only heads that can be taken into account when weighing public interest against disclosure?---Yes.

30 Right. Can we just look at those. That table is immediately after section 14. The first one really relates to what happens at ministerial and cabinet level, correct?---Yes.

And let's move to the second one. There is then law enforcement and security which is effectively a combination of things that might relate to police investigation or DPP prosecution or to terrorism matters?---Mmm.

Likewise in the third we deal with judicial processes and individual rights? ---Yes.

40 And it's the fourth one that I particularly want to focus on, Ms O'Donnell, business interests of agencies and other persons. Now, there are there five categories, (a) to (e) - - -?---Ah hmm.

- - - of which (b) deals with commercial in confidence. (d) deals with prejudice to legitimate business, commercial, professional or financial interests?---Yes.

Now, can we just focus on that area for a moment and I think I've explained to you a commonly heard objection during the course of these hearings is that disclosure of material that occurs in ministerial meetings or with directors general that involves material that is commercial in confidence would prejudice government and would prejudice parties dealing with government and I appreciate too that you are heading a very new jurisdiction but can you tell us do you have a view about how this fourth category, I'm not endeavouring to commit you in any way, but how this fourth category would operate?---I would imagine again that it would come up in terms of an agency refusing to disclose information in response to an application by a member of the public or a member of the media and, and if the person, the applicant was refused access to information that something like that would be a reviewable decision by the Information Commissioner and that would be, it would be up to the agency to put forward that as the public interest test consideration which, which they held to be of higher order than releasing the government information and, and it would be then down to my office to assess the quality or the merits of that argument.

Now in, in carrying out your assessment you're not bound by what either party says as I understand it?---No.

You can carry out your own investigation?---Yes.

You can use various powers to determine the question?---Yes, yes.

Or to increase your information?---I call on expert advice whenever I need to do so that's the independence of the role of the Commissioner.

Or even enter premises should you wish to do so?---Enter premises, request information, exactly, so using those coercive powers if, if I deemed it warranted, yeah.

Right. And I think in part one of the ramifications of that power is that if you find something that may be untoward you then have the power to refer that information off to relevant bodies including this one?---Exactly, or the Ombudsman as appropriate, yes, so it's part of what I think is, is very powerful about the Information Commissioner's role in its link to that integrity arm of government, yes.

All right. All right. So that in determining questions then in this section 14 table category 4 interests you wouldn't necessarily be limited to the information provided you can carry out your own investigation?---Exactly.

All right?---Yes.

Now, Ms O'Donnell, I think in the course of a discussion that we've had with you on another occasion you understand that, that the matters that are being investigated by this Commission concern lobbying?---Yes.

And that in particular there is a proposal that meetings between government and non-government which would amount to lobbying, that is, an endeavour to, I think you've had an opportunity to see the Issues Paper?---I have.

10 Yeah, that would amount to an endeavour to change policy or legislation or to otherwise influence government might become the subject of some disclosure, public disclosure, perhaps on a self-entry database where the name of the lobbying entity and the persons involved, the date of lobbying and the name of the person being lobbied were disclosed?---Yes.

As you foresee the way in which this Act, that is your Act, would operate, would you agree with or disagree with the proposition that the provision of that information would enable people to better use the GIPA Act to get information?---It would in my, in my view, yes.

20 Can you tell us why you think that would be the case?---Well, the nature of the disclosure as you've just defined it, that is that there was, who the parties were, would probably be sufficient in and of itself to indicate to an interested party that there might be something they would be interested to know about that occurred at that meeting at that time.

All right. From the point of view of the media as well as the public, you would, I take it, acknowledge that often non-transparency issues arise because some, the outcome of a decision is seen publicly but none of the information that led to the decision is available?---Yes.

30 Would you accept that by publishing the dates of meetings between lobbying entities and a body lobbied, together with the date, would enable people at least to track back and find a starting point for a meeting and then make an application to the department, ultimately perhaps reviewed by you, but which would then enable the information to be obtained?---Yes, it would.

40 Right. Putting aside issues of practicality about what information can be put on the Website, do you see any reason why a system like that would not fit with your act?---No, I don't. I don't see any reason why that wouldn't, Mr Gormly, may I make a small comment about another way that that matter might be dealt with?

Yes?---My understanding of the New Zealand jurisdiction, which has similar sorts of objects to ours, something like that could conceivably be covered by an agency declaring that it was entering into a review process, that it intended to conduct a series of meetings with a number of lobbyists and at the end of that process, that it would be making its decision open. And that would be another way of dealing with the transparency requirements, as opposed to a meeting-by-meeting disclosure. But that's, that's at the discretion of the agency. One of the long-term objectives of the

GIPA Act would be that agencies would more proactively declare up-front their intention to undertake further research or to open for public discussion a specific issue. So that's just another angle potentially.

I understand.

10 THE COMMISSIONER: The point you raise is of considerable interest. The proposal that's so far generally been made is that the lobbyist to, and I use that term in a very broad meaning, would have the obligation to disclose the information initially. That is, people who meet and the date of the meeting- -?---Ah hmm.

20 - - -not the department. The notion you've expressed is that the agency itself would be involved in that disclosure?---Could potentially, yes. I have a personal view that your staff are aware of from my days as the Parliamentary Commissioner Western Australia, that it is really important as a public servant that you disclose, that you are accountable to put on the record and potentially have that open to public access that you have been involved in meetings and the nature of the discussions.

