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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 TUESDAY 17 AUGUST 2010

AT 2.00PM

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

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we have Ms Catherine Fitzpatrick in the witness box.

THE COMMISSIONER: Ms Fitzpatrick, would you like to give your evidence under oath or do you wish to affirm the truth of your evidence?

MS FITZPATRICK: Affirmation please.

10

<CATHERINE ANN FITZPATRICK, affirmed [2.01pm]

MR GORMLY: Commissioner, Mr Luke Hastings from Freehills is going to seek leave to appear for Ms Fitzpatrick.

MR HASTINGS: Mr Gormly.

20 THE COMMISSIONER: You make history.

MR HASTINGS: I'm told that.

THE COMMISSIONER: Yes. Well, that's a very cautious person. You have leave.

MR HASTINGS: Thank you.

30 MR GORMLY: Ms Fitzpatrick, your full name?---Catherine Ann Fitzpatrick.

All right. You're currently employed I think by Leighton Holdings. Is that right?---That's right.

But Leighton Holdings is a covering body for a number of major Australian bodies including John Holland, (not transcribable) and Leighton Contractors. Is that so?---That's right, we're the parent company of six operating companies.

40 Right. And you are in their government relations area?---Yes.

All right. Do you head that?---There is one person.

And that's you?---That would be me.

All right. Do your duties cover all of the bodies of Leighton Holdings?

---No, my role is government relations and sustainability manager for Leighton Holdings, each of the operating companies have various people that may do government relations activities.

Okay. All right. Now, Ms Fitzpatrick, I think you don't wish to make any kind of an opening statement so I'm just going to plunge straight into your background if I may?---Yes.

10 I'm going to get you to either sit forward a little bit or just pull that microphone towards you so that we can hear. Thanks. And I think your background is originally in journalism in Western Australia?---Yes.

I think you were with the Western Australian newspaper, I think you've been awarded for your media work. Correct?---Yes.

And you after being in journalism went into media advising and politics and initially or at least at one stage to the Defence Minister and to the Leader of the Government in the Senate?---They're one and the same person.

20 Yes. All right. And that was from 1999 to 2004. Is that so?---Yes, I was the media advisor for that time to the Attorney-General and to the Defence Minister.

Right. Who was the Defence Minister in that period?---Robert Hill.

Right. All right. Now, following that period you then joined Leighton from about March 2006. Is that right?---I, I didn't join Leighton from that time, I was a consultant to Leighton in 2006 and I joined Leighton in a full time capacity in 2007.

30 Right. All right. Now, I think your area of work ranges across government relations but also into other areas of work as well. Is that so?---Yes, sustainability matters.

Now, Ms Fitzpatrick, can I ask first that you give us something of a thumbnail sketch of the range of duties that you do without going into any Leighton business and we'll perhaps expand from there but bearing in mind that the interest the Commission has in your evidence is in your role as in effect an in-house government relations, in-house lobbyist. Would you accept that as a description of part of your role?---Yes.

40

All right. So on a day to day basis in-house at Leighton how would you describe your duties?---Day to day may not be the best way to describe it because on occasion I'll be doing things that have no relation to lobbying but if I were to describe my role it's understanding government policy and how that might influence our business and provide opportunities or risks to the business. In terms of my government relations work I would, if there are particular issues I'd find out how that impacts on our business by talking

to our operating companies and our relevant executives and then I would potentially pursue those issues with government by either speaking to public servants or ministers and their staff.

And are they generally speaking people you know or people you don't know? If you're making contact with government to try and get information are you talking to people you know?---Not necessarily, it would depend what the issue is.

10 All right. But you'd know where to look - - -?---Yes.

- - - if you want the information?---Or if I don't know where to look I'd pick up the phone and ask.

Right.

THE COMMISSIONER: Are you the only person in the Leighton office organisation who does this?---Who does government relations?---

20 Yes?---I'm the only person at Leighton Holdings whose official role it is to do that. If there was a particular issue that our executives are interested in they may well make representations to government.

I see.

MR GORMLY: And be in contact with people in government apart from making representations?---Yes.

30 All right. Is there any kind of, from your experience of working in Leighton but also from your knowledge of what else happens in the in-house government relations field would somebody in your position be in touch with government relations people in other subsidiary bodies?---Yes.

Do you coordinate, I mean are you able to share information or contacts or methods of work?---Yes, if, if need be. We, Leighton Holdings operates that we provide corporate governance guidelines to our operating companies, government relations is one of those areas where we provide those good governance guidelines and that sets out minimum expectations of how we would expect people to behave.

40

What sort of things would be in guidelines for government relations?---Our guidelines on political donations which is to be transparent and bipartisan and just acknowledging that our government is a major stakeholder of ours and we need to treat government as an important stakeholder because they can have an impact on our business.

Sure. That's as to conduct issues is it that you're talking about there?---It provides minimum, minimum expectations of how the operating company should work.

Right. Now, again on a more or less a day to day basis to whom would you be reporting?---I report to the Executive General Manager of Corporate Affairs.

10 Right. And would that be on all matters in your area or is that specifically for government relations?---That's all matters in my area.

All right. You're covering government relations, corporate governance issues. Is that right?---Some corporate governance issues.

Yes. What else is there?---Sustainability.

Right?---So I do our sustainability reporting and some risk management industry affairs.

20 All right. So those three or four areas?---Ah hmm.

Can we just focus on the government relations for a moment. If you were to describe what your role was in the government relations field other than getting information would you be able to do it, would you be able to tell us what that was?---Yes, perhaps if I use an example. I was very heavily involved in our response to legislation relating to an emissions trading scheme, my general focus is federal policy and federal MPs so when we saw the legislation we discussed with our business, each of the operating companies how that draft legislation may impact on the business, whether there were any unintended consequences of that legislation and where there were were there ways that we could suggest to government that we might improve that. Then I co-ordinated our efforts to talk to government. First of all to the Department of Climate Change and then to other relevant departments, to talk to industry associations and other businesses that might be affected in the same way to see if there was a general impact. And then eventually we worked our way up the chain to more senior people in the bureaucracy and then to ministerial staffers and MPs as necessary.

40 So might that involve, before you go out to government and when you're wanting to investigate the Emissions Trading Scheme's impact on the Leighton's group, I take it that that would involve a more or less a multi disciplinary meeting in Leighton's before you go out. Is that right?---Yes or the relevant experts from different parts of the businesses.

And so you're authorised to go and talk to them?---Yes.

Right. Are you able to call them in for a meeting?---Potentially. On this particular issue we didn't see any competitive problem so we did discuss an approach that would assist the group.

How do you mean a competitive problem?---Three of our companies compete against each other in the Australian market and where there are competitive issues there are probity rules. This we didn't see as an issue that would need to involve any probity issues.

10 Right. So, so that means you could meet or you could meet?---We could meet.

You could meet?---Yeah.

And did?---Yes.

All right. So you then understand what the, work out what the Emissions Trading Scheme is about and so far as it affects Leighton's or perhaps overall. And gathering what the arguments or the information or both?
20 ---Both really.

And if you then design a, a government relations programme, is that something that you would design yourself and then present for clearance or would you just go ahead and do it? How does it work?---Where we identified some issues, I don't know that we got clearance but we certainly, I mean I'm authorised to talk to government about our issues. So we talked about what those issues were with relevant people in the department who were seeking engagement with corporations about what the legislation might look like. And if, whether there were any issues.
30

So you have to inform yourself sufficient to be able to debate the topic with government?---Yes, I do. I know more about the Emissions Trading Scheme than I ever cared to.

Right. And would you then in the design of your programme, work out who it is, can you tell us what you did to design a programme to make Leighton's points about that scheme?---Yes. We looked at which people in the department were working on relevant parts of the legislation. We then looked at, as we sort of escalated, which ministers had responsibly and who were their key staff members, which parliamentary committees may be
40 looking at the legislation or issues to do with the legislation. Which members of the opposition might be interested and any local MPs that may, where we might work and have some unintended consequences, we wanted them to know what might happen in their electorate, to our business. That's about it.

