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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 16 AUGUST 2010

AT 2.18PM

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THE COMMISSIONER: Yes, Mr Gormly.

<ANTHONY CLAVET HARRIS, on former affirmation [2.18pm]

THE COMMISSIONER: Mr Harris, I want to take you to the register that you heard described when Mr Lennon and Ms O'Donnell were giving evidence this morning?---Yes.

10

All right. I need to identify four or five features and I'm going to ask you to comment on them?---Yes.

And on the effectiveness of the register as you see it?---Yes.

Firstly, online self registration - - -?---Yes.

20

- - - but perhaps with an initial gatekeeper to determine whether someone does or does not go on, otherwise the obligation is on the registrant to maintain the details?---Yes.

Secondly, registration involves acceptance of a Code of Conduct?---Yes.

Thirdly, that in addition to the name of the proposed lobbyist there would in the case of representative lobbyists like professional lobbyists, lawyers, accountants et cetera, an obligation to disclose the client?---Yes.

30

Thirdly, that there would be possibly, and we seek your, your evidence about this, names of either a person responsible within the organisation for lobbying or alternatively the names of those who lobby, which may be a much longer list?---Yes.

40

Next, that the register would require that there would be submitted within say 30 days or 60 days after any event the date and the name of the person who lobbied and the person who was lobbied, no more. That registration may or may not involve the charging of a fee and that there would be sanctions for non-compliance either in limiting registration or other sanctions. Limiting as in terminating registration or terminating the registration of an individual who may have breached the Code. Now that's a description of a possible registration system that as you understood it this morning when you were wearing the evidence?---Yes. Yes.

Right. If we - - -?---And the event, sorry, the event is as I understand it a meeting.

The event would be oral, pre-arranged, say. So we're talking about meetings, we're not talking about social events. I appreciate the reservations about that, but we'll come back to that. And we're not really

talking about telephone contact. We're certainly not talking about documents, which can be traced in other ways?---Yes.

10 The scepticism of the public appears to be about the meeting which uses relationships and knowledge. I want you to put out of your mind for the moment, if you wouldn't mind, the social occasion, because there's been a body of evidence from all parties which suggest that those occasions do involve lobbying, but if anything is going to happen, they will usually move to another stage, that is a meeting. Which in the past may not have been a disclosed meeting, which now would require to be disclosed?---Before I put that out, it was the practice in Immigration that we would accompany a minister to all functions, official functions to keep records - - -

Yes?---of the work that the minister accepted from his meeting with individuals at that function.

Yes?---So I'll just leave that (not transcribable)

20 Yes. I understand that point and I want you to understand that this register is not seen to be a panacea?---Yep.

It is simply one plank among a number which would include a standard of permanent record keeping for meetings?---Yes.

Which currently doesn't exist?---Yes.

30 All right. Now can we just go to the register firstly. Would you accept that register of that type would have an impact on the transparency of the lobbying process?---To the extent that the work isn't moved in-house, away from lobbyists to the principal, yes.

THE COMMISSIONER: So what, but there would always have to be a lobbyist, even for the principal who would be caught by this?---Oh, so if you're saying that the, if you're saying that the chief executive of BHP is a lobbyist - - -

MR GORMLY: Absolutely?---yes, I have no, yes.

40 Absolutely. If you, if you want to step from the private area into the public realm you must sign up?---Okay.

You must declare yourself?---Right. There are going to be a very, very large number of lobbyists who would need to be registered.

They seem to fall into these categories. Correct me if you think otherwise. Firstly, the representative lobbyist, professional lawyer, accountant. Secondly, the peak body?---Yes.

Thirdly, the charity church group?---Yes.

And fourthly the corporation that may either through staff - - -?---Yes.

- - - government relation staff, in-house or through its own offices lobby?

---Yes, yes.

10 There seems however, Mr Harris, to be given the evidence that we've had here, perhaps greater limitations on the numbers than were, then might ordinarily have been thought and less meetings than might ordinarily have been thought. Mr Lennon, for example - - -?---Yes.

- - - for a large body was talking about meetings with ministers perhaps once or twice a week?---Oh, is it only with ministers?

Well, for this part ministers, but we're aiming at senior departmental staff as well?---Administerial staff.

20 Yes, definitely administerial staff?---Yeah, yeah.

Now here come the questions. Firstly, do you see that as likely to have an impact on the transparency of lobbying?---Yes. Yes.

30 Can I ask why?---Well, because you are capturing events that, because they don't involve, necessarily involve documents, are not discoverable currently. Although you may be able to discover the ministers diary. It's harder perhaps to discover the, the diaries of the ministers staff and tedious in any event. So making these publicly and easily available would, would increase transparency.

30 Right. People should not - - -

THE COMMISSIONER: To a significant degree?---Yes. Yes, to the extent that there are meetings and there are ministerial meetings constantly during a parliamentary session. Ministers would be meeting external people. They would have four or five appointments at least a day.

40 MR GORMLY: But with different entities. Is that correct?---Different entities, yes. Yes.

So an entity may be putting a meeting on the register during a parliamentary sitting perhaps if they're busy, five times in a week, once a day?---Yes.

Not actually they're going to have five ministerial meetings in a day?---No. An entity will only have one meeting every some months with a minister or a ministers office.

Yes.

THE COMMISSIONER: If an entity has, if an individual is negotiating something with the minister and it's getting close to completion, that person might have three meetings in one day with the minister. But then it might not be necessary to require that the three meetings to be identified as long as, as long as it's stated a series of meetings, because you then use the other leg of the system to get hold of the minutes of the meetings?---Yes. Yes, I take your point, Commissioner. And it would be very unusual in any event for any entity to have more than one meeting with a minister and the  
10 ministers staff in, in any month, because ministers typically don't do, well, at the federal level, they typically don't do negotiations. Those are sent off to the departments to do.

MR GORMLY: If you add to this system a requirement that there be minutes kept of, a record kept of ministerial meetings and that that be a permanent record that would overcome the ineffectiveness of trying to obtain through FOI and then interpret ministers diaries or staffers diaries?  
---Yes.

20 That's an unsatisfactory way to be tracking government activity. Would you agree?---Yes, yes. Yes, of course. I mean it's always intrigued me that the Governor Generals diary was made public but no one else's.

Yes. Yes, it might reflect the lack of contention in the work though?---Yes.

But Mr Harris, if you then, if you accept that there is a right of the public to information and for the media to information subject to protective categories of the kind that are in the Government Information Public Access Act?---  
Yes.

30 It becomes necessary to lay a sufficient pathway for that information to be obtained doesn't it?---Yes.

At the moment we seem to have quite a good Government Information Public Access Act, but there isn't necessarily a pathway between the event and that Act?---Yes, I understand that point.

40 All right. If this lobbying system is placed in operation that does lay down at least to a substantial degree a pathway?---Yes, yes. You're alerting people to the existence of an event. You are aware that from that event there are documents, that you can seek those documents through the - - -

And you're interfering with government business?---No.