Well, you have been informed of the second limb of the proposal being considered, and that is that the government department is obliged to minute the meeting?---I see, yes. Well, that, that would, that would be- - -

And so that you would, there are two limbs to it, you'd have one, the register with names, dates and, names and dates of meetings, the entities involved?---Yes.

30 The second limb is, and also the first one would be, would also have as part of it the notion that the people who are registered can only be registered if they sign a Code of Conduct. Then you have, the second limb is that the department is required to keep a minute of the meeting and retain it? ---I understand, yes.

40 So that the concept is that the public, on some kind of self-registrable online register, would be able to see who has met and that there was a meeting and then would be able to use the GIPA Act to apply to the agency to produce the minute of the meeting which they are required, whether by law or departmental fiat or some sort of regulation, they would be able to trace the minute themselves through the GIPA Act?---I see. And then make the public interest weighing up test about whether it should be disclosed or not?

If the person seeking the information is met with a refusal by the government agency or department, the government department would then have to justify its position under the GIPA Act, under public interest divisions?---Yes.

That is the basic theory of the scheme?---I see.

Do you have any comments as to that?---It sounds perfectly logical. In terms of government records in any event regardless of the nature of them, they all fall under that same, under the same protections and the same provisions as, as the, as the GIPA Act. So that's not unique and that's always an efficient outcome, isn't it, that you don't have a separate regulatory system. So the proposal then is really different for the lobbyists and their requirement as you've outlined it to me to keep the register updated and - - -

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Yeah. But the point, the main point of the register, as far as I personally am concerned at this moment, is that it is a form of imposing the Code of Conduct on the individual lobbyists.---I understand. Yes, I see that. And that's, that's perhaps earning their right to be a lobbyist and therefore to enter into an - - -

Exactly, which is a step towards a professional body regulating lobbyists? ---I understand. Yes.

20

MR GORMLY: Ms O'Donnell, can I just explore with you a question that has arisen here that arises from the material the Commissioner has just raised with you. That is as to where the disclosure of meetings might occur. One idea is the, or perhaps the main idea as outlined by the Commissioner has been that the information about meetings would go on the register supplied by the lobbyist. Another idea, and perhaps it's an additional item, would be that government agencies through the information component of the Website that's been imposed by reason of your Act be utilised to list meetings with lobbying groups. That might perhaps provide a matching between two sources of information which would no doubt at times produce discrepancies but would probably be substantially accurate. Do you see any practical reason why your information, the information component from your Act on agency websites could not be used to list lobbying events, assuming that they were appropriately defined?---No, of course not. When, when I speak to agencies I say that what the public is, well, step right back. An Act like mine or the Ombudsman Act or the, or the ICAC regime is about promoting public confidence in the way government agencies operate, and confidence, part of that confidence can be through transparency and accountability and part of the mechanism of the Information Commissioner regime provides is a readily-accessible mechanism for that transparency to be effected. So if an agency is in what we might call a high risk area where lobbying activity occurs and where there is a lack of clarity or transparency, that agency may, ideally might choose to say, well, to promote public confidence in our integrity and the rigour of our process, we will have a subset or on our access part of the Website about who we do business with, when we do business with them, the sorts of circumstances in which we would do business with them, how we record our doing of business and at what stage we think it will be in the public interest to make the general public aware of the nature of those discussions. So they could actually be

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proactive, which is one of my wonderful words in the GIPA Act, about telling the public how they will engage with lobbyists, the rules that they are doing it, as I said, under a regime that's accountable, and the basis on which they propose to make information available. Then that can always be tested, of course, by a member of the public, or that might be sufficient.

10 There has been expressed here on some occasions a concern, which could be taken to be a legitimate concern that the listing of meetings of that type might itself become an onerous administrative obligation that would slow things down. Do you see that as a possibility?---I could imagine that it could be a possibility for certain, for certain government departments that extensively deal in the commercial world. I don't know that with my own knowledge, but I could imagine that it could be, it could be an issue.

20 That may come down to a question of definition presumably. Let me just put to you a proposition that if a member of the public comes into the RTA to get a driver's license and it requires an exercise of judgement or discretion, say for a disabled person of some kind or an elderly person, it would become inappropriate for that kind of information to be listed on a website. Do you agree?---Because it's personal information, that's right, particular to the individual.

Well, yes, but also without pushing to denigrate the act of an individual person when they're trying to put their view, it's also not, it's information of a very, very small compass likely to accumulate a very large number of records to no public utility?---I see. Okay. Yep. Yep.

30 So presumably one would have to define the degree to which you would want government departments logging this information?---Yes. Yes, what is the utility, yeah.

Might that be a department by department problem?---I imagine it could be. I would imagine that there would be different levels of risk, to use that word, or different levels of lack of confidence in processes of, yes, of a range of government departments, that's true. Yes.