And you then pursued the programme?---Yes.

So what might that involve?---So, if I can - - -

Is that, can that be done by phone?---Yes, initially there were, we made some telephone calls. We generally made appointments with the department first. Our issue related specifically to contract mining, which isn't well understood. So we made a presentation pack and told people how it works and how the legislation might impact on us. And then made suggestions for how we thought the legislation might be changed so that the government could still achieve its intended aim and so that, but it might
10 work a bit more logically as it applied to our business.

So over the whole period that you - - -

THE COMMISSIONER: Work more favourably to your business?---Not necessarily favourably, just it didn't make much sense the way it was, the legislation was drafted. It was drafted for, mainly for organisations that have a facility that emitted and the legislation didn't really comprehend how our business model worked and how contracts may well be set up.

20 I don't really want to pry into this issue with the Emission Trading Scheme but I, I mean, in general principle you'd only get involved in something that was to your detriment or something where you wanted to get something to your benefit, you wouldn't do this for the greater benefit of humanity I assume?---We, we, we would comply with the legislation had it have gone through the way that it did.

Yes?---It just wouldn't have applied logically to our business.

30 That would have caused you inconvenience?---It would have caused us inconvenience.

And you wanted to be rid of that?---And we thought it would also cause inconvenience to the government because some of their figures would be wrong.

Yes?---So I, yeah.

40 MR GORMLY: All right. So that, that's part of a normal strategy is to work out not only what affects you detrimentally but what's going to be advantageous to the government, is that right?---Yes.

What's the purpose of that?---Well, you want to be helpful in your suggestions.

THE COMMISSIONER: Or persuasive?---Or persuasive.

MR GORMLY: Yeah. And in, over the course of that period when you were pursuing that campaign, what sort of time span are we talking about?

---About two years.

A long period?---Mmm.

All right. So over that period can you give us an indication, I'm sure you'll understand why when we get to the topic of a register, but can you give us an indication of how many meetings that might have involved with, with government, just a range?

10 THE COMMISSIONER: Approximately?---50 or so.

MR GORMLY: Right. And that would be over a number of government departments and who else?---Government departments, ministerial staff, MPs, ministers.

THE COMMISSIONER: And where would they be held? I mean, I'm not asking for the precise venue but what kind of venue?---Their office, our office generally or on the phone.

20 Phone discussions?---Yes.

Or phone, prearranged phone meetings?---Both.

MR GORMLY: All right. Would the phone meetings involve telephone conferences, that is, where there's more than two parties?---Yes.

Right. Would they, how long would a, you know, an ordinary lengthed multi-party call be, are you talking about 15 minutes or half an hour, an hour?---15 minutes to half an hour.

30

Right. I take it - - -

THE COMMISSIONER: I'm sorry.

MR GORMLY: I take it the most effective meeting is the face to face meeting?---Not necessarily. We found we had to use a range of methods on that particular campaign, partly because people weren't necessarily in the same place at the same time but sometimes it was more effective just to have a quick phone call.

40

THE COMMISSIONER: Ms Fitzpatrick, can I just ask you, there's, also, this is, this assists us in our search for various definitions but these meetings that you had, were they always a combination of providing information and providing, and putting forward proposals that might benefit your company? ---In relation to, to lobbying on the Emissions Trading Scheme?

Yes?---Yes, yes. We had to put our case often and it was the same case generally.

And what is the lowest level of bureaucrat that you saw?---Branch officials, just people who were working on the policy so policy officers.

And, and then at some particular stage you got to, what, the director general?---No, we didn't go to the secretary of the department, we went to branch heads I think is the - - -

To branch heads?---Yeah.

10

And when you went to branch heads what, what were you aiming for? Were you aiming for a decision by them or, or a recommendation by them or, or, or what?---I guess the first thing we wanted was an acknowledgment of our issue and understanding, some comprehension of the issue that we had and then an undertaking to have a look at it and, and consider what our perspective was.

Having put your perspective to them?---Yes.

20

And when you left those meetings, what did, what did you hope for? Were you expecting them to come back to you?---Well, you might recall, well, you might recall the way the legislation was proposed was there was a Green Paper with draft legislation and then there was a White Paper which had the legislation attached to it so we were hoping to have the legislation changed between the Green Paper and the White Paper.

And were you, you hoped that the bureaucrat that you were talking to at that stage would be able to make recommendations to the minister?---Yes.

30

But you then went on to speak to the minister?---Yes.

Is that at the suggestion of the bureaucrat or your own suggestion?---No, that was at our, that was our own undertaking.

The impression I get is that you didn't really get a decision, a commitment, one way or another until you ended up with the minister?---Well, the public servants can make recommendations but it's up, up to the - - -

40

Yes, well, a decision to make a recommendation, did they get that?---No.

So, and did you get, when you go to the lower level do you get, you, are you told whether you're going to get a recommendation from each one as you go up the chain?---We weren't in this case, no.

So you just put your case, wait, talk, speak to another bureaucrat higher up and so on until you get to the minister, is that right?---Pretty much.

And why do you do it that way? Why don't you go straight to the, well, I suppose you, you go to the people who inform the senior bureaucrat, is that it?---Yes.

10 You go to everybody who, you understand I presume that you do it that way because you understand how the system works and you know that if you higher up right away you're not going to get anywhere, that's just going to be delayed because they're going to ask the people down below to do some research and to think about it and report back to them. Is that it?---Exactly.

So this takes, this takes skill, knowledge and, skill and specialist knowledge of how to proceed in the most efficient way to put your case. I mean, really that's how it is?---Yes.

No different to a professional lobbyist?---No.

No. I mean that's the technique that a skilled professional lobbyist would apply?---Yes.

20 Yes.

MR GORMLY: Might it be, Ms Fitzpatrick, that you would never actually get a commitment but you're hoping to have adoption of your view, is that the process? Were you expecting a commitment?---No, we were expecting to see something in the White Paper if - - -

THE COMMISSIONER: You were successful?---If we were successful.

30 So if there was, if somebody was taking a minute of these meetings, let's take the meeting, the last meeting before you see the minister and say some civil servant was there taking a minute and he was required to record the outcome, what would be his record of the outcome of that meeting?---There wasn't an outcome at that point so I'm not sure that there would have been an outcome.

No outcome, no?---It was information sharing really.

Right.

40 MR GORMLY: You said earlier on in answer to the Commissioner we had to put our case many times and you laughed as you said it. I take, I take it what you mean is that you are having to repeat yourself?---Yes, we did.

THE COMMISSIONER: To different people though?---To different people and potentially to the same people.

Because it was so complex?---Because it's, it was very complex and we just needed to educate people about how our business works.

MR GORMLY: Did it ultimately succeed, whatever the argument was?
---Yes.

It did. So you could read the Green Paper and you could see the impact of your lobbying once you read the White Paper or the legislation attached to the White Paper?---Yes, Leighton Holdings was quoted in the White Paper.

Right, all right. As having put an argument?---Yes.

10

And that argument having been accepted?---Yes.

THE COMMISSIONER: Do you, was there anyone affected to the detriment, to their detriment as a result of what you did? I don't mean that in a, in a negative way because often, I mean, most times when one goes to government and asks for something you get something and somebody gets something less. I mean, that's just how it works. I'm trying, I'm trying to find out whether there was a competitor to you?---We had discussions through our industry association and we also had discussions with, which is the Australian Constructors Association. We also had discussions with the Minerals Council who were our clients and we were all agreed that the legislation didn't apply logically and the solution that we proposed was acceptable to the whole industry as not being detrimental to anybody.

20

So did someone, somebody outside the industry have to pay more or do more things?---No.

The government received the same amount as it did beforehand?---Yes.

30

It was just the mechanism that was changed, was it?---Yes, yes.

And that didn't harm anybody?---No, it probably benefited lawyers.

MR GORMLY: Why do you say that?---Because we would include in commercial negotiations.

Did you say because it, it, it benefited lawyers - - -?---We would, we, we'd have to change some contracts through commercial negotiations.