Right. Because I take it that you would accept as, as has been said here on many occasions, there is a degree to which a meeting, whatever scepticism it may cause must occur in an ordinary way, that is not under the glare of

television, so to speak?---Yes. I mean, I've always had the (not transcribable)

(not transcribable)?---I've always had the (not transcribable) not to say anything in private that you wouldn't wish to see disclosed in public. But there are exceptions to that for people engaged in business. But as a, there is an issue isn't there about when government seeks to talk to business? It's not always business coming to government, it's quite often government going to business.

10

Yes, yes. That's not lobbying though, is it?---Well, it allows the, the business to provide their views to the government.

Yes, yes. It also allows though the government to interact with the community in the way a democratic system requires?---Yes.

20

They can call on the community for information?---Yes. So for example, the treasury have staff in Sydney to liaise with business all the time about what business is doing and what business wants, and that would provide say in the context of the global financial crisis, that would have provided banks headquartered in Sydney with an opportunity to do in Sydney what they might have done in Canberra. Merely because treasury officers approach them doesn't mean that they're not lobbying.

Mmm?---Just that the agenda setting is weighted.

Right. Can I just take you to some of the practicalities- - -?---Yes.

30

- - -of a system like this? This is critical that it be practical and also in the current times that it be cost-effective. Can I ask you firstly, you see no difficulty, do you, in requiring that ministerial staffer and senior executive meetings with lobbying entities be appropriately noted in accordance with some standard protocol?---Oh, no. Yes. No. There's, there's no problem with that. There might be a problem getting it done but there's no problem requiring it, yes.

40

THE COMMISSIONER: Fred Chaney who gave evidence said that was, in his time that was the rule?---The, over time we have seen a reduction in note-taking, not necessarily because of the FOI Act, although there are claims that that has happened, but also because communication is much more instant, but even emails are recorded and kept, in the commonwealth arena at least.

MR GORMLY: Mmm. But you accept that there's nothing old fashioned, antiquated or- - -?---No.

- - -likely to slow the system down by requiring people to minute a meeting?

---No. In fact I would go the reverse and say that minute-keeping and record-keeping ought to be improved in order to improve accountability.

All right. Did you hear the evidence of Ms O'Donnell about the components of an appropriate minute for a ministerial meeting?---Yes, yes.

Did you accept that?---Yes. The, the time, the place may be less relevant, the participants ah, the broad objective or the goal or the subject matter and maybe the duration, yeah.

10

All right. And outcomes?---And outcomes, yes.

Right. The other day, I want you to assume that we had the director general of the Department of Premier in cabinet commenting on what might be the appropriate components of a meeting and he had some reservations about a distinction between stating the purpose of a meeting and stating the subject matter of a meeting. Do you accept that there may be a grey area there?

---They ought to be the same, ought they not? The purpose of the meeting is the subject of the meeting.

20

Mmm?---This is, yeah.

I think he had in mind that sometimes things crop up in a meeting which are more important than its original purpose?---Oh, well, I, by saying the purpose, I didn't mean the intended purpose, I meant the actual purpose or purposes.

30

Yeah. All right. In any event there's a general view those components identified during the evidence of Ms O'Donnell are a bunch of components that you as an ex-auditor general would be happy to see- -?---Yes, yes.

- - -as a standard? Do you think that those same components would apply for senior executive meetings, directors general, deputies, director general et cetera?---Yes. And perhaps even to first, in, in old terminology, first assistant secretaries or division heads, yes.

40

All right?---One of the issues there is the differentiation between meetings and telephone conversations. You can have virtual meetings, can't you, with telephones these days?

And that would fall into the category of oral and pre-arranged though? ---These days pre-arranged are probably required, but you could also have quite serious discussions that aren't pre-arranged.

Yes?---Yes.

Yes, I can see that, by two people having a meeting and then deciding to join a third?---Or just by having the head of a bank ring up the head of

treasury, the head of treasury is going to accept that call, indeed as the treasurer would if, if the treasurer can, because those calls are serious calls and something, the call is made for a purpose and there is an outcome.

THE COMMISSIONER: But it might not be lobbying?---The only reason that a senior bank officer would ring the treasurer is to get an outcome that, that the bank wants, I think, Commissioner.

10 MR GORMLY: How would you, how would you rate, in terms of a lobbying regulation system, that is a system that, that aimed to make more transparent the process of lobbying, how would you rate that call for the purposes of capture within a regulatory system?---Difficult.

THE COMMISSIONER: We've been told that it's rare for any decision to be made on the telephone?---Yes. It doesn't have to be a decision. Well, let us have a hypothesis. I'll ring the treasurer and say we are having grave difficulties securing credit during the international global crisis and I would like the government to think seriously about guaranteeing wholesale, bank  
20 wholesale raisings. And it's urgent, that's why I'm making the call. It's very serious because a lot of our debts are short-term and denominated in international dollars and I think the government should act on it very quickly. Now, the only response the treasurer should make is, fine, it's, it's, it's, it's an issue that I'd like your officers to discuss with my staff or with, with the department, but I am alert to the issue and we will resolve the matter very quickly. You, you can have documentation about that if the treasurer doesn't ring the head of treasury, the head of treasury should document it anyway, so there can be documentation about it. In fact of course we've got an FOI case at the moment where Macquarie Bank doesn't  
30 wish documentation to be made public on its approach to treasury, but that could have followed telephone calls and it may not have led to documentation necessarily of the kind that you're talking about.

MR GORMLY: I suppose the first observation you'd make about a call like that is that you wouldn't want a system that would restrict or prevent it?  
---No.

That's an important call to be made?---Yes.

40 I suppose the second thing that you would say about it is that it's a non-determinative call, it's a call that seeks to raise an issue, it makes a request, it does lobby in the terms that you're, you're suggesting or that I'm suggesting?---Yeah.

It does lobby, but it sounds as though you're of the view that it would lead to other action perhaps between the offices of both departments, bank and treasury?---Yes. Most, I think most lobbying would not be conclusive at the first meeting. Most lobbying is about raising the issue and providing the



persuasive argument for the outcome you're seeking. Mostly you will not get a respond decision.

Yes?---It would be very unusual.

That's consistent, isn't it, with the view that a problem about lobbying at the moment is that there is a perception that deals are done but on closer scrutiny one finds that it's very rare that a deal is ever done in that way- - -?  
---Correct.

10 - - -because it can't be?---Yes. I mean, quite often ministers either don't have the power to make the decision- - -

Yeah.---?- - -or if they have the power to make the decision they don't have the power- - -

Don't have the capacity---?- - -to, to effect it.

Yeah?---Yes.

20 And I suppose if somebody wants to do something that is in fact corrupt, to do a deal, that is to have an arrangement that is not in the public interest but that may benefit one or other of the parties in an inappropriate way, that kind of meeting is going to occur irregularly and the arrangements are going to be covert and those arrangements are going to be dealt with or discovered in another way?---Yes.

That is, a regulatory system is not going to deal with that?---Yes.

30 So you get transparency but you don't necessarily get an anti-corruption act?---Yes. Yes.

All right. Well, if that - - -?---If the anti-corruption authority has the resources to follow all the, all of the suspected issues.

Well, you're never going to catch them all - - -?---No.

- - - but you can catch a lot, Mr Harris?---I hope so.