40 THE COMMISSIONER: Did you say that in New Zealand this happened? ---Well, my understanding, in discussions with the New Zealand Deputy Ombudsman, who has a like role to mine as Information Commissioner, he was explaining to me how the culture in New Zealand has changed towards a more proactive disclosure. Because one of the, the heart of my Act or the success of my role is that governments feel, government agencies feel more like telling everybody what they're doing, to put it at its simplest. And he was giving us case studies of how government agencies who originally were very defensive and secretive about their information because they held it as theirs, not the publics, had begun to turn around and to think, yes, I must tell the public about these particular aspects of my business that they're really interested in. And you can judge the level of public interest by, in the olden

days, FOI applications and hopefully part of the new regime will be agencies looking at previous FOI applications and saying, I've had a number of these, perhaps I can proactively disclose this information now. So the verb there is thinking about what does the public want to know about my business.

I understand. So one might, I mean, one possibility that springs to mind is that we might have some kind of provision inviting government departments voluntarily to disclose meetings and see how that goes for the time being?
10 ---Yes. Yes, conceivably.

In addition to the, in addition to the register?---Yes. Or to note it as a public interest, as something that is in the public interest to be out there.

To note it?---Yes. Yes, to promote confidence that the regime is operating effectively and the checks and balances are there. Yeah, if that's a possibility.

MR GORMLY: Do we take it from that that you would, apart from a
20 suitable defining process, you wouldn't see any reason why the information component of a, an agency website could not be used for example, to provide a list of appointments or meetings?---I can see no barrier to that whatsoever.

An issue that has regularly arisen in the course of these hearings is the concern that people who lobby have that the privacy or the confidentiality of a meeting that they may have with a public officer, whether departmental or ministerial not be impaired by public exposure. In the limited time that
30 you've been able to see your regime in place, have you seen that there has been any significant change in the type of document that is now disclosed to the public compared with under the FOI regime?---It's really too early for me to say, Mr Gormly, I'm sorry about that. Effectively, everyone is expected to have a publication guide in operation within the first six months and we're only six weeks, seven weeks into the operation of the Act so far. So so far I've seen numerous publication guides. We have looked closely at the big agent, the super agency websites where we know traditionally lots of FOI applications used to occur to see if they've changed the way they're dealing with the public. We've seen that, but this sort of level of - - -

40 Activity?---yeah, activity around commercial in particular I wouldn't be able to make a judgement, I'm sorry.

Because one of the outcomes of transparency is that it does tend to change peoples behaviour?---Yes.

If it's going to be made public, they're likely to say and do things in a different way from if it's private?---Indeed.

Have you seen that kind of thing occur in your roles in Western Australia?
---I have. And in my roles as the Telecommunications Industry
Ombudsman too. So, and that's one thing I'm hoping to also see in this role
of Information Commissioner here in New South Wales. The analogy of
sunlight is a very relevant one. As a State Records Commissioner, for
example, in Western Australia, which was part of one of the hats I wore as
Ombudsman, the keeping of a good record about a deliberative process or a
decision with an agency that then became the subject of an Ombudsman
review, the quality of that sort of record keeping and the clarity of that
10 record keeping is constantly something that Ombudsmen concerned in
public administration criticise in government agencies. The GIPA Act
reinforces the importance of good, clear record keeping. Good clear record
keeping is appropriate language isn't it? It's not pre-judging, it's not
making pejorative or inflammatory statements, it's clear and logical,
hopefully, articulation of the fact. So this will promote good public
administration in a way that I hope would be a benefit.

All right. Well, just before we get to the records thing, the reason I'm
asking this, Ms O'Donnell is because the, there has been during the course
20 of the investigation rather than the public hearings of this matter statements
made especially by former ministers that the intimacy in effect, the privacy,
the confidentiality of a meeting between a minister and a private interest is a
source of frankness between the parties and that a minister, these ministers
will say or former ministers will say values that frankness and considers it to
be of importance to good government. In so far as you can tell either from
your work in Western Australia or in the use of this Act, have you seen any
sign that or heard any complaints that there is an impairment of that
frankness that would normally occur between a minister and a private
interest?---It's, it's too early in the operation of this Act for anything like
30 that to have, to have come to my attention. There was an interesting
comment offered by the Public Service Commissioner of Queensland about
the impact of their regime a year ago. And that in the early days rather
similar public servants, rather than ministers talked about their fear that an
oral culture would develop and I certainly saw that fear of an oral culture
developing in the early days of the State Records Act in New South Wales,
but it didn't last. It was, it was a fear that, at least in my limited experience,
did not have, it didn't continue, but it did make people think a little bit
differently upfront about how they would act and then people adapted to
that and people, in my experience, began keeping better records, began
40 thinking more about the purpose of that. Their role as a public servant or a
representative of the people and what was appropriate, so in that sense, it
was quite a good discipline to start thinking about the nature of the Act
should it need to become reviewable as part of you know your own actions.
That's, that's part of that impetuous to change behaviour they think is good.

Right. Well, that, that takes me to the next subject then which is this
recordkeeping issue. Ms O'Donnell, at, at the present time it would appear
from evidence that's been heard here that while generally speaking some

notes may be kept of meetings by ministers with lobbying entities there is no particular system for it and certainly they don't necessarily form part of any permanently retained record. If there's a departmental officer present the chances are there will be or there's a greater chance that a record will be retained and of course if it's a departmental officer then presumably that record will end up on a department file. If, however, there's no departmental officer present it would seem that the practice in New South Wales is that a staffer may keep some notes which will be regarded largely as his or her notes. They may be kept in notebooks which are kept in the ministerial officers but not in accordance with any particular system and because ministers don't necessarily have a file system they may not necessarily, the notes may not necessarily be apportioned to files. Because there's no particular protocol for keeping meetings, even if one goes back to the notebooks of the staffers who have kept notes it may not be possible to tell for example on what date the meeting occurred or who attended but there may be a to do list or something like that or an outcomes list. Now, there seems to be a general acceptance that that's a situation that could do with some improvement or some change. From your experience as the Commissioner for State Records in Western Australia what did you understand to be the practice for note-keeping so far as ministers' meetings were concerned, if you're aware of any such practice?