40

I see, right, all right. So how did the problem arise in the first place? Why was the Green Paper drafted the way it was and it gets changed as a result of your representations? What, what went wrong in the first place in your view?---In my view I don't think something went wrong, I think it was drafted to cover a whole range of industries and the people who drafted the legislation didn't contemplate every type of contractual relationship that exists in the Australian business community.

So there may well have been others lobbying on similar misapplications. Is that right?---Yes.

Do you know if there were other persons lobbying or other interests lobbying on the same material?---On our particular issue?

10 Well, on a, on a, well, were there others lobbying on your issue? I take it there weren't if everybody was of one mind?---There were other industry associations who had similar issues to us and so our lobbying and their lobbying was pretty aligned and they were also acknowledged in the White Paper.

Right.

20 THE COMMISSIONER: Is this a typical case or is it a special case?---It's a typical case with new legislation where it's completely uncharted territory and no one really knows how it's going to, how it's going to look and so you need to examine the legislation and, and consider how that might apply to your business.

Do you lobby only in relation to legislation?---That's my primary focus.

What else do you do then lobby?---Policy, policy issues, so if a political party has a particular policy that we think may be detrimental to the business or could be improved we may talk to the political party about or MPs involved in that policy development.

Including the minister?---Yes.

30 Right. I would like, once we've finished this I might just ask you something about the donation policy?---Yes.

MR GORMLY: Perhaps, Commissioner, if I could just go, take it a couple of minutes more.

THE COMMISSIONER:

40 MR GORMLY: Ms Fitzpatrick, I appreciate that you're the only person in Leighton Holdings but one gets the impression that, that people in government relations tend to get to know one another over a period of time even if they're in unrelated interests. Is that correct?---Yes.

And that I take it is because you're all focussed on a fairly definable target, you're generally focussed on government one way or the other?---Yes, we see each other around a lot.

All right. And I take it there's movements, staff movements, employment movements between one realm and another as well?---Yes.

Right.

THE COMMISSIONER: You bump into each other in the corridors of power?---We do.

MR GORMLY: All right. Is there an industry organisation for somebody in your position, that is somebody who is doing government relations in-house?---Yes, we're members of the Centre for Corporate Public Affairs.

10

But when you say we are, do you mean Leighton's?---Leighton Holdings is.

Right?---And some of our subsidiary companies are as well.

THE COMMISSIONER: And your, and people occupying some of the positions in similar organisations are as well I take it?---Yes, they are. That's another place we bump into each other.

MR GORMLY: Right.

20

THE COMMISSIONER: And professional lobbyists?---I'm not aware.

You're not aware if they are or not?---If, if they are members of that same association.

MR GORMLY: Could they be?---I, I don't think so. But I don't know.

Are you, are you yourself aware of the professional lobbyist entities, you know, the Hawker Brittons and the Parkers and so forth?---Yes.

30

How do you know about them?---In my experience as a former press sec in government and we also engage some third party lobbyists at Leighton Holdings. We have Hawker Britton and John Connelly & Partners.

Right. All right. So you, you've got to know them over the years in a number of different ways?---Yes.

Right. Would you know the individuals in the various companies?---I know some.

40

THE COMMISSIONER: Do they do the same job as you do you think? Would you say similar?---They don't do the same job as me because they do it for a range of clients.

Yes, other than that? What's your technique?---Generally it's the same technique.

MR GORMLY: So do you know if they, are you conscious of them having something like an industry body?---No, I don't know.

All right. Is it your understanding that they would tend to know one another?---I don't know.

All right. You've come across them I take it at functions as well?---Yes.

10 All right. In the, this is going to lead us to donations as well, but I think Leighton's is to some extent a body that falls within Section 400 and whatever it is that, of the Environment, the EP & A Act, which prevents the giving of donations by developers. Are you familiar with that provision?
---Yes.

Now I take it that that's had some impact on the way you would do your work in so far as Leighton's does development work?---Yes, we don't make political donations in New South Wales.

20 Right. Prior to that you did?---Yes, we did.

Right. Now, how have you found that apart from making the donation, how have you found that that prohibition has impacted itself on your work?
---The major impact is that I don't attend functions that I might once have attended.

All right.

THE COMMISSIONER: Fundraising functions?---Yes.

30 MR GORMLY: Those fundraising functions usually involve ministers. Is that so?---Yes.

Right. What's, what's the drawback in not going to them?---You miss out on the opportunity to hear the context in which a speech is delivered and potentially the context of the way the government is tracking or discussing particular issues of interest to our business.

40 THE COMMISSIONER: Don't they give those, don't you, don't they give those speeches unless you go to a fundraising dinner?---No. They give those speeches at other functions too.

So you could, you could hear them there?---Potentially.

But you don't?---I tend to focus on, I go to a lot of functions.

It's a matter of priorities is it?---Yes, it is.

MR GORMLY: All right. So you're hearing some speeches but not others?---Yes.

That's the position?---Yes.

Do you find that by not attending the fundraising functions you're also not talking to other people who are not the minister, that is you're not talking to other public relations people either?---No. Not, do you mean by not attending political fundraisers?

10

Yes?---No, I see other government relations people at a number of places.

All right. So is it a drawback that you're precluded from attending these fundraising functions or not?

THE COMMISSIONER: Or is it a benefit?---I, in my experience I think it's a drawback because our company is precluded from attending while other company's are able to attend. And I think if there is a ban on political donations it should apply equally, to not just corporations but other parties that make political donations, so that we're all in the same boat.

20

MR GORMLY: Right. So because of the sectional activity that Leighton's carries out as a developer, if there is a fundraiser and it affects both developers and non-developers the non-developers are going to get the benefit of the ministerial contact and, and Leighton's is in effect prohibited from hearing it?---Yes. But I wouldn't necessarily say that every political fundraiser there is a ministerial contact, because you may go to a fundraiser where there's 600, 800 people and you're not going to meet the minister.

30

THE COMMISSIONER: What kind of contact are you talking about?---So, at a fundraiser you may just be sitting and listening to somebody speaking. Just - - -

Yes. Or you may meet the person?---Or you may meet them. But I'm saying not every fundraiser you would necessarily meet them.

No. But I'm just, I'm just asking you as a separate category of question. I mean what kind of, what kind of meeting takes place between a lobbyist and a minister at a fundraiser?---It would depend on the nature of the fundraiser. If it was a small boardroom dinner you could be one of ten people around a table. Usually a minister would make an opening statement. Each person would go around the table and say here's an issue I'm interested in. And the minister would speak to that.

40

So is it more informative than anything else?---Yes. Obviously at a large fundraiser it may well be hello.

Do you feel that you get to know the minister in that way to some degree if

you attend enough?---Yes. There are people who are very well known to ministers from the number of functions they attend.

And that helps?---I think like any business relationship it does help to have a relationship with the minister.

To get access?---I don't think it helps to get access, but it helps for the minister to understand that you may have some information that may be helpful and they can trust that information.

10

Yes. And, and the minister may relay on you more because he or she knows you?---In my experience if an, if an argument is evidence based and well put, the minister will take that on face value and it's not related necessarily to the relationship that the minister may have.

So is that why, is that why commercial organisations give donations to both parties?---I can't speak for all commercial organisations, but for Leighton Holdings, we have a bipartisan approach.

20

Yes, that's what I was going to ask you about?---And, and that is because we, we like to facilitate the development of good public policy. And the parties rely on donations to get re-elected.

This is not a jury?---No. But I mean that's, that's what we do. That's our stated aim.

THE COMMISSIONER: Stated aims and true aims are not always the same.

30

MR GORMLY: It's a painful truth isn't it that, that donations are given bi-laterally because you don't know who's going to be in power at any one time, election to election, other than by making a political judgement. And you don't want to appear to be one sided. I'm not asking you about Leighton's here, I'm asking about the practice of donation giving from the point of view of a public relations person.

THE COMMISSIONER: Because Leighton's is not alone. This is a general practice?---But I can't speak for other organisations. I can only speak for ours.