40 Increasingly more. All right. And I suppose too that a process can occur during urgent telephone contact of the type that you've spoken of or even non-urgent administrative contact where things have been established or set up that appropriate undertakings can be given or accepted which would bring about a recording of the event?---There ought to be, yes, there ought to be.

Is there a way of making that occur that is not obstructive of business, the business of government?---No. It's part of business to record.

Ah hmm?---It's part of the business of government.

That's consistent then with the general principle that good business practice is itself an anti-corruption measure?---Yes, yes, yes, exactly.

And it's also a transparency measure?---Exactly.

It leaves a trail for people to follow - - -?---Exactly.

10 - - - so long as they know they've got enough access to the trail to follow it through?---Exactly.

All right. Well, with, with all of those various qualifications and reservations, with those qualifications, is there any aspect of a system of that type, that is, a self-registration online system that starts the trail for information with which you would disagree?---Because you've covered not only professional lobbyists but everyone who seeks an outcome other than you gave that RTA example, other than people seeking (not transcribable) matters.

20

Yes?---There will be a lot of people involved I should think in this registration issue.

Yes. Necessarily the system is going to miss and perhaps should miss large chunks of lobbying activity, for example, I think as you pointed out yourself, the direct personal lobbying?---On a personal issue.

Yes?---Yes.

30 THE COMMISSIONER: Mr Harris, the question arises in this context when dealing with say a large corporation or any large entity which is not a professional lobbyist - - -?---Yes.

- - - organisation, whether it's necessary to list the individuals who do the lobbying or whether it is sufficient simply to require the entity to register. What do you think?---The entity may suffice, the entity may suffice.

There is a problem with that and that is the code of conduct question because - - -?---Ah, yes.

40

- - - if you, if, how important do you think the code of conduct is?---I have contemplated that you were going, applying a code of conduct to a professional lobbyist is to say to that lobbyist you will be disadvantaged in some way in your relationships. To do that to a corporation rather than a professional lobbyist is, is quite severe. I mean, for a start I don't know how you'd do it. You could say to professional lobbyists we are no longer going to talk to you and that's okay because the corporation can hire another lobbyist or the corporation can come direct but to say to a corporation you

are going, you know, there's going to be a, you're going to suffer because of a breach of the code is, is - - -

Well, you'd say if you do it, well, that is a problem. You might say, well, you can't do it yourself you'll have to hire a professional lobbyist?---Yes, I think the government might find that odd. I think the government would always rather - - -

10 MR GORMLY: But there are other sanctions available, Mr Harris. I mean, I understand your point. I think if, you're saying that if a, if a corporation breaches the code - - -?---Yes.

- - - and you say you may not now lobby, what you're really doing is disenfranchising them?---Yes.

You're stopping them from having access to government - - -?---Yes.

20 - - - which may itself be a problem but there are other methods of sanction apart from deregistration. I mean, you could have straight out penalties of the ordinary kind?---Yes.

THE COMMISSIONER: You could actually send someone to gaol?---Yes, in which case you do have a problem having just the corporation.

Yes?---Yes.

30 Well, you can fine them but I suppose that, those fines are usually derisory? ---And it may actually be very interesting to see how much this would cost a corporation, especially very large corporations who's dealing with the government all the time and I don't know how you define government yet but if you include people like the Industry Commission or the ACC or the ASIC, I'm talking at a Commonwealth level of course, corporations have dealings with those entities all the time about matters, some of them quite often are lobbying. In the context here, in the Office of State Revenue, in terms of taxes, perhaps the planning authority and any government that's a large purchaser of, of corporation services or goods, there may be some, there will always be lobbying about those matters, how much tax should I pay, can I have planning authority or why don't you buy my computers.

40 We're aiming for a low-cost system here, Mr Harris, but there's a striking, a striking difference between Commonwealth and state structures is that the state-owned corporations are of a nature it seems that make them rarely lobbied, some are. Those state bodies which are lobbied are usually more directly government departments so that it does seem to make it easier at New South Wales state level to define government as being at a ministerial level, departmental and you could include state-owned corporations, so the same sort of utility in it unless you're picking the ones that are lobbied?

---Yes. I suppose the point, the point I was making is that there will be corporations that will have very significant frequent dealings with government.

Yes?---Who may be judged to be lobbying government in those dealings. I mean I think you would probably exclude tender processes because - - -

Yes?--- - - -they're well (not transcribable)

10 Covered by (not transcribable) rules?---Yes, yeah. But it's in the nature of those, I suppose those requirements, they don't actually bear with lobbying, do they? The tender process doesn't allow lobbying.

No, no, it prohibits it?---Yes.

THE COMMISSIONER: Everything you've said I think suggests that it would be more appropriate if one could do it just to require individual persons doing the lobbying to be registered?---To answer that question, yes, if you're going to have a code of conduct and it's going to have bite, yes.  
20 Yes, you're right. The companies have to be very careful about the persons they allow to talk to government.

And that would be a good thing?---It may very well be a good thing.

MR GORMLY: Would you accept that it probably does happen to some extent now anyway?---The companies are very careful about, yes, yeah.

There's always the problem of the need for the consistent message?---Yes.

30 And if you defined the category or the level of government about which the register was concerned then exchanges at lower levels, that is, ordinary departmental gathering of information in either direction would be excluded anyway?---Yes.

That's probably not the site of any significant lobbying?---Yeah, yeah.

All right. Mr Harris, can I take you to another matter. Is there, just before I finish, is there anything else about that sort of system, subject to appropriate costing and to being clear about definitions, that you would see as being a  
40 problem?---No.

I might take you now to the question of post-separation?---Yes.

You appreciate that at the present time post-separation is governed by a code of conduct?---Yes.

Codes of conduct?---Voluntary?

Yes, at the, well - - -?---There's no sanction, there's no - - -

There's no sanction other than peer or superior?--- - - - authority who monitors the - - -

Do you, do you have a view about the length of time that currently applies in New South Wales, being 12 months compared with Queensland's two years and Canada's five years?---The current - - -

- 10 Can we just deal with them in categories? Can we deal with ministers first, specifically?---All right. There are two issues. One is knowledge and one is contacts. If you had an election and a change of government, then the period could be one year or six months, because the personal relationships have changed dramatically over that period of time. Knowledge also, so, if we're talking about personal influence then one year is probably too little and two years is better, five years is perhaps more than you need. If you're talking about knowledge, I think it might actually be a similar kind of period. One year's knowledge is quite important, two years it's less important, five years there's probably very little left.

20

What would you say of the view, Mr Harris, we've heard this from a former Premier of New South Wales that the real and useful currency of information available to a minister who has just left the ministry is probably not much more than a few weeks or a couple of months at most, because the turnover is so great that while they may retain some knowledge, they've got no actual saleable or useful knowledge?---I'd agree with that. (not transcribable) extend it a little, a little longer than that period, but that's the kind of argument that I agree with.

- 30 All right. As to the relationships, apart from a change of government, do you see any way of dealing with the fact that lobbyists who have come from the ministry are probably going to know people that will enable them to grant access or to get access for some time?---Probably of a similar order to knowledge although very senior people will have some access availability for an extended period of time. So the head of Treasury, if the head of Treasury left, one to two years maybe about the currency of that person. If the Premier leaves then the currency may be longer.