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---I don't remember that ever being a matter to which we as commissioners directed our attention. I'm trying to think and I, I, if, if you like, Mr Gormly, I could certainly go back to the State Records Act in WA and have a look but - - -

No?--- - - - but I, I'm sorry, I don't remember that being an issue (not transcribable).

30 That's all right. I want you to assume that the State Records Act in New South Wales - - -?---Yes.

- - - make any particular provision for the notes of ministerial meetings?
---Yes.

40

It distinguishes for the purposes of disposal of records between records that are party records which can be destroyed and are not necessarily retained in state archives or those that are regarded as ministerial records which are retained. Would you accept that unless there is a system that records in accordance with a particular protocol date, venue, attendees, content and outcome of a meeting, they're unlikely to be able to usefully find their way to state records?---Yes, I agree entirely, yes.

Right. If there were to be a protocol can I just explore with you what it would contain. Obviously date and venue would be important. Do you agree?---Yes.

Tell me if you don't agree with any of this?---No, I think in Western Australia venue was very important so I think that's, I agree.

All right. Attendees, obviously?---Yeah.

10 What would you say of the content of notes for a record of a ministerial meeting? How would you prescribe that?---I'm not an expert so I'll just think about what, what I look for from a point of view of administrative accountability. I suppose I, I'd think about including the purpose of the meeting, I'd potentially put any actions or agreements if, yes, I would, the purpose of the meeting and actions or agreements probably at a minimum, just thinking about what do I do for board and other committee meetings, yeah.

20 What, what about the, the person that sought or called the meeting? Would you consider that to be relevant for state record purposes?---In terms of your particular interest in relation to lobbying activity I think that is relevant. There is a difference between me as a head of agency seeking information to assist me in developing policy and somebody actively seeking my time and effort to look at a matter that might be particular to them so I do think that's a relevant consideration.

Well, if you were to follow through the process from a lobbying event, publication of the meeting and attendees on a website, application to, under the GIPA or GIPA Act, perhaps a view by you with a decision to release the information on review, if we follow that process through - - -?---Yes.

30 - - - do you have a view as the Information Commissioner, I'm not seeking to bind you permanently about this but we're asking for your view, as to what you would expect to see, how much information you would expect to see in a note of a meeting between a minister and a lobbying entity?---On the points that we've just covered I think it would be material to know how long, the duration of the meeting, I think that would be relevant, but I think the, the purpose, the agreements and the agreed outcomes or actions would be, would be what I expect would be the essence of the meeting.

So not, not necessarily any attempt to try and record the content of the meeting?---I don't think, my personal view is no, not necessarily.

40 Right?---It would be different if I was an minister, if I was a member of a government agency and I was making notes to assist in the development of a briefing note or a more enhanced policy, I would look for a different record there just as a matter of good administrative practice but from the point of view of that higher order meeting we've just talked about, that's what I would think of anyway.

THE COMMISSIONER: Would you consider that proposals made would be an important matter to record?---Again, you know, it would depend on

the circumstances. If agreements and outcomes reflected proposals made - -
-

They seldom do?---They seldom one, well, then, you know, what would be materiality of the proposals I suppose, yes.

Well, only if there's something sinister in there and then I suppose they wouldn't - - -

10 MR GORMLY: Write it down.

THE COMMISSIONER: Well, I'm not sure if they'd be recorded but one would hope that they might be. That's the issue. That is one of the issues but I suppose that that might be, it might be a vain hope to think that sinister proposals would be recorded?---And how, how would you test - - -

Well, on the other hand they might be?---Yes.

20 It might, it might be a good reason not to make them?---Well, and that's part of that tension, isn't it, about what is going to be documented, if there were a clearly articulated protocol, if one of your recommendations was that that be the case and that that was followed that might change the behaviour in a certain way.

I mean, the proposal might be if you give us this we'll do X and I would think that there'd be a lot, there might be in some cases a lot of interest in what X was?---That would be an agreement wouldn't it, possibly, or a to do not necessarily.

30 If might be a refusal?---It might be a refusal, okay.

Well, there may be an agreement but the agreement might be an agreement to exclude X because that's just a promise and we rely on the promise, there's no agreement. There are many ways to get around these things? ---Yes, and it's hard to conceive of in an administrative way all the safety nets that would give you confidence.

40 But if you've got an, if you've got two, two people there, two neutral observers there it becomes more difficult to make proposals of that kind? ---Of course.

MR GORMLY: Commissioner, I really have nothing further for Ms O'Donnell.

THE COMMISSIONER: Well, there's one other aspect, Ms O'Donnell, that I wanted to ask you about?---Certainly, Commissioner.

And this is not going to, you don't have to answer this question?---Okay.