40

MR GORMLY: No. I'm just asking for your experience then?---And my experience with political donations only relates to Leighton Holdings.

Right?---We make it bipartisan because we want to be seen to be contributing to public policy development. And there are other organisations that are also doing the same thing.

Yes. I know?---And I'm not talking just about corporations, but unions and other third parties.

Of course.

THE COMMISSIONER: How does that contribute?---Pardon?

How does that contribute to, to, how did you put it, to what development?
---Public policy.

10

Yes. How does making a political donation contribute to public policy?
---Well, it gives the, it gives the political parties the funds to do the research to development, develop their policies.

And how do you know they're using it for research?---Well, it also gives them the funds to be re-elected.

That is true. All right. Yes. I think there's not much point in going through.

20

MR GORMLY: No, no, I understand that, Commissioner?---What I would like to add is that I think that political donations, we give political donations within the letter of the law in every state and territory, we will always abide by the rules, we're not permitted to do that in New South Wales so we don't. What would be beneficial for us is if there was a consistent approach to political donations in every state and ultimately I think we expect that it will be publicly funded, elections will be publicly funded in the future.

30

All right. Is that a Leighton position?. Is that something I can ask you?
Does that cause you difficulty?---(NO AUDIBLE REPLY).

Right. Is that a Leighton position, I mean - - -?---We would expect that it would be funded publicly.

Right?---I think that's a general view that we hold that we expect that that's what's coming.

40

All right. I think when you're expressing views here I think one of the things that is wanted to be made clear was that you're not here as a spokesperson for Leighton but that you're answering questions about your knowledge and experience as a lobbyist. Is that right?---Yes.

All right. I understand that.

THE COMMISSIONER: The Leighton Group has a number of companies within it?---Yes.

I mean, there must be hundreds?---There's six 100% owned operating companies and some of them have subsidiaries and we do have some joint ventures.

Yes. And does each one have a government relations department?---No, they all have corporate affairs people in various capacities and some of their roles may be some government relations roles.

10 So overall how many government relations people who do lobbying in the group about?---Named government relations people?

People who do lobbying on behalf of the company for which are employed?---I wouldn't know. I, I don't know.

It could be several or not?---It could be many several, there would be our Chief Executive Officer and the executives lobby on behalf of the company as they do at each operating company.

20 MR GORMLY: In a sense if one were to register a company like Leighton Holding or its group, not Leighton specifically but a company that had in-house government relations people and lobbyists would, do you think from your experience and your knowledge it would be correct to say that simply requiring the name of the government relations people is not going to cover the people who would lobby on behalf of the company?---Yes, that's right.

You'd be covering a minority of the people who would lobby?---Yes.

30 If there is an issue that arises in a corporation that requires contact with a minister would it be generally true that there would be nominated people who would contact a minister on a specific issue?---Yes.

So that there'd be a clear line of authority about any particular issue?---Yes.

Would they be the same people from issue to issue?---Not necessarily.

It might depend on expertise or speciality?---Yes.

40 So that the people that would contact a minister or a director-general or a secretary of a commonwealth department might shift from issue to issue to an array of people in a large corporation?---Yes.

Going to take you if I may, Ms Fitzpatrick, to the question of a register. I think you're familiar with the existence of the New South Wales register and you no doubt are familiar with the commonwealth register and I take it that you're nodding as you say that?---Yes, yes.

Right. And I take it that you are not on either register yourself. Is that right?---No.

Right. Now, you've no doubt become aware that there are, there is consideration being given to amending the current regulation of lobbying in New South Wales or making recommendations about it, what is your view about expanding the New South Wales register so that with appropriate definition it included categories of what we might call professional or employment lobbyists, those who are employed to lobby?---Do you mean as a third party or in-house?

10 No, in-house as well?---Right.

So that you would for example consider peak bodies who are obviously lobbying bodies almost entirely, substantially, perhaps other very active lobby groups like charities and some churches, the professional in-house lobbyist, lawyers and accountants who do lobbying but in each case defining their position on the register by their activity, that is, by the lobbying activity they carry out. What is your view about the inclusion of the corporation that directly lobbies, that is, that is of sufficient size and importance that it needs to go and see ministers, directors-general,
20 secretaries et cetera?---Just so I can understand the question if you were to have a register that had named, named an organisation as opposed to the person, is that what you mean?

That's one issue on which I'd ask you to comment. I want you to bear in mind that the purpose of a register of this proposed type would be to require those who lobby on behalf of the registered interest to adopt a code of conduct and secondly to simply expose to the public eye the fact that lobbying is occurring by registering the dates of meetings between the
30 lobbying entity and the minister or senior government official.

THE COMMISSIONER: Where lobbying activity takes place.

MR GORMLY: Yes.

THE COMMISSIONER: Not just mere information and not casual meetings, I mean serious meetings where lobbying takes place?---So, and that would be the date? Sorry, just so I can make it clear you're asking me the lobbyist register would be expanded to say for example include Leighton Holdings?
40

MR GORMLY: Yes?---Which would the compel staff of Leighton Holdings to abide by the code of conduct and for any meeting of anyone from Leighton Holdings to be recorded the date of that meeting?

Yes.

THE COMMISSIONER: Lobby meeting?---And no other information?

MR GORMLY: No other information. Who they met with obviously?
---Yep.

That Leighton Holdings met the Minister for X on such and such a date?
---In, in my view that would seem far more workable than requiring
someone like me to be registered where you don't necessarily capture
everybody from the organisation who's having those discussions so for
transparency I don't think it's necessary to know which officer it is from the
company that's having the discussions. In Western Australia the lobbyist
10 code relates, doesn't relate to in-house lobbyists but it does require that the
date of the meeting, the people who attended and any undertakings are
recorded and then that's FOI-able, I think that that's a sensible way to go.

THE COMMISSIONER: There is a problem with just putting Leighton
Holdings, I'm not sure how the, how that makes the individual staff
members are bound by the code of conduct but I mean there may be a way
of getting over that. And then there is an issue as to what happens if the
code of conduct is breached. I don't think Leighton Holdings would like to
be removed from the register would far rather the individual staff member
20 who breached the code of conduct be removed?---We haven't contemplated
it as a company of how you might change the register so I wouldn't be able
to comment on that. I would say though that I wouldn't just compel large
organisations to be on a register that it should apply equally to any business
or any lobbying entity or any entity that does, engages in lobbying.

MR GORMLY: Well, there does need, would you accept this that there
needs to be some boundary put on it because you're otherwise likely to get
small community groups who are lobbying about a car park having to
register and accept a code of conduct when they may exist for a week?
30 ---Why shouldn't they if we should behave to the highest standards of
conduct regardless of who we're representing?

Because, Ms Fitzpatrick, what it would do, what it could potentially do is to
build in unworkability, it becomes so large and so flaccid in a sense that it
couldn't ultimately meet the test of true transparency. Would you accept
that?---I understand your point but I also think that legislation should apply
equally, that just because I work for a large organisation doesn't mean that I
may - - -

40 Yes, I understand that?--- - - - be engaging in conduct that is - - -

Questionable?---Yeah.

Yes, no, I understand that point entirely. What would you say to the
proposition that the register would require the, or the system would require
the registration and the acceptance of a code of conduct of any lobbying
entity but for small community groups or those that didn't have some kind
of corporate or legal status so that you'd be changing the small company as

well as the large if they wanted to lobby? You'd say it's a question of degree I take it?---Yeah, it is and if a lobbyist code of conduct is about transparency so the public understands when representations are being made to government and for which purpose, presumably the public is most concerned about the representations that may have a commercial ramification and so the code should probably address those kinds of representations.

10 All right. So you, you would extend the group that was required to register fairly deeply into the commercial community but you might exclude lobbying about non-commercial activity?---Yes.

And that's because of the involvement of money I take it, money and property?---I assume that that's where the most concern about transparency, about interaction with government is.