- 40 Would you accept that there does seem to be a problem about extending the cooling off period given the absence now of pension arrangements or any, and the complete absence of any form of termination arrangement for parliamentarians leaving parliament?---Certainly the benefits are significantly less generous than they were and are more akin to that which applies to other people. And so yes, they have to have some kind of livelihood in many cases to continue with. But nevertheless, it doesn't mean that they should trade on their, on an asset which will not be tradeable.

Let me put the contrary arguments to you, just to hear what you say about these. Firstly, you'll be aware of the argument that, that parliamentarians don't come out at present with the same benefits as others, that they come out with significantly less?---Well, I suppose on average, well I'm not even sure about that.

Well, there is no arrangement for redundancy that's for sure?---Yes.

Or termination?---Yes.

10

Yes. And they usually when they come out it's at short notice and after a period of intense activity, which is not consistent with establishing ones future career?---It's at least foreseeable. I suppose that's the difference.

And there is a real undesirability about parliamentarians establishing a future career while they are still in power?---Yes. Yes.

That really is a problem isn't it?---Yes.

20

All right. So that, that's a consideration that at least to some degree is likely to shorten the period rather than lengthen the period of the cooling off?--- Having said that Auditors General appointed for one term only, they may not be reappointed and there's an expectation they will not work with the state government.

Yes?---Now, those kind of restraints are, are quite interesting.

30

Yes. Well, interesting but not necessarily financially challenging if they are appropriate arrangements for post career income in the form of superannuation or pensions. I'm not trying to explore you history, Mr Harris?---Yeah. Well, they probably are no more generous then or no less generous then those available to parliamentarians.

All right. Now moving to another category, we have heard in relation to the ministerial staff who after all can have access to - - -?---Yes.

40

- - - the same level of knowledge and sometimes in some areas more than a minister, we have heard that they are often much younger people at a much earlier stage of their career, they may have saleable knowledge, they may have some relationships but they're not necessarily going to have the financial resources to have gaps in their career which would separate them from the next obvious step for many which is to go into government relations firms?---Yes.

Do you have a view about the periods that would be applicable to those people. Well, first, whether they're needed and second what it might be? ---Ministerial staffers, again at a federal level, are very influential and when they do leave there being no good separation policy in the Commonwealth

they do occupy quite powerful positions in the commercial sector. If you wish to avoid that happening in New South Wales there would have to be a time period as difficult as that might be for the individual, knowing it exists beforehand the individual may be able to plan for it.

Would you, would you care to put a period on it?---Again, you know, after one year the knowledge becomes reduced and after perhaps two years the, the social links become much weaker.

- 10 Just from your experience as auditor general is the sort of knowledge that a minister staff of an active ministry, in an active ministry, might have is of a saleable nature within that 12 month period?---I think so, I think so.

To the detriment of government?---That's a, that's a more interesting question, certainly to the advantage of others but not necessarily to the detriment of government. In other words, having access to information, the information may be on the public record but not easily as obtained as the staffer has obtained, yeah.

- 20 There are two views to be taken of people who emerge from government, one is that it's more important in the public interest not to allow their knowledge to be used or abused or sold, another is that they're people with a large body of accumulated knowledge and experience about government and we don't want to lose them. Do you have a view about that?---I, I suppose we're talking about information which is not available to the public, we're talking about anticipatory events, anticipating events so in the planning area for example one might talk about what is going to happen rather than what has happened, that's very valuable information even though it's not yet certain, the events are not certain it's still very valuable information and it's inside information and I suppose it's the trading in  
30 inside information which we ought to be worried about.

- Let me move to the third category, that is the, the senior public servant, let's not worry too much about whether they're directors general or someone a little bit further down. We heard the other day that they represent less of a risk than a minister who has access to cabinet, who is present in cabinet, they will be familiar more with their own department and their own field but not necessarily with others, is that a view you'd share?---While cabinet minister do have access to the breadth of government information they, they  
40 tend not to be too inquisitive about that, they've got their own affairs to worry about so I mean the head of Treasury would have more, more vital information than many others for example, the head of Planning would have more vital information than the Department of Health perhaps and so - - -

And the head of Premier and Cabinet presumably has a fair knowledge of all fields?---Everything, yes, which if he's selective about it, if he wishes to study it careful to advantage himself later.

So you're in a sense saying that there's no significant difference between the cooling-off period you'd apply to a senior public officer compared with a minister?---Correct.

Is there anything else you'd like to say about the post-separation issue?  
---Other than an obligatory one is required both here and in all jurisdictions in Australia, obligatory enforced requirement.

10 At present we don't necessarily have a system, I'll withdraw that. At present we don't have a system that would necessarily make use of former public officers, rather we're more concerned about making sure they don't abuse the information and relationships they have. Do you think that there is room for the creation of a more active system which would make use of people with a body of knowledge and experience, but at the same time try and institute in that a system for post-separation cooling off?---That's a very large question because it contemplates the kind of organisation we have at the moment which is so riven with problems that you would like to start again, and if you did start again you may have a system which doesn't need alternative employment mechanisms or resting places as Germany has them.  
20 What I'm trying to say is that the politicisation of the public service in New South Wales gives rise to problems about departures. If you had a new system which de-politicised, that there would be fewer departures and, and less of a worry about a need for alternative employment mechanisms.

Mmm. All right. There's no shorter easy answer?---No.

No. All right. Look, lastly, Mr Harris, I think that you had an experience of lobbying in the Department of Immigration from which you drew some matters that you wanted to bring to the attention of the Commission, as I  
30 understand it?---Ah, the importance of policy versus discretion, the importance of law compared to policy, is one issue. And I suppose that's the main issue, to, to establish a system whereby policy-makers need not get involved in individual decisions. They get involved in setting the policy or the law, preferably the law, but whichever it is, they, they, they do not then become involved in individual decisions. So the treasurer is not involved in individual matters of taxation, your, your taxation assessment, he's involved with the policy and the legislative, in fact, involved in setting the legislative parameters for it. Similarly, welfare is not the matter for the minister, it's a matter for the bureaucrats who have the power under legislation and they  
40 have very close requirements to follow. So in, in matters of local government, for example, just go give you an example, when I went to a local government in Sydney and, and it was a development application and I said, "Just tell me the rules, because I'll follow the rules." And they said, "Well, that's not the way it works. You put up your proposal and we argue about it." That kind of vacuum is, is, is not very useful to either party, but particularly it's susceptible to corruption.



Mmm?---So that's the main, the main issue that I, that I got from my time at immigration because it was considerable opportunities for corruption, if not, if not actual corruption.

Mmm. All right. Thank you, Mr Harris.

THE COMMISSIONER: Thank you very much?---Thanks, Commissioner.

10 Thank you for your time and your advice?---Thanks, Commissioner. Best of luck.

Thank you.

**WITNESS EXCUSED**

**[3.03pm]**

20 MR GORMLY: Commissioner, we have Dr Richard Sheldrake present in the hearing room. If I could perhaps call Dr Sheldrake.

THE COMMISSIONER: Dr Sheldrake, would you - - -

DR SHELDRAKE: Commissioner.