But you, I think you were in the hearing room when we discussed the notion of the listed lobbyists signing a code of conduct?---Mmm.

And then the notion that if, if the code of conduct was found to be breached then the lobbyist would forfeit his or her right to be on the lobby, would the administration of that system be at all consistent with how you see your functions?---If I can answer with not being direct, so I've been much exercised in my mind after my earlier discussion with Mr Gormly and
10 Hydren about whether it would be appropriate for the Information
Commissioner to be a custodian of information as well as a promoter of
public access. Is that a fair way of looking at?

MR GORMLY: Yes.---For thinking about that and the other, perhaps
another relevant consideration was when I was the West Australian
Ombudsman being approached by an independent member of parliament to
take on a register as Ombudsman because of our independence and our
arm's length from and our investigative powers as to whether it would be
20 appropriate for us to hold such, such a register.

THE COMMISSIONER: This so much as being a custodian.---No, but
investigating breaches.

But it is to be a guardian of the probity of the individuals allowed to be
registered.---The questions then would be around the scope of the
jurisdiction of the officer of course and that was a limitation in the previous
consideration because there was no, there was jurisdiction over third parties,
over members of the public. There are certainly investigative powers there
if they were adapted to such a, a review function and administratively, you
30 can imagine, you can imagine it would work well. Is that enough?

Yes.---Okay.

Thank you.---Thanks Commissioner.

And we are truly grateful to you for coming and spending time and helping
us, thank you very much.---Thank you very much.

40 **WITNESS EXCUSED**

[12.11PM]

MR GORMLY: Thank you. Commissioner, I have Mr Tony Harris present
as the former auditor-general for New South Wales because I know we've
got to rise at 12.45 but I would be grateful for five minutes with Mr Harris
just before we start his evidence, if I may?

MR HARRIS: Yes, certainly.

MR GORMLY: Thank you.

THE COMMISSIONER: The Commission will adjourn for five minutes.

SHORT ADJOURNMENT

[12.12PM]

10 MR GORMLY: Commissioner, I call Mr Tony Harris.

THE COMMISSIONER: Yes, Mr Harris. Mr Harris would you care to give evidence under oath or would you prefer to affirm the truth of your evidence.

MR HARRIS: Affirmation will be lovely.

THE COMMISSIONER: Yes, thank you.

THE COMMISSIONER: Won't you be seated, Mr Harris.---Thank you Commissioner.

MR GORMLY: Mr Harris, can you tell us your full name.---Anthony Clavet Harris.

10 I think, Mr Harris, I want to spent a couple of minutes just going through your history and then offer you an opening statement.---Thank you.

Right. I think that you have worked on micro economic and budgetary matters throughout and as auditor general throughout most of your working life. Is that correct?---Correct, yes.

All right. I think you were in treasury – working on treasury and finance portfolio both Commonwealth and State, New South Wales?---In the Commonwealth I was in treasury and finance and in the state I worked in
20 finance/treasury matters, yes.

All right. You were New South Wales Auditor General, for a period.---Correct.

What was that period?---The statutory limit, seven years between 1992 and 1999.

Thank you. Now, I think that you've also been a professorial fellow at the
30 University of Wollongong?---Yes.

And I think you're continuing as a writer and columnist in the Financial Review?---Yes.

Right. I think your background has been in both arts and economics?
---I have degrees in Arts and Economics, yes.

Yes. And I think a Master of Business Administration from the University of Southern California as well?---Correct.

40 Right. I think there have been a number of other roles that you've had, including being responsible for coordinating federal budget, no, I'm sorry, in serving as Deputy Secretary of the Immigration Department?---Yes.

Which I think is a matter that's going to come up in your evidence- -?
---Yes.

- - -in respect of lobbying?---There's a good deal of lobbying there.

Right. And you've also been a presiding Commissioner of the Industry Commission and Head of the Office of the Commonwealth Treasurer, fiscal expert to the IMF as well?---Correct.

Thank you. And, Mr Harris, I think that you have in your role as an author for the Financial Review often also written on the subject of donations and fundraising at political level?---Yes, I have.

10 All right. I just bring that out because I know that that's going to be a subject of some questions we'll ask, but I understand also a part of your opening statement. Could I invite you to make an opening statement?
---Thank you. Thank you. I suppose having worked for thirty years in government, state and federal, one of the abiding interests I've had is, is what makes governments make the decisions they do, whether it's I suppose a theatre play of democratic forces as ministers might see it and the public interest, they don't always coincide. And I have- - -

20 THE COMMISSIONER: And the forces I take it that aren't democratic?
---Ah, no. I mean by that that democracy has its weaknesses and some things that you will do for democracy, such as parish pump because that's a marginal seat, was not necessarily in the interests of the whole community.

30 Right?---And I, and I've been particularly alert to, to decision-making environments where ministers make decisions that advance their interests versus the public interests. That is the same argument about democracy and public interest. How do you get access to a minister, how do you influence a minister for a particular outcome that you want, I suppose are the three question that have occupied my brain from time to time for the last thirty years. And one of the ways of course is, is donations. When I arrived in
New South Wales I saw that in the federal environment the treasurer and the prime minister were going to offer briefings to individuals who made contributions to the ALP. And I thought this was very unusual, as well as outrageous, so I rang, having some influence by access I rang the treasurer's office and asked them what, what they were doing and I don't know what happened after that, but I was happy to see that the advertisements were discontinued and that event didn't occur. But the idea of ministers selling access for donations to a political party I still find quite outrageous and indefensible.