All right. You, you accept the view that there does seem to be a degree of concern and scepticism about the process of lobbying at the present time? ---From what - - -

20

As a perception?---From what I read the paper and, yes, I do accept that.

What's your view about the reality?---The reality is it's like any other relationship that we have in our business, it's a professional, it's conducted with integrity.

Is that your general view about what you've seen of lobbying?---Yes.

30 Given that we, everyone seems to be of one mind that the transparency is a solution to the perception and am I right in saying that, as to you?---Yes.

Yeah. You appreciate that by giving the name of the lobbyist, the name of the person lobbied and the date of the lobbying is information that will start or trigger a process that for the interested person can lead through to a government information, public access, FOI type application?---Yes.

40 Do you see any difficulty in that?---The only difficulty would be if there is commercial confidentiality and the fact of a meeting probably wouldn't in most cases but there could be some occasions where even the fact of a meeting could be commercially sensitive.

Can I just test that with you for a second there. I want you to assume that in the new New South Wales GIPA Act, and you may not be familiar with that Act but it has as a category for exclusion of production commercial in confidence documents which would presumably be exercised with a degree of caution to protect commercial interests rather than the other way around. But as to the, as to the meeting, I understand your point that the fact of a meeting could be commercially sensitive, that is, that tactically, and I don't

put that in any derogatory sense but tactically it may be that an interest would prefer that a competitor didn't know that they were seeing a minister or a director general but would you agree with me that the fact of a meeting doesn't involve any intellectual capital or any intellectual rights or ideas, it's just a tactical consideration as to whether someone knows you're seeing someone?---Yes.

It is a significant difference would you agree?---Yes.

- 10 You're not disclosing any content of the meeting and you're not disclosing any idea, just the fact that you're seeing someone?---Yes, I, I accept that.

Would you go so far as to accept that the publication of the fact of a meeting, even if it were tactically undesirable, may be a price worth paying for the transparency that could be achieved, it involves a value judgment I accept but what's your view about that?---It's almost something that needs to be considered on a case by case basis. As a publicly listed company anything that's material we need to disclose to the Stock Exchange.

- 20 In any event?---In any event. So we abide by those rules and if that's the same impact as it would have with recording the fact of a meeting then I wouldn't have a problem with that.

- Just as to the question of whether you put a corporation name on a register, so obviously one would endeavour to design a system that was simple, didn't interfere with business, didn't become bureaucratic, didn't become bureaucratic, didn't clutter a register with unnecessary information, a question arises, as you were asked before, whether the names of an in-house, the names of a corporate, of people in a corporation would be included on the register. Would you see a practical way to requiring a corporation to accept as part of its obligation for registration the duty to ensure that anybody that, on its staff that lobbied accepted and signed the code of conduct before it engaged in lobbying on behalf of the corporation? ---I think there may be some practical difficulties but if that was what the legislation required that's what we would do.
- 30

What kind of, I'm sorry.

- 40 THE COMMISSIONER: It might be easier than getting everybody, every individual who lobbies to - - -?---I'm sorry, I misunderstood the question, I thought that you were saying that every person needed to do that.

MR GORMLY: No, no, we're trying to avoid, we're trying to avoid having every name on the register?---Right.

But anybody who lobbies must accept the code of conduct.

THE COMMISSIONER: So we're saying the corporation has got to accept
- - -?---Right.

- - - responsibility privately on its own to ensure that every individual who
lobbies agrees to be bound by the code of conduct?---I don't have any
problem with that.

Well, if that's the case then do you see any reason why the same shouldn't
apply to firms of lobbyists? Why should they be treated differently?---I
10 think we should all be treated equally.

So if we're going to get, make this a special rule for companies it should
apply to all companies including professional lobbyist companies?---And
any other third party organisation that - - -

Yes?--- - - - engages in lobbying.

MR GORMLY: Do you see lawyers and accountants lobbying on behalf of
clients at a political level? I'm not asking you to name anybody?---I have
20 seen people representing firms at various functions.

Right. Are they people that, that might also have some expertise in a field
other than the law? Does one sometimes see planning lawyers who've got
obvious legal expertise but they understand the planning system as well. Is
that the kind of thing you're talking about?---Yes, yes, potentially, yeah.

THE COMMISSIONER: So you'd end up with perhaps, if everyone is
going to be treated equally you'd have the name of the firm on the, on the
register and they would have to give the same undertaking as a corporation?
30 ---Yes. I would say that that would be logical, a logical extension.

MR GORMLY: So it it's not a corporation giving the undertaken then
you'd require a nominated person or something like that? Well, look, I
won't, I won't trouble you with that?---To sign, to sign the declaration, it's
not - - -

Yeah?---I don't really have any experience of it, it's - - -

Yes. No, I understand that. With the, you've no doubt heard the complaint
40 of the professional third party lobbyist that what they do for the in effect
undisclosed client, probably because they have a number of clients, is
identical with what lawyers and accountants do when they lobby on behalf
of a client. Have you heard that argument?---No.

All right. Do you accept it's probably true?---The lobbyist that we engage
have never put it to me.

All right. Can I ask, I'll leave that alone, Ms Fitzpatrick. Can I ask, you told us earlier that Leighton's employed professional lobbyists at times. And I'm not interested in the issue, but, any specific issue, but why would Leighton's, for a company I assume that wouldn't have difficulty getting access to a minister if it required it, why would Leighton's use professional lobbyists?---At Leighton Holdings I have engaged Hawker Britton to provide extra arms and legs because I'm one person.

10 Right. So it's just a question of having other people do the work as well?
---Yes. Yeah. I haven't engaged them to make any representations on behalf of our company.

So what sort of work would you ask them to do?---They may help to prepare submissions. Provide me with background information about a particular policy issue or about ministers or public servants with whom we may be meeting.

I take it you don't need Hawker Britton to open doors for Leighton's?---No.

20 Right. Do you choose a company like Hawker Britton, a professional third party lobbyist because there's something that they can provide that others can't and if so, what is it?---No, it's a commercial decision on who I think they do the, who's the best fit for our company and who charges the most appropriate fee.

Right.

THE COMMISSIONER: Like choosing a lawyer?---Yes.

30 MR GORMLY: You know that they're going to be able to do the task you set them?---Yes.

Yes, thank you, Commissioner.

THE COMMISSIONER: Thank you very much for coming and for giving evidence. It's been very interesting. Thank you Ms Fitzpatrick?---Thank you.

40 **THE WITNESS EXCUSED** **[3.02pm]**

MR GORMLY: Commissioner, we have next in the hearing room Ms Doris Spielthener and Ms Margaret Simmons, who together, though in different fields understand the operation of LobbyLens and who are familiar with some other matters. It's proposed, Commissioner that we call the two of them together. It's expected that there would be a, a short demonstration and some internet access, perhaps. So may I call the two of them together?

THE COMMISSIONER: Yes.

MR GORMLY: Yes. I wonder if you could both come forward.

THE COMMISSIONER: I think we should - - -

MR GORMLY: I'll just ask each of you to take a seat and we'll just swear you in separately.

THE COMMISSIONER: The, is it necessary for each of the ladies to share the microphone or their evidence will be recorded anyway. Do they have to speak into the same microphone?

10 MR GORMLY: I understand Commissioner that if they just stay where they are and speak it's going to be picked up. If it's not, I think we're going to be told. Do you have any difficulty with the - - -

THE COMMISSIONER: Well, if I, if I might just start with Ms Spielthener first. Would you, do you wish to give your evidence under oath or do you wish to affirm the truth of the contents of your evidence? Do you understand?

MS SPIELTHENNER: No.

20

THE COMMISSIONER: Do you understand what I'm talking about?

MR GORMLY: It's a choice between - - -?---Yes.

THE COMMISSIONER: It's a choice. If you, religious people generally take the oath and people who are not religious will generally affirm.

MS SPIELTHENNER: No God.

30 THE COMMISSIONER: You affirm?

MS SPIELTHENNER: Yes.

THE COMMISSIONER: Do you mind standing Ms Spielthener.