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

DR SHELDRAKE: The affirmation.

<DR RICHARD SHELDRAKE, affirmed

[3.04pm]

THE COMMISSIONER: Yes, Mr Gormly?

MR GORMLY: Dr Sheldrake, can you tell us your full name.

DR SHELDRAKE: Ah, Richard Frederick Sheldrake.

10 MR GORMLY: I think you're currently the director general of the New South Wales Department of Industry and Investment. Is that right?--- Correct.

You've been in that position since 1 July, 2009, but I think prior to that you've had a very long history in senior public administration in New South Wales. Correct?---(NO AUDIBLE REPLY)

All right. I think your original qualifications have been in agricultural research, including I think doctorals. I'm not going to go through it all, Dr  
20 Sheldrake, or we'll be here all afternoon, but I think you did a PhD in the Faculty of Medicine at the University of Newcastle and you worked I think in veterinary research for a long time. Now, if I could just go through some of the positions though that would be of assistance. I think you've been the Commissioner of the Murray Darling Basin Commission, that was in 2003 to 2009, you've been the New South Wales Commissioner for Soil Conservation from 2005 to 2007, the Director of Pig Research and Development Corporation from '93 to '96, Director of Animal Health Australia from 2004 to 2005, Chair of the Primary Industries Health  
30 Committee, 2004-2005, and a board member of the New South Wales Rural Assistance Authority from 2002 to 2006. I think you've had an interest in the development of policy in some national areas as well, including clean coal, carbon offsets, plant and animal bio security. It's a very long list, Dr Sheldrake. I think you've had a Churchill Fellowship as well and you've been a Fellow of the Australian Society of Microbiology and a Fellow of the Australian Institute of Company Directors. Dr Sheldrake, you were kind enough to talk to me and another member of the Commission a little while ago and I think you've had access to the Commission's Issues Paper. I think you appreciate that the Commission has had an interest in the perception and current operation of what might be generally described as the industry  
40 of lobbying and its growth and perhaps a degree of public concern and scepticism about the way it operates, principally that it is a behind-closed-doors activity and that it's very difficult to track a lobbying event through to documents that might otherwise have been available under the old FOI system or the new GIPA system. Does that largely reflect what you understand?---(NO AUDIBLE REPLY)

All right. With that in mind, can I ask are there any preliminary comments that you would wish to make about the subject of- -?---Well, I have a page and a half just to read.

Yes.---And it might just set the scene in terms of my position, Commissioner. The efficient delivery and provision of services to the public, construction of modern infrastructure and the effect of utilisation of the state's natural resources is dependent upon a productive and sound working relationship between the public and private sectors. Individual relationships that exist among political office-holders and their staff, public servants, private sector employees and representatives of company boards needs to be open and transparent. Governments are lobbied on a daily basis by groups and individuals trying to influence government policy or outcomes, and this is a key aspect of government relations. Trade unions, industry organisations, community groups, non-governmental organisations and representations by individuals through their local members of parliament are extremely effective, along with the public sector, in shaping contemporary government policy and decisions on a range of issues. However, in relation to the business sector potentially influencing government policy or an outcome change, the difference to the sectors described above is the real or perceived potential for private benefit to accrue to an individual or a company as a result of their lobbying activity. The issue of a perceived benefit should not be discounted. It has, it has the potential to undermine the capacity for the public sector to be seen to be open and transparent at all times. Moreover, failure to remove any perceived benefit gives opportunity to those who wish to be mischievous to gain advantage, even though there may be no real benefit at issue. Consequently, relations between private sector and the public sector need to be handled with more attention to good process and transparency than would normally be required. With respect to the use of professional registered lobbyists acting on behalf of another party, their relationship should also be managed openly and transparently. Registered lobbyists are likely to be aware of the appropriate process requirements of government in the public sector and may offer the government some comfort in this regard. It is far more likely that inappropriate lobbying, ie lobbying not following good process of meeting documentation, presence of appropriate staff, declaration of conflicts of interests, records of discussion and use of appropriate location for the meeting etc will occur with individuals not familiar with an appropriate code of conduct when dealing with public officials. The overriding issue is not the use of lobbyists being used to bring matters to the notice of ministers or public servants. Rather, it is that the government and the public sector have in place and use processes that ensure whenever representations are being made to government they are done in a way that is open and transparent. This should be set out in formalised guidelines which would be included as part of an induction process.

MR GORMLY: Dr Sheldrake, I'm going to go straight to a particular topics, if I may, to just raise with you. As I understand it your, your heading up what's widely called a super ministry. Is that correct?---Yes.

And I think you're reporting to some five or seven ministers.---Seven.

All right. Now, may we assume that you don't receive a lot of lobbying from lobbyists in that individual areas.---That's correct.

10 At the moment?---That's correct.

You have been in the past though, I take it, exposed to it?---Not from individual lobbyists. I, I mean I haven't been exposed to lobbyists approaching me directly that I can really recall.

When have you seen lobbyists in operation?---Well, I haven't, I haven't been exposed to them and I mean I haven't been part of the process where a lobbyist has put a case on behalf of a company.

20 THE COMMISSIONER: Can you explain why not?---Because I think, I mean, we administer, I administer the department and perhaps companies don't see advantage in engaging a lobbyist to come and lobby me.

MR GORMLY: You're department at the moment covers mining, energy, agriculture, forestry, fisheries, tourism and film and television and I don't think that covers everything. Am I right?---No.

30 Could it be that you don't see professional lobbyists because what you're seeing perhaps, are direct representatives of mining, energy and forestry who themselves are competent lobbyists?---And that was really, I mean, certainly I have contact with the management of those companies in a number of ways and the point of the comment I made in my opening statement was exactly that. The issue is really not whether I'm approached or a minister's staff are approached by a lobbyists, is that they're approached from a private sector company however their representative is. So that's where the correct processes need to be - - -

40 You have no doubt or hesitation about the idea that the approaches made by lobbying entities whether they're third party professional lobbyists or companies that want something or want to propose something to government have no doubt that that's of value?---Yes.

Having them approach you?---Yes. It's certainly of value to ensure, I mean, because of the way modern governments run, there's the interaction between the public and private sector on a regular basis. So, yes, there's good value in having good open communication between private sector and government.

Right.

THE COMMISSIONER: In one view Dr Sheldrake, the concept of lobbyists is an artificial one or a red herring, I mean if when, takes up what you've said in your opening statement the fact that they exist is not a problem - the problem is the processes. If that's right, would you agree that the processes need to apply to all activities that one, that fall under the rubric lobbying no matter who does the lobbying.---I agree.

10 MR GORMLY: It's the action of lobbying not the people who do it.---  
That's exactly right.

Right.---I think you need, in drawing, sorry – if you accept that then I think what I would try and do is separate, so that you don't get swamped between genuine community groups, stake holder groups representing a large community based organisations – you need to try and come up with some guidelines and ground rules that don't swamp the process so that you capture, and what I think it is about, people who will gain a personal, significant personal benefit or their company will gain significant - - -

20

THE COMMISSIONER: That's a very difficult distinction- - -?---I know.