40 Does it still happen?---Oh, yes. Oh, yes. Ah, not in the, not in the sense, Commissioner, that I described it just then, but in the sense of if you pay \$1,000 you will be given a seat at the table, at a dining room table with, with a minister of your choice.

Does this, I know that it happens at functions in the way you described, that is dinners and function of that kind. Does it happen, is there, in other cases more direct or is it always disguised by a function?---Yes, it's now disguised by a social, a social opportunity. There are times when ah, ah, for

example, the Minister for Communication in the federal environment would invite people to participate in party platform design arrangements, the communication policy meeting of the party, not the government, and you could pay several thousand dollars to attend that meeting ah, and participate in that meeting. We see that parties also do that and of course parties invite people to pay to participate in a party function at which ministers will attend. So that still continues but the bulk of it I suppose now is social arrangements, disguised as social arrangements. So donations are an important point of influence. Social connections are as well, that's why you see lobbyist firms hiring people from both political parties in order to ensure that the doors are open, whoever forms government. That's another form of access. And I suppose they're the main two forms of access. Lobbyists are, I should say that lobbyists, I don't see lobbyists in any particular seat that differentiates them from say senior officers of large corporations. Senior officers of large corporations are part-time lobbyists. Lobbyists are part-time lobbyists for that particular senior corporation, so that there's not, there's not a lot of difference between the two. And I, and I worry about distinguishing between the two because they are there for the same end. And as we see, sometimes former ministers become engaged to firms who are lobbyists, professional lobbyists, and sometimes they're engaged to firms in their own right as employees to do the lobbying for, for the particular corporation, which is not a lobbyist corporation, it might be a bank or a mining company or whatever. So I don't like the distinction between lobbyists, professional lobbyists and others because they are so interchangeable. In the main, I am a strong advocate of transparency and when I saw in the main, I probably advocate this more strongly than most, and looking at some of the limitations in the state Act, cabinet information for example, is, is unfortunate because we see in other jurisdictions, the ACT, when an auditor general reports, some of the most interesting issues about government performance is seen in the cabinet documents that the auditor general cites in his report, something which the auditor general doesn't, perhaps can't do in, in New South Wales because cabinet documents, he doesn't, he or she doesn't have access to cabinet documents as a matter of right, nor, not do the public, but in other jurisdictions, in New Zealand and in Scandinavian countries, cabinet documents are released as a, most cabined documents are released as a matter of course and we haven't seen the end of government-imposed jurisdictions. But when you do see cabinet documents and you see the degree of sophistication of arguments, you can, you can make some assessment about the, the, the, the strength of government. Thus the ACT case, if you, if you look at some auditor general's reports there you will see that the tables don't even mathematically add up, let alone conceptually add it. When ministers came to a decision they did it on the basis of, of incorrect information and perhaps the information wasn't as important as the decision. Now, if I could turn my attention to New South Wales briefly, as you know, the auditor general here has two broad audit functions, one the financial audit, which is very settled and there's no particular disputes about that, the other, the most difficult function relates to performance audits where the auditor general

examines the efficiency, the economy and the effectiveness of government programs. There's no difficulty with the first two issues, but effectiveness has been a bane of arguments between auditors general in all jurisdictions and the governments, in the main because when you audit financial data you audit against a standard, the accounting standards, when you audit for effectiveness, you're looking for a standard which is, what does the government want to do, what is the goal of the government in this program. And in New South Wales the police formulation of government was so poor as to be risible. We had to spend most of our time trying to work out what the government was trying to do with its program. As you know, in New South Wales the auditor general may not question the merits of a government's policies but I was also told that I wasn't to question the absence of government policies because it may have been a policy not to have a police. And I thought that was also a very interesting way of behaving for a government, not to have a police so that you may have absolute discretion, so that you may do what you wish, so that there is no proper, proper accountability for that because there are no standards against which you can be measured. If I can revert to the Commonwealth, one of the big issues in my time in the Department of Immigration was the conflict between policy and politics. And we sought policy, it's a non-binding, a non-binding, not absolutely binding approach to decision making. So the powers given to the minister to admit persons to Australia for residency, that power is delegated to officers you wish to control the exercise of that power so you set down policies which officers must take into account but, but must not follow blindly, accordingly to administrative law. You must look at the particular circumstances of the individual to determine whether the policy should be applied to that individual. That allowed, as one minister for Immigration described it, an enormous amount of sleaze in immigration decision making. And in order to get rid of that sleaze, and this is, I'm using the ministers words, we codified that policy into law so that not even ministers could subvert the intentions of parliament unless they had good cause. And we had grave difficulty trying to determine legislation which would allow minister discretion in those very few cases where the law wasn't fit for the case. It was described, the minister described it as the rat hole where the minister still had discretion and, and we devised a technique or he devised a technique, actually, to allow him necessary discretion but to be used only in very particular circumstances and even that was abused by successive ministers, as we've seen on the record. So the idea of not having policy is, is allowing ministers, governments absolute discretion and you can see this in the terms of toll roads.