<DORIS JOSEPHINA SPIELTHENNER, affirmed [3.04pm]

THE COMMISSIONER: And Ms Simons?

MS SIMONS: Affirmation please.

THE COMMISSIONER: Affirmation as well.

10 **<MARGARET JEAN SIMONS, affirmed** [3.04pm]

MR GORMLY: Thank you, Commissioner. Now, first of all Ms Spielthener, can you tell us your full name?---(MS SPIELTHENNER) My name is Doris Josephina Spielthener.

Thank you. What is your current position, occupation?---(MS SPIELTHENNER) I'm a consultant and entrepreneur of a small company I head which is called IDU Consult.

20

Called?---(MS SPIELTHENNER) IDU - - -

IDU, yes?---(MS SPIELTHENNER) Consult. And I've been the initiator of a tool called, and co-creator of a tool called LobbyLens, which we will see later as well.

All right. Thank you. Can, can I ask what your, your background is that's lead you to your present position?---(MS SPIELTHENNER) I have a background in international commerce and business. And I also have a background in, like a bachelor and masters also in media and communications studies and psychology. And for the last 10 years I've been highly involved in a hybrid science called Social Network Analysis, which is sort of a mixture between mathematics and sociology and psychology, which led me to looking into how people are connected and influence one another.

30

All right. Now I think that you've studied at the University of Economic and Business Administration in Vienna?---(MS SPIELTHENNER) Yep.

40 Correct. I think you've also studied at the Hong Kong University of Science and Technology?---(MS SPIELTHENNER) Yes. That's - - -

I'm sorry?---(MS SPIELTHENNER) Yeah.

Yes. All right. And you have a masters in journalism and communication and psychology from the University of Vienna as well. And I think you've also done work in San Francisco?---(MS SPIELTHENNER) Yes, that's correct.

All right. Is there anything else that we should know about you before we start?---(MS SPIELTHENNER) No, I think that's sufficient.

That covers it?---(MS SPIELTHENNER) Yes.

All right. Thank you. Now, Ms Simons?---(MS SIMONS) Yes. Simons, actually.

10 Simons, my apologies. Right. Now your full name is?---(MS SIMONS) Margaret Jean Simons.

Right. And can you tell us your current occupation?---(MS SIMONS) Yes. I wear a number of hats. I'm a freelance journalist and author. I'm a senior lecturer at Swinburne University of Technology in Victoria and I'm the convenor of the journalism programme there. And I'm also the chair of the Foundation for Public Interest Journalism, which has been established within the university.

20 Right. Now can, can perhaps you, Ms Simons, since you're speaking now, tell us how the connection has occurred that the two of you are now together giving evidence? So, I think about LobbyLens, is that right?---(MS SIMONS) Yes. About LobbyLens and also about a project which the Foundation for Public Interest Journalism aspires to create, which involves LobbyLens and the potential of this new tool.

Right?---(MS SIMONS) So the question is how did we come together? The Foundation for Public Interest Journalism was established within the university to look at positive uses of new technology to advance journalism.
30 Quite often the dialogue within the media industry is of despair about new technology because it's undermining the business models which traditionally have supported investigative journalism in particular but journalism in general. We seek to address that by looking at the ways in which the potential of Web 2.0 technology particularly to foster collaborations and research can actually advance the function that journalists have traditionally fulfilled so we're looking on one hand to preserve what is useful about journalism and also to evolve it for the new world. Part of this agenda and we have other projects but part of this agenda is an aspiration to establish a public interest journalism resource
40 centre which would have a number of functions both to train journalists to do the training that is no longer happening within the industry in how to access and analyse existing sources of public information such as company searches, title searches, court judgments et cetera but also to engage with the several agendas including the government 2.0 taskforce agenda which we believe over the next few years see an exponential increase in the amount of public sector information that's available and much greater freedom in the way that information can be accessed and used. This has been our agenda since we were established, we were brought into connection through a group

in Victoria called The Accountability Round Table which is a connection, a group of well connected citizens who share many of our objectives about capacity building amongst citizens and journalists for accountability.

All right. Thank you. Now, as I understand it between the two of you you have proposed a demonstration or a method by which you could communicate to the Commission what it is that you have to say about LobbyLens. Can you just outline briefly one or other of you what's proposed and then perhaps we can launch into it?---(MS SPIELTHENNER)

10 Yes. What we proposed is to look at a number of relationships and public data that is available that would not only show interests, interests that's represented by different groups in society but also potential conflicts of interest between companies and government officials, government agencies and lobbyists and so the way we envision this to do is by looking at a number of different databases like for instance the AusTender database, lobbying registers, the ASIC information of who sits on the board of what company, executive and non-executive directors who are high officials in a company or it's of trustees, commissions, advisors et cetera so collect all that information and show which of those companies actually received
20 funds from which government departments and are these companies in turn also linked to lobbying companies as, as their clients or have these companies been given, been giving donations to particular political parties or other, or other interest groups. So LobbyLens is a way to take a large amount of data and make it visible such that irregularities, potential conflicts of interest et cetera become visible in an otherwise ocean of data that's not navigable.

Right.

30 THE COMMISSIONER: It seems from what you say that it's really an investigative tool?---(MS SPIELTHENNER) Yes, it's an investigative tool, it's a, it's a data collection tool that visualises relationships and helps to investigate into more detail if there are potential conflicts coming up.

MR GORMLY: So this would be a supplement to lobbying in a sense? Well, it incorporates lobbying but it also provides more interest, more information about the interest, pathway of interest in lobbying, who's got an interest in what?---(MS SPIELTHENNER) Exactly. Well, my, my strong
40 belief is that by collecting information from all the different boards and commissions be it on, be it on surfing, be it on environmental protection, be it on social justice, be it companies, industry organisations that have certain industries all these industries in our society are manifested in boards and commissions and committees and people on those boards try to cross-pollinate their interest by pulling people from their board or their group onto boards of other committees and groups to create their resonance and the influence of their interests. And if you capture all those interests in their relationship and whereof a network that are actually show how our society's structured and if we then put another layer over that and look at where the

money flows when, from what government agencies to what companies et cetera we will get a, we will get a very good idea of where interests in society lie and if there were any lobbying activities if the lobbying activities matched those, those interests.

All right. Okay. Perhaps we'll try and do the summarising then after you've shown us. So perhaps whichever one of you is going to lead off first?---(MS SPIELTHENNER) This is the demonstration of LobbyLens that you're asking?

10

Is that what you'd like to do now?---(MS SPIELTHENNER) Yeah, I think it would be great and it would give us I think a good, yeah.

All right. (MS SPIELTHENNER) So how do we access the internet from here? Can we actually go, can we go online?

20

MR GORMLY: Yes?---(MS SPIELTHENNER) Yep. Okay. If we were to go to, if we would type in LobbyLens.info, yeah. So what we can see here is basically on the top you, if you would for instance click on suppliers you can see all the companies that have received money from different government departments over the last, I believe we've got data of a year and a half in the background so the companies that are represented are shown larger are companies that received more money, those that are shown with a smaller, in smaller letters are the companies that have received little money. So if you go to, if you go to agencies you can, and if you would click on any of those companies you can actually see from which government departments they receive money. If you go on agencies you can do, again browse all the federal government agencies to see which government agencies gave money to private - - -

30

Can we do that?---Yeah, we can just click on just one of them.

40

Clicked on National Museum of Australia?---(MS SPIELTHENNER) So National Museum of Australia now is in the centre and if, and the yellow bubble surround are companies that have received money from the National Museum of Australia so if you hover the mouse over, over one of those companies you can actually see how much, how much money Hayden Engineering received so they seem to have received \$996,211 so that was 7.9% of all contract expenditures through two contracts. So actually all the contracts with the National Museum of Australia are added up together so that we can see how much money they have received overall so even if a company would receive smaller batches of money like of 25,000 over a certain period of time and this was a way of disguising that a lot of money has changed hands. By using such a tool for instance we could see that, you know, how much a particular company received.

Do you mind if we just hover over a couple more of those yellow items?