- - -that has been emphasised throughout these hearings because one person's altruism is another person's commercial gain. No matter what entity is involved, no matter the altruistic nature apparently, you are going to find instances where government is being sought to prefer them rather than some other group. The other group may be another altruistic group but it may be a commercial group. So, the problem is that if one applies different rules to different groups one is immediately confronted by this notion of subjectivity. A netball lover might prefer to, might think that all netball teams should be benefited above basketball teams and netball lobbyists don't have to register while basketball lobbyists who are really lobbying for basketball have far more spectators and far more advertising, they should be covered. Now as soon as you get involved in that kind of judgment exercise there's a very big trap. So the easiest way is just to say, where we give everybody an equal playing field or if you register, what's wrong with that?---So, I think there are two issues there. So if it's in terms of identifying firstly, let's deal with the process - - -

30

40 You first have to look at the activity.---Yes. So if you deal with the process before the registration. So if you deal with the process it would be good process to come up with a set of guidelines which address how meetings between ministers and the lobbying group or lobbyist occur and one of those would be to have a public servant, senior public servant present at each of those meetings. Now if you've got the right culture operating within government and the public sector then the point that you're making probably comes almost irrelevant because it would become the norm. Whether it was the ladies basketball team or the netball team that were

coming in, the process would be so routine that a public servant would be attending anyway and the protocols for meeting et cetera would be adhered to.

Not merely attending but taking a minute of what's happening.---Taking a minute - - -

Not necessarily a verbatim record.---No.

10 But recording certain essential elements.---Key issues.

Key issues and the time, the date, the parties and the outcomes.---Yes, that's correct, I agree with that. And I think you could construct a fairly simple set of criteria and guidelines as to how meetings along those lines should be held and picking up the Police Commissioner's note. The next issue is in terms of creating register, I think what you don't want to do is create something which becomes some big and cumbersome it sort of becomes unworkable and detracts from what we're really trying to do here and so I think my feeling would be, you would then try and be a bit subjective so that if it is the President of the Netballer's Association you would probably say that's in a different category to the head of a large coal mining company who's meeting with the minister for minerals or the minister for energy. And I think, I think you could come up with criteria which allowed you to separate in terms of constructing a register how you would, who should be registered.

Well, there a trade unions, there are employers' organisations, there are churches, there are charities that compete with each other for a lot of money. Do you say they should be ignored, that they should have the right to be excluded, even if they are seeking a piece of land on which to build a mosque, a church, a building for cancer research, while there is another group which wants to build a retail store on that? Now, the retail store has to lobby while the others don't, or has to register while the others don't. Is that, do you- -?---So I wouldn't like to try and design the criteria here this afternoon, but an example like that, maybe one of the criteria would be that if there is an issue where the decision is having to be made along the lines of you're describing, then that then might fall to the line where you would, you know, you would require some form of registration. I think, I think if you could determine that there is a gain to be made from the, from, from the public purse, if you like, or if there's a gain which would accrue to an organisation, then, a financial gain, then, you know, maybe it falls one way. If, if it is, if it is lobbying where the benefits are spread over a large number of the organisations' representatives, you would perhaps say it falls the other way.

It is very difficult?---But I, but I agree it is very difficult.

I mean, we had a discussion here last week I think it was dealing with the competition between the cardiologists and the Cancer Foundation as to funds. Both employ lobbyists heavily?---Ah hmm.

There's no doubt about the altruism of each group. Do you give them free rein?---Look, I've never worked in, I've never worked in health, other than doing my PhD. So I think I'll leave the cancer people and cardiologists alone.

10 MR GORMLY: Can I put it to you another way, Dr Sheldrake. It would be nice to be able to avoid a register at all, that would be a good thing, if you could achieve three things. If first of all you could expose the lobbying process to a transparent light. That is, that you could make it visible to the public without having to have people register on a register. Secondly, if you could lay a trail of information sufficient for people to know that an act of lobbying has occurred and they can then follow that through to the Government Information Public Access Act and ultimately to some documents subject to appropriate protections. And thirdly, if you could do it all in a way that overcame the problems of representational lobbying, that is by the professional lobbyists, the lawyers, the accountants and others who lobby on behalf of a client, because the undisclosed client problem seems to be one of the goals of regulating lobbying. If you had those three things, you could avoid a register. One way of doing it, I suppose, is that require departments, consistent with the current Government Information Public Access Act, to have an information panel on their Website where meetings were registered. That would be one way of doing it. But it would mean that the public would then have to go in effect from ministry to ministry searching panels to try and find where a meeting might be. As to the, as to the second issue, you really can't get the documents unless you know the meeting has occurred in the first place. Well, I suppose that comes back to the panel as well. And thirdly, the representational problem seems to be impossible without some kind of a public register. All of those factors do seem to point to a register. The practicalities issue which you've been referring to and have been discussed with the Commissioner seem to be, does it become too big? I'm putting all this to you for your comment? ---Yeah.

40 Secondly, is it really necessary to identify individuals, and thirdly, how else do you impose, not just on the public servant, but on the lobbying public, the dictates of or the requirements of a Code of Conduct, unless you have a register which would require them to adopt it in the first place? Because it seems so often that the cause of corrupt conduct is not necessarily the public servant, it's the public who want something from the public servant who are more likely to offer. True, it happens the other way around as well, people can seek inducements, but it's more often the public offering to try and get a favourable decision. Now, that would suggest a benefit in applying a Code of Conduct. Now, I know that that's a large soup of material there, but the point is, unless one can find a practical way of achieving those three goals,

you end up with a register?---I think, I think your assessment for potentially inappropriate/corrupt behaviour is probably going to be more likely to come from an individual, either on their own or working for a company, trying to get an outcome that's favourable to them. So one of the ways that I think that will be addressed will be to make the culture, not, it's not as though the public servant is any way corrupt, but it helps if there's a real culture that's open. So your comment about putting stuff up publicly on Web pages following meetings, I think that's, that's good. I mean, we're looking, I mean, we've had recent discussions with the new head of, of GIPA in terms of making some of our material that we previously haven't made public, more public. And I think what you're describing there is probably a step that's going to happen. So you do that, you have a culture whereby ministers' staff and ministers know there is a procedure that they have to adopt, record, et cetera. I think once you've got that in place, then, then people as individuals coming in will just, you know, there will be a lift in the level of how people choose and have to behave.

10 THE COMMISSIONER: That doesn't cure the perception problem?---  
In- - -

20 We're not talking about reality here, we're talking about, I am not talking about reality, I'm talking about perception, the perception- - -

MR GORMLY: That is the reality of corruption, we're talking about the perception of corruption?---But I, I think, so, so in terms of the way the meetings are held, I think that does address the perception.

30 THE COMMISSIONER: But if somebody wants to find out whether there has been a meeting or not- - -?---I would be, so I would- - -

Between whom and whom?---So if there's a meeting between a minister and a company and we've, and we have that recorded on the departmental Webpage, that's fairly, fairly accessible. If you then wanted to have that linked into a government site so that you could track it back, I think, you know, I think that makes it fairly open.