THE COMMISSIONER: And how does this all relate to lobbying, Mr Harries?---Well, if you have absolute discretion then the government is more easily lobbied to make a particular decision. So when the government extended the M5, it had the choice of imposing a toll on that part of the M5 that it constructed or not imposing a toll. If it imposed a toll, it would do damage to the, to the existing toll owner of the remainder of the M5. If it did not impose a toll, then the existing owner of the M5 got a windfall in

terms of increased traffic. So there would have been no doubt a great deal of lobbying about the decision as to whether or not to impose a toll on that part of the M5 that the government funded.

MR GORMLY: So, so in a sense you're saying that the presence of policy is itself a protection against inappropriate lobbying?---Correct. Correct. We don't have a toll on, on the Anzac Bridge. We do have a toll on the Sydney Harbour Bridge. We don't have a toll on the Gladesville Bridge. And if you ask the government to explain the rationale for that it would be very difficult because they don't really have a policy that undertakes that. Cashback was a policy introduced by the government for two roads. You ask for the rationale for that policy and there is none, other then - - -

It needs the money. It needs the money?---No, Cashback is actually when the government - - -

Oh, returns the toll?---Yeah. So why does the government return the toll on the M4 and the M5 and not on the M2 and the M1 or, or the M7. It does it because there were more seats that vote Labor affect, people who use those tolls are more likely to be from Labor seats then if they came from the M2. When Michael, when another Minister for Roads came in to power he said he was moving money from the northern suburbs for the road maintenance to the western suburbs. What was the policy behind that movement? There is none. There was none. So how many policies that determine allocation of resources or policies that determine how you make individual decisions is better then not having policies. Having law is better then having policies, I suppose.

All right. But I suppose one thing that one would draw from that is that while you can regulate lobbying to ensure that it's more transparent and that its regular, it's very difficult to regulate government and require of it that it produce policies that, I mean, I can't see a way of requiring of governments that they have policies other then through the, through the electoral process?---I suppose I would like to see the cabinet documents that persuaded ministers to make a particular decision. I don't need to hear cabinet discussion about those documents, but I would like to see the documents to determine whether the documents were professional enough to justify the decision made.

All right. I suppose whatever amount of lobbying may occur at ministerial level, you're saying the ultimate decision may be made at cabinet level and we don't know what the process of that decision making may be?---Yes. In fact in the Commonwealth arena, there is a saying that if you take the decision making into cabinet, the auditor general will not follow you.

Mmm. Would you accept that there may be in a parliamentary democracy, I'm just putting this up for your comment, Mr Harris?---Yes.

That in a parliamentary democracy there may be very good what me might loosely call political reasons for making a decision which don't have any direct policy foundation. Can I give you an example, for example, between a Liberal and a Labor government, there may be a general tendency towards expenditure on social capital by Labor and on productive capital by Liberals and so that that process of allocating resources may end up being a political issue rather than - - -?---Yes.

10 Would you accept that?---Yes. Yeah.

All right?---And I accept that there's a political issue about developing assets in Labor seats under Labor governments and developing them in Liberal seats under a Liberal government.

Yes?---And that's a policy, that's a political decision, yes. And it should be seen for what it is.

20 I see. All right. So that if, if cabinet minutes were disclosed then at least we would know which decisions were being made on that political basis you're saying?---Yes.

Okay. All right. Well, thank you. Now, have you finished?---Yes, I have.

Right. I want to take you to some, some fairly nitty gritty issues, Mr Harris, before we get back to those wider issues. I understand you were present during the evidence of Mr Lennon and Ms O'Donnell?---Yep.

30 I want to go straight to the, the proposal that was being discussed there about a lobbyist register. I need to ask you some preliminary questions so that we can understand what your views might be. Firstly, you, you would accept in general terms that lobbying, including by commercial lobbyists, and I understand your reluctance to distinguish between one lobbyist and another is a natural part of the democratic process?---Yes. Yes.

All right. Secondly, do you accept that there has in recent times been an expansion of what we might generally call active political lobbying?---Yes.

40 Right. There's also been the expansion of the political lobbyist, by which mean the third party professional lobbyist?---Oh, I see. Yes. Yes.

Sorry, I, yeah, third party political, professional lobbyists. Now, it seems reasonably clear that a cause of public scepticism about lobbying of the two matters you raised, that is the use of relationships and the use of prior knowledge by former public officers who then come out and lobby in New South Wales at the moment, you're probably familiar with the current register?---Yes.

I want to take you to the registration issue. Can you tell us what your views are to the extent that you've been able to form them in the time that you've been hearing about it, about a wider lobbying net that would require those who lobby to declare themselves publicly and to provide sufficient information about the event to enable people to follow through, in other words, trace the - - -?---Yes.

10 - - - breadcrumbs through to a GIPA Act application and thereby get information that they would otherwise have not had available to them?
---One, one of the hardest things to do when dealing with government is to get items onto the agenda, the government's, for a number of reasons which we needed go into and so a company or a lobbyist with a problem wishes to have that problem recognised and dealt with by a government, it doesn't have to be, it doesn't have to be a company or a lobbyist, it can be a citizen as well. I mean, I would like to lobby, if I, I would like to lobby in New South Wales when I see some shortfalls in regulations or legislation and governments are very anxious about which items they accept to put on the agenda so it has to be a pressing, a pressing issue. Now, I don't know whether that actually addressed the question that you raised.

20

No, no, but I think I understand your point. You were saying that the breadth of lobbying is so great that you can never catch it all?---Yes.

30 All right. Now, would you accept that the scepticism about lobbying is probably not about ordinary direct lobbying that, the direct process that you've just described, a citizen or somebody, a company dealing in its own interests perhaps, a small company, but there does seem to be a concern about the industry of lobbying, that is, those who develop expertise in their employment in lobbying government?---I wouldn't see the difference, I wouldn't see the distinction. If, if I were a company I might employ a professional lobbyist or I might employ the former premier of New South Wales - - -

All right?--- - - - or the former head of treasury.

40 I may have thrown in a red herring there. Can you tell us what, what you think is the cause of public odium and scepticism about lobbying as it stands at the moment?---That decisions are made based, based on either relationships or on perceived advantage that the party may, may receive in making that particular decision.

All right. So you'd see that as a rising out of relationships and knowledge? ---Relationships and knowledge on the one hand.

And, and donations - - -?---And donations on the other.

Fundraising?---Yes. As well as the negative connotations of donations, donations is a positive connotation and it can also be a negative connotation about them.

Well, let's just deal with donations first and move up that list of four?---Yes.

With donations I am under the impression just to cut to the chase - - -?
---Yes.

10 - - - that in your view there is no room really for donations, political donations in and, well, what is your view about that?---My view is that only natural persons should be allowed to make donations and they should be limited in amount.

All right. So that in effect a voter, the right to donate, accompanies the - - -?
---Correct.

- - - franchise?---Correct.

20 Right.

THE COMMISSIONER: I'm not sure what lobbying, what do you say lobbying has to do with donations?---What we are, what we are trying to determine, Commissioner, is why governments make decisions which may not be in the public interest.

Well, what we are trying to determine is what's wrong with lobbying?
---And lobbying in its own right, there's nothing wrong with lobbying in its own right, it's the lobbyists who secure their outcomes because they have
30 other, there's a nefarious agenda, there's another agenda other than the object that they're seeking so - - -

Do they have, they have, there's a carrot that they offer?---Yes, or a stick.

A carrot or a stick - - -?---Yes.

- - - which is often secret?---Often not even discussed, not even disclosed.

40 But of which both parties are aware?---Yes. So, I mean, politicians use to or parliamentarians used to say don't talk to me about political donations, it's a matter for the party and I don't know anything about it. Well, that kind of (not transcribable) can no longer be, be acknowledged or accepted. Everyone knows when they're dealing with somebody the donations of that party made, that person made or that company made and ministers have kept on talking about it, the influence of donations. You're getting access and influence and outcomes. So when a lobbyist comes with an agenda item the agenda item itself may only be - sometimes may only be of secondary importance. It's the unspoken issue which determines the outcome.

MR GORMLY: Would it be true to say then that you see no role for lobbyists in the making of donations?---Lobbyists won't – well – I was about to say lobbyists don't often become associated with donations but there was a case recently in Canberra within the last couple of years where a chief of staff would demand of a lobbyist that he'd make to donations to the party before their request for a meeting was granted.

10 So that would be a donation that was required in effect of the lobbyist client?---Yes, yes the lobbyist would bill the client.

Well that's, that's potentially corrupt conduct I suppose - - -?---Yes.

20 It would depend on the circumstances but whether it was or not the perception is that access to the minister is for a payment of a sum of money and perhaps the outcome may be depend on the donation. They are the kinds of inferences that can be drawn.---Often access to a minister can be related to a donation as well and the outcome, there's an implicit undertaking that the donations will continue.

All right. Would you agree then, and I put this to you as a proposition – there should be no difficulty about prohibiting lobbyists from having any role in the making of donations?---If you wish to distinguish lobbyists from, lobbyists external to a corporation to the lobbyist within a corporation.

Yes, all right. Now I think as I understand your views, any donation by a lobbying entity runs the risk of looking like a bribe.---Or an extortion.

30 One or the other.---Yes.

It's going to be one or the other.---Yes.

Because there would be an inevitable perception at least of a linkage between the donation or the payment of money on the one hand and the request being made of a minister.---Yes. You'll see in Richardson's book whatever it takes, an outright acknowledgment that a person who makes a donation will at least get access.

40 I'm not going to comment on that because that was his statement about as at that time.---Yes.

While I accept general – what I infer to be your general proposition that that could generally be true – can we limit this so that we're trying to find a set of workable rules we can sever the line between donations and the representative lobbyists.---Yes.

What do you say of corporations and lobbying – corporations and donations. Do you say, as you said earlier, that they should be prohibited from making donations?---Yes.

All right.---I mean, you can go another route – you could say, okay you can make a donation to the Australian Electoral Commission and it will be anonymous and it will be used by the Commission to fund elections. You can go a number of routes but basically you want to stop donations affiliate bodies of ministers.

10

Mr Harris, I'm sorry Commissioner, I notice the time perhaps if we could withdraw now. Mr Harris, I've spoken to Mr Harris about timing and he's happy to come back at 2 o'clock.

THE COMMISSIONER: I'm glad for Mr Harris. Thank you for co-operating in this way.---Pleasure.

We will commence at 2.15.

20

LUNCHEON ADJOURNMENT

[12.49PM]