---(MS SPIELTHENNER) Yep. So for instance the Telstra Corporation has received 1.1 million, 8.95% of all contract expenditures.

You mean by the National Museum?---Exactly, from the, by the National Museum of Australia. AST Group has received 3.5 million, that's 28% of all contract expenditures through one contract over the period that we looked at. Intrec Management has received approximately half a million, that's 4.38% of all contract expenditures.

10 What are the blue ones?---(MS SPIELTHENNER) The blue ones tell you which, so within the AusTender database there's particular categories that you can browse to see what the money was actually spent on and so in this case we can see that the National Museum of Australia spent \$869,000 on freight for various services.

THE COMMISSIONER: I'm sure what the difference is then between the contract, the blue and the yellow because the yellow represents money paid out and so does the blue?---(MS SPIELTHENNER) Yes. Yep. So, so if you, if you click on furniture I believe that you would then, you would then
20 see which, which of the companies, so for instance we can see the linkage between the National Museum of Australia and Click Systems and furniture and furnishings so we know that the 594,000 that went to Click Systems were, were spent on furniture and furnishings. This is one, this is one way of representation. I might have to say that we built this tool within the (not transcribable) contest over 24 hours so the tool as you see it has its limitations in, in what it can show however within the public interest lens which is the project that we pursued with Swinburne University we envision to put a lot more information from different databases like ASIC et cetera
30 into, into the tool so, and, you know, make it more easily accessible and understandable so you can prove the information, how the information is actually, actually shown.

MR GORMLY: This is under the heading Agencies. We can go to any one of- -?---(MS SPIELTHENNER) Yeah, I would suggest we go to Lobbyists. I think that's an interesting one.

Okay?---(MS SPIELTHENNER) So under Lobbyists we put all the information that's available through the state and the federal lobbying register, into the database and so again in this case the larger the, the type of
40 the actual lobbying company, the more clients this particular lobbying company has, unfortunately the lobbying registers are quite limited in their information of, you know, what information is provided, so we only know who are the clients of those lobbying agencies but we don't actually know for what particular cause they actually have lobbied. So if we, if you can click on John Connolly and Partners or basically any of the, which, which is sort of in the upper, upper third of the screen- - -

So left-hand side?---(MS SPIELTHENNER) On the- - -

Two inches down. Connolly and partners?---(MS SPIELTHENNER) Just up some, some lines. Down a bit, yeah. That's great, thank you.

10 Yep. So we click on that?---(MS SPIELTHENNER) So basically a relationship and an arrow between the lobbying company and any of their clients means that basically there is a client relationship. We do not really know whether the client's paid the lobbyist through success fees or through an actual, an actual fixed amount, and you can see additional information for each of the clients. For instance, in some instances, here we've got the client, BHP Billiton, but for instance the ANZ Bank we can read that the ANZ Bank is also, is a client of John Connolly and Partners but the ANZ Bank is also a government supplier. So are some other companies like Wesfarmers. Wesfarmers is a client but it's also a government supplier. So if we click on Wesfarmers we can see which government agency they received money from. So if we maybe zoom out of the picture a bit- - -

20 So what we started with was John Connolly. We then clicked on- - -?---(MS SPIELTHENNER) We then clicked on one of their clients- - -

Right.---?(MS SPIELTHENNER) - - -where we had the information that one of their clients was or several of their clients were also suppliers of particular goods and services to one or a number of different government departments.

Right?---(MS SPIELTHENNER) So if the lobbying register had information on over which, over which issue they engaged a lobbyist- - -

30 Right. Well, if we could just stop right there for a sec.---? (MS SPIELTHENNER) - - -we would, we would then actually know if there was a relationship between them winning the government contract- - -

Right.---?(MS SPIELTHENNER) - - -and engaging a lobbyist.

Let me just ask three quick questions. There's a reference here to donation, recipient of donation- - -?(MS SPIELTHENNER) ---Yep.

40 - - -a little bit further down, and there's also a yellow Department of Defence on the screen at the moment?---(MS SPIELTHENNER) Yep.

Now, if the cursor's over Department of Defence, what is the \$11,000 a reference to?---(MS SPIELTHENNER) That means that the Department of Defence has paid \$11,425 to Blackwoods and Son Limited, which is a client of the lobbying company.

Right. And if you see over there to the left, it says, "Donation Recipient, Australian Labor Party- - -?(MS SPIELTHENNER) ---Yep.

--New South Wales branch.”---(MS SPIELTHENNER) Right. So if you scroll down a bit, we will see that the John Connolly and Partners, a lobbying company, gave money to the Australian-

Labor Party.---?(MS SPIELTHENNER) - - -Labor Party.

Are we able to tell how much that is if we click on that?---(MS SPIELTHENNER) I don't think, I'm not really sure.

10 Okay?---(MS SPIELTHENNER) But potentially, you know, we, any information could be loaded into the system, any fiscal or legal information that is available through public sources. And I think this just is a, sort of an exploration of, of just the very start of what would be possible if, you know, investigative journalists or, you know, commissions like yours were able to have such a tool at hand, because industry such as pharmaceutical companies or infrastructure companies have been engaging me and other companies to provide an interface like that and provide them with information of how their competitors might be linked to political decision-makers or how they might be able to reach political decision-makers. So it
20 would be good if a tool, if a tool like that was actually also in the, yeah, I think we just hit a very, very (not transcribable)

There is a massive amount of information obviously in this system?(MS SPIELTHENNER) ---Yes.

How frequently is it updated?---(MS SPIELTHENNER) Since this was, this project came out of a, came out of a contest and was more of a hobby on the side and there was no funding, we don't really have that much, that many
30 resources to keep on updating the database and the tool. If, you know, particular parties, like groups, companies or universities commission a particular project then it, usually it gets, yeah, we can custom-build such a tool and obviously have somebody who would update the, the information regularly.

Right?---(MS SPIELTHENNER) Whereas somebody would be provided by the university to update information.

Right. Well, at the moment, just looking along the toolbar at the top, Home, About, then you've got Supplier, so- - -(MS SPIELTHENNER) ---Yep.
40

--that's presumably any corporation that might be involved with government?---(MS SPIELTHENNER) Exactly.

Right. Then Agencies, which is any government body that might be involved with non-government, with suppliers?---(MS SPIELTHENNER) Yes.

Then Lobbyists are those who may stand between government and suppliers?---(MS SPIELTHENNER) Exactly, but unfortunately this is only limited to companies that have to register under the lobbying register.

So it's a work in progress at the moment?---(MS SPIELTHENNER) Yes.

At the moment, Lobbyists refers to third party professional lobbyists whose names appear on a register somewhere?---(MS SPIELTHENNER) Yes.

10 Right. And then Industries is I take it another category of suppliers?---(MS SPIELTHENNER) Yes. That's just a statistical overview based on the AusTender database which industries received the most amount of money. So management and business professionals and administrative services- -

Received nineteen billion dollars?---(MS SPIELTHENNER) Correct. Yes.

20 So if we were to click on Management and Business Professionals and Administrative Services, have been the recipient of that amount of government money, we then find out what the breakdown of- -?(MS SPIELTHENNER) ---Which, exactly which companies- -

Right.---?(MS SPIELTHENNER) - - -received and- - -

Which companies received it and how much?---(MS SPIELTHENNER) Yes, exactly.

Right. And if we then clicked on each of the companies we could see from which particular government- - -

30 Department the money came.---?(MS SPIELTHENNER) - - -department they received that money
- - -

Can we do that? Can we click on one? Garden Office Park Pty Limited. Can we click on that? Right. So if we scroll up I think we get, so it got money from Centrelink?---(MS SPIELTHENNER) Yes, Centrelink.

Right?(MS SPIELTHENNER) ---Yep.

40 Right. Okay. And then what, I don't know what GS Spatial Visualisation is. Is that something?---(MS SPIELTHENNER) I think that's, I think that might overpower the system.

Okay?---(MS SPIELTHENNER) But basically, basically what we can see is in which, which geographic area the companies were or in which political area the companies are based that actually received government money.