40 I accept that, but not as easy as the register of course?---And I, sorry, sorry, in terms of the register, I wouldn't have a problem with linking meetings back to some sort of common register. I mean, it's probably the same.  
We're probably talking about the same thing 'cause electronically - - -

It's just (not transcribable) But the point of having a register, one of the main points of the register, apart from providing a trail for people to follow to find out what's happened so that they can actually get the document that's - - -?---Yeah.

- - -proper process has caused to be produced, is to impose this Code of Conduct on the outside. If you've got a register, it's easy. You say, if you



don't, if you want to go on the register, sign the Code of Conduct, if you're found to breach the Code of Conduct, you're off the register. That's easy. If you don't have a register, how do you control the public?---Look, I haven't, I, I think I would agree that you need a register. It gets back to the point- - -

Who's one it?---Who's on it. Without making, because you don't want to destroy- - -

10 Right. Okay. I understand. I'm sorry, I don't mean to be rude by interrupting, but if you get, say you get a large corporation, it's easier to get a medium-size corporation on the make, a couple of years old, making a great deal of money, whose ethics aren't so terrific. They employ, they've got an in-house government relations department or, or something with a name like that, where the people in it go out and try and influence government. And say they've got twenty people there. Now, and they have no Code of Conduct, no training and, and their motto is, whatever it takes. I mean, that's not an unrealistic scenario. How do you deal with them, with that kind of organisation, if you don't have a register?---In that case I think  
20 that is the sort of, so those people, so whoever they choose to have as their lobbyists on behalf of their company lobbying government or ministers, they should on the register.

What, each individual?---Well, it would depend. I mean, in a company like that perhaps, you know, only half a dozen of them are going to be meeting with, with ministers of government but I think, I think it probably has to be the individual because, I mean, it's a bit like driving a motor car. I mean, you might drive on behalf of a trucking company but it is the driver who's responsible.

30 Well, I think the only difference between us then is the notion that you've got to exclude some category from the register. Is that, is that correct?---So I think that that's, that's correct because what you don't want to do in my view is swamp the register with - - -

Yes?--- - - - perhaps a lot of unnecessary work.

Undoubtedly. And, well, you would agree that you'd have to have a pretty clear definition of the groups excluded because otherwise there's just  
40 problems?---Yes, although in the example you gave before you might say if it is about, if it is about a significant, you know, financial incentive to one or other - - -

Yes?--- - - - then in the case you gave with the Cancer Council or the Heart Foundation, that might be an appropriate case where, in their case.

You would say, you might say that charitable organisations or not for profit organisations do not have to register their lobbyists unless they are seeking a benefit from government that involves some kind of commercial objective?  
---Yeah, that sounds like a nice summary.

All right.

MR GORMLY: Dr Sheldrake, sorry, Commissioner, have you - - -

10 THE COMMISSIONER: Yes.

MR GORMLY: Would you, if there were to be a system that asked New South Wales government departments to publish on their website details of what we might call lobbying activity, that is meetings with say commercial entities that sought something from government, would you regard it as onerous for your department to gather the events and publish them on a website? Not, not the content of the meeting, just the date and the party seeing and the party lobbied?---We wouldn't find that onerous and as I said a moment ago, I mean, we I think having had some discussions for example  
20 in terms of exploration licences, I mean, we will look in future to be much more open with some of the, the conditions that, for example we put on, on licences. Now, we hadn't, and, and it's the sort of thing that, you know, really hadn't, we hadn't thought about, it was raised with us, we've got no reason why we wouldn't do it and, and in a way what you're proposing fits the same category.

THE COMMISSIONER: I think that we would really be interested to know what kind of information you would be prepared to put on the website involving meetings with people who are seeking benefits or favours or - - -?  
30 ---I think what you would want to be not putting on the website would be commercial in confidence material - - -

Yes?--- - - - that the company may provide to the minister or public sector.

But the very fact that they're meeting might be commercial in confidence?  
---That's right but, but on the whole you would think that you should be able to indicate for example, if a company wants to meet with a minister then meetings with ministers are fairly frequent, that in itself should at least be able to be recorded. It's, it's, it would get, so sometimes the content of  
40 the meeting would, you perhaps would have to argue that perhaps it shouldn't be placed on the website.

Would you be content if that issue, that is to say the content of the meeting or the very fact of a meeting taking place should be determined by say an independent person such as say the Information Commission?---Sorry, Commissioner, while you were, what I was thinking, I mean, I think that this is not dissimilar to the FOI so we make material available under FOI or GIPA after it's been assessed and, you know, as you know there are

conditions, commercial in confidence being one, that exempt material. So there's no reason why similar conditions couldn't be developed and identified for material going up on a departmental website so, yes, I agree with that suggestion.

MR GORMLY: If one adopts a practical, I'm going to withdraw that, Dr Sheldrake. Can I take you to another matter. I understand your proposition that it would be desirable generally for a departmental officer to be present at all ministerial meetings. We have heard evidence, particularly  
10 from chiefs of staff, to the effect that well, sometimes ministers do have meetings at which a department officer ought not attend, for example, if there's a complaint about a department or something of the sort, as a preliminary matter you wouldn't have a department officer there. That, that, would, and there may be other reasons for presumably meeting without a departmental officer that would still fall within the, the basket of ministerial activity. That, that would tend to suggest that even, even if the department were to take the bulk of the responsibility for listing meetings, ministerial meetings, there would still be some meetings that would amount to lobbying activity perhaps which wouldn't get to the minister so the minister's office  
20 would still have an independent obligation under this system to publish some meetings or to notify some meetings. Do you agree with that?---If they were, I think I would argue if they are companies meeting to lobby then a public servant probably should be present. It doesn't have to be from the, from the department. I mean, I have thought about this. For example, we employ an independent chair of our audit and risk committee so someone of that stature could always be, be drawn upon. You could draw upon a public servant from another agency, if there's an issue relating to department you could select someone out of the Department of Planning to be present. But if, if, I mean there are lots of times where people will want to meet with  
30 ministers where there is need to have, because they won't be lobbying meetings, they'll be meetings in line with the political party, they'll be - - -

THE COMMISSIONER: To get information?---Yeah, to get information, they'll be trade union, you know, and they won't be lobbying, they'll be, they'll be, and they'll be personal so it doesn't, I mean I don't, I think, again this is where we do need to give some thought to, to make it genuinely workable and not capture everything so that it grinds - - -

Well, again, it would focus on the activities?---Yes, that's correct.  
40

Again, the need to have an independent person there and to minute, take minutes would depend on the activities that are going to occur at the meeting?---That's correct.

And if, if a meeting is called under false pretences or genuinely called simply for information purposes but turns into what is in effect a lobbying meeting it would be the obligation of the minister to stop the meeting until or postpone the meeting?---Yes, I agree. And the staff, and the staff of the

minister's office wouldn't, and which is again, I mean, the comment I made in my opening statement, some of these processes need to be really driven home through an induction process so with the incoming ministers and incoming ministerial staff that needs to be part of the process. They need to understand how important this is.

10 I suppose too, Dr Sheldrake, the discussion to date hasn't got to this point, but I suppose just following the Commissioner's point a moment ago, if a minister has a meeting which amounts to some complaint about the ministry, that's not lobbying in any event, that's something else. If, if a party sees a minister with a view to lobbying, I can't think how that would ever not involve the department. Is that your point? Is that the point you're making?---Yes, that's, that's correct.