Right?---(MS SPIELTHENNER) Ideally an application like that would have information on, on every company, not only companies that received government money for products or services but every company in Australia
- - -

10 That received government money?---(MS SPIELTHENNER) That received government money but also that didn't receive government money but they might be a client of various lobbying firms and might have been trying to get money but didn't so I think it would be interesting to look at the whole landscape and how interests are distributed over that landscape by looking at how the companies in turn connected to foundations or, or industry groups, are certain directors of the infrastructure or pharmaceutical or telecommunications industry, are they also engaged with an industry body, an industry association and then in turn is this industry association lobbying directly to government officials or lobbying indirectly through lobbyists. So if you saw the whole landscape we would get a, I believe a very good picture of different interests and activities.

20 Ms Spielthener, I hope I'm not treating this at too simplistic a level but in a sense what this tool evolves from is the lack of transparency at government level. Is that correct?---(MS SPIELTHENNER) Exactly.

You both nodded, I take it you both agree with that proposition, do you? But in a sense this is, this tool shows where government money has been sent, how much and what the lobbying interests and donation interests are that are involved?---(MS SPIELTHENNER) Exactly, that's correct.

30 All of, all of that being information that in perhaps a more transparent society might be available from the government anyway?---(MS SPIELTHENNER) Exactly, yes.

40 All right. Is there anything more that you would like to tell us or show us about that because it's an impressive tool?---(MS SPIELTHENNER) Yeah, basically just, just that, that I believe that we're going to, with the government to our initiative or other initiatives in Australia but also globally we see more, more data becoming publicly available and one strategy of a lot of agencies and governments is to throw a lot of data at the public to make it unnavigable and, because everybody can say well, you have all the data available but nobody can actually navigate and find the essence of the data in all this big ocean of information and so therefore we do need tools to, to, to actually, yeah, be able to filter the information - - -

Filter out and read it?---(MS SPIELTHENNER) - - -and knowledge.

Can I just ask finally from my point of view the uploading of this amount of data, amounts in contracts, numbers of contracts, entity to, entity from, involvement of donation and involvement of lobbyists, can that data at the moment be uploaded automatically in some way or does it have to be

manually inserted?---(MS SPIELTHENNER) Currently we use a mixture of both but as I said, it's not really an established tool or an established group of people that would do that but it is absolutely possible to, whenever new data gets released, for instance, by the AusTender database I think it's once a week, that this data automatically gets extracted from the AusTender database and gets automatically fed into that larger database, it also holds data from, for instance, the ASIC files or the Australian Legal Database or other databases so most databases can talk with one another or there is a way to make them talk with one another and automatically fit the data in so that humans would be needed to have the last control over where there might be some mistakes in the data and to actually investigate the data.

Right?---(MS SPIELTHENNER) But most of it could be done automatically and would take a lot of workload off - - -

Yes. And I take it that there's no reason in principal why this couldn't be extended for example to board and committee members and ministers and so forth to find the cross connections between one individual in public life and another?---(MS SPIELTHENNER) Exactly. I would highly recommend that, that, that's something that I am asked to do by my clients from the industry side, to show all those relationships.

Is industry using this tool?---(MS SPIELTHENNER) No, this tool but, but something, something very similar that would be custom-built or that would actually be a static map helping industries to, showing industries of how to, who are the most influential people within a particular sphere of interest and how they could possibly approach those people or what access their competitors might have to particular decision-makers or boards, committees.

Right. Okay. Thank you?---(MS SIMONS) You have covered some of the issues I was going to cover in my slides with your questions but there are - - -

Sorry about that?---(MS SIMONS) That's quite all right. There are a number of things which perhaps I'd like to pick up on. I don't know if you can find the part of the presentation which is where my part of the presentation begins which is with that coversheet. It's probably about halfway through, yes, there we are. That's good. If you, sorry, if you go back to that and then two slides forward from that perhaps. No, yeah, that's me, we've already introduced me, the next slide after that.

Is that the one?---(MS SIMONS) No, that's not the one. Go, sorry, when I say forward I mean through the presentation so further towards the end by two slides, no, the one above that. No, what I'm after is one that looks like that, the one after that, no, after, so later in the presentation.

Do you know its number, do you know what number it is?---(MS SIMONS)
Look, I'm sorry, I don't, I've only got the printout in front of me. It's later than that one, so towards the back of the presentation.

Keep going down?---(MS SIMONS) I think you just had it up there just a moment ago.

Is that it?---(MS SIMONS) I'm sorry, that's the one. Thank you.

10 Right?---(MS SIMONS) We could start the presentation from there perhaps, if you could start the slide show. Thanks. This is just a little bit about the Public Interest Journalism Foundation and what it's about, I think I outlined this in broad terms earlier on but certainly we have a number of projects to advance these aims which, as I say, are largely about trying to address the problems of the journalism trade and also to evolve that trade through using the potential of new technology. If we could to the next slide, please. If I can address the part of our agenda which matches with this inquiry, lobbying is obviously part of democracy. It's one of things which is envisaged in democracy but there is an inherent problem with paid lobbyists
20 and companies lobbying in advance of commercial interests (not transcribable) and I guess the core question here is what are they selling. Certainly evidence to other inquiries and my own experience as a journalist suggests that they're dealing, their selling expertise and dealing with government, the perception or the reality of special access and the perception or the reality of special ability to persuade, next slide thanks. Now, the question is, is there a real product and probably the answer will be different case by case but either way it's problematic. If there is a real ability to gain special access or a real ability to persuade government over and above that of the average citizen, corporate or individual then obviously
30 it's a problem for everyone else in that the access - - -

THE COMMISSIONER: Well, that's debatable, that's how society works. They employ one barrister who's better than another?---(MS SIMONS)
Mmm.

And that barrister persuades the judge, you don't say that's corruption?
---(MS SIMONS) No, it's not corruption, Commissioner, but it - - -

40 And nobody's being ripped off?---(MS SIMONS) It does imply an unequal access to the halls of power and what flows from it. But if on the other hand of course the, the product is false and the special access doesn't exist then obviously the person who's paying for that might have a problem but I know that's not ICAC's business that's more the Department of Fair Trading but nevertheless if we are going to manage that tension disclosure I would suggest is a big part of it. I think those tensions, the necessary tensions perhaps in many ways justify regulation and rigorous disclosure standards and Commissioner, if I can take up your example of a lawyer, lawyers of course do have an obligation to the court and to the law and that

is one of the ways in which our society manages those sorts of problems. There are also things such as Legal Aid for example which are an attempt albeit imperfect to make sure that citizens who come to full lawyers do also have the right to representation. And so if we look at the current lobbyist code obviously a great deal of information is already on that and indeed that's some of the material that's been fed into the tool that Doris has just demonstrated. Next slide. And in the discussion paper which informs this inquiry the idea of a greater level of disclosure is canvassed including contacts between lobbyists and ministers, name, date of contact, issues, contact, issues discussed and of course the publication of those records. Now, if that information of course was fed into a tool of this kind then it gives you a great deal more information about the links of, if you like, the underbelly of a decision process, the part of the decision process which currently is not transparent. The next one. One of the things which I would really want to say is that if this Commission does end by recommending those sorts of information, that sort of information to be made public that it shouldn't be a standalone system it should link with other things that are happening around the field of extra disclosure of information and of those of course is reform of the Freedom of Information Act. At the moment FOI is not adequate for journalists to interrogate and examine lobbying relationships. For example a colleague of mine Bob Burton who's involved in our foundation applied last year for the diaries of the Tasmanian Premier David Bartlett and he had quite a struggle, I'm not going to go through all the details here it would take far too long but at various times of the process just about all of the potent exemptions in the FOI Act were suggested as reasons why he shouldn't have that information. Next slide. He was eventually successful and discovered that in the first three months as Premier he had seen only government agencies, companies and industry lobby groups and at the same time environmental groups who also tried to see him obviously to lobby them their interests were rejected that was despite an election promise to consult widely on the issues. Next slide. You can