20 So that if ever there is lobbying, a departmental officer would automatically be, oh, I think that was the Commissioner's point, a department as well, the department would always be present?---Yes, that's correct. So the Commissioners comment of the activity that needs to be identified in terms of the purposes of the meeting, and once that's quite clear, then you can go down, you know which pathway to go down.

Well, that would mean, wouldn't it, that if there were a system that required all lobbying to be notified on a Website, that one could expect that with a regular system, so that there was a departmental officer always present, the department could in effect take full responsibility for the publication of lobbying meetings?---Yeah.

30 So the likelihood of a minister ever seeing, well, one could almost prohibit events where a minister saw a lobbyist without a departmental officer present, prohibit in the sense of administratively prohibit?---Yes. A departmental or a, or an equivalent, so public sector. I mean - - -

Well, the goal, Dr Sheldrake, would be to get the minutes of the meeting onto a departmental file, because that would be the way in which you get through to the GIPA process, which is the ultimate goal?---Yeah. Yes. I agree.

40 THE COMMISSIONER: You'd have to deal, I mean, we've heard a lot of evidence about casual contact, social contacts between lobbyists and ministers which is impossible to control and which would always happen, but we are told to calm down because, because deals, no deal, it's very rare for a deal to be concluded as a result of such a contact, that the norm is that the minister will say, it's very interesting, make an appointment and come and see me about it. Would you go along with that or not?---I think that would be my experience. I think you can't, as you said, you can't avoid social contact and, and I do think that if the effort is placed into changing the culture, people wanted, people do largely want to, want to behave appropriately and correctly and so the process that you're going through

here, if it outlines a new and changed process with heightened, heightened guidelines, I think that will drive, that will drive people to behave in the correct way and so the example that the Commissioner has given in terms of social contacts being the first point of contact, ministers or chiefs of staff or staff will say, well, we need to follow that up, we'll be arranging a meeting and we'll have a public servant there.

10 In a way, that is for the protection of the minister?---Absolutely. I think that, I think this is a really important aspect, that the perceived, sometimes the perceived inappropriate behaviour, it is, it is that, it's perceived. But that's what gets, tends to get reported and published sometimes and it is about getting rid of that, because that's what makes it difficult for the public sector.

MR GORMLY: Dr Sheldrake, can I just put this to you, that if one works in the field, that is inside government, one can see that the processes are clean, that the activity of the lobbyist is regular, that the receipt of the information or the lobbying persuasion has received an appropriate fashion, that a decision is made in an appropriate way and the outcome is an appropriate  
20 outcome of lobbying activity, plus all the other considerations of government. So if you're inside government you can see all of that and the mechanism. If you're outside government, you see a decision at the end of a process and whole series, perhaps a whole series of private interests that have gone in there, maybe not even that. You can't make sense of the decision. That's what transparency is about, is in effect allowing the public to see as well. Now, if you, if you adopt that view, it does seem reasonable to acknowledge that lobbying is a normal activity, but equally it seems reasonable to impose on those who lobby standards of conduct by which that regularity can be seen to occur all the way through the system. We've  
30 heard here, Dr Sheldrake, that mission statements are not necessarily effective documents but codes of conduct are. We have heard that codes of conduct are generally read and people seek to comply with them. Would you agree with that?---Yeah, I think that's right.

Do you see any merit in imposing on lobbyists as distinct from the public sector which is already subject to codes of conduct requirements that they not exaggerate, not mislead, not lie, comply with reasonable requests and so forth, that's an application to the public at large so long as they step over the line and lobby. Do you, do you consider that there's likely to be any benefit  
40 in the imposition of a code like that?---Applying it to lobbyists?

THE COMMISSIONER: Lobbyists.

MR GORMLY: Lobbyists, people who lobby.

THE COMMISSIONER: As a requirement to registration?---Yeah, I think we should and I think they should know the processes that they will be required to go through as part of that, they should know the processes that

they will be required to go through to have a meeting with the minister or the public sector so it should be really clear and up front how, how a meeting will be conducted.

There should be an acknowledgment in the code of conduct by the lobbyist that he or she knows that oral contact involving an attempt to come to an agreement is prohibited. They can use oral conduct, contact, to arrange meetings and to pass information perhaps but, but when there is a meeting, when there is to be a meeting to, to really lobby it should be at the minister's office or perhaps on site in some cases?---Ah hmm, ah hmm.

Attended by a departmental officer taking notes, otherwise they should not have the meeting?---Yeah, yes, I agree.

And so that that is part of the lobbyist's code of conduct as well?---Yeah.

And so that they acknowledge that they know that so that if they do that then that's a breach of the code of conduct?---Yes, I think, and I think, I think you'll find most lobbyists, professional lobbyists so as opposed to perhaps company employees at this point, professional lobbyists would understand that and would be more than comfortable, I'd anticipate, be comfortable to adhere to that and then, so then what you've got to do is say if you're a lobbyist, an in-house lobbyist or a company employee they too have to - - -

Yes?--- - - - to follow that behaviour.

And in time it might lead to a professional lobbyist organisation which would monitor itself?---Yeah.

And make it a really professional occupation?---I think what will grow out of it, if, if, the, then there will be, you know, it will become part of training packages so it will then be slotted into MBA programmes or senior public sector training programmes. That's where you've got it to. It's just got to become part of the normal way you do business with government.

MR GORMLY: Do you think Dr Sheldrake that if there were a system in place that exposed lobbying in the way we've been discussing this afternoon and that also enable a tracking from a lobbying event through to the documents that resulted from that lobbying event, that that would have any impact on public scepticism about lobbying or do you think that's going to occur anyway?---I, I think it would. I think - - -

You think it would have an impact?---I think a positive impact.

Yes?---I think, I think, look I think sometimes the public, you know, you read material in the papers and you can't help but think that this doesn't look very good even though it, you know, may have been carried out

correctly which, you know, was your comment before. So if you can cut a pathway so that the public understand there has now been an agreed way of doing business then I think that will definitely allay community concerns because it's being open, it would, it would presumably have agreement, bipartisan agreement, it would be accepted by the private sector, it would be accepted by the public sector and, and so I'm sure the, you know, the community would see that as progress.

10 At present it's not possible to do it, you may not know this, Dr Sheldrake, but it's not possible at present is it to do a search across the websites of New South Wales government entities?---Look, I, I might plead the, the recent politicians plead on this one. Look, I don't know the answer to that.

Right?---But I'm sure there'll be people in the public sector who in the, in the IT area who will.

Right. Thank you, Dr Sheldrake, I have nothing further.

20 THE COMMISSIONER: Thank you very much, Dr Sheldrake - - -?  
---Thank you, Commissioner.

- - - for your very valuable evidence?---Thank you.

**THE WITNESS EXCUSED**

**[3.51pm]**

MR GORMLY: Commissioner, I have no further evidence today.

30 THE COMMISSIONER: The Commission will now adjourn.

**AT 3.51pm THE MATTER WAS ADJOURNED ACCORDINGLY**

**[3.51pm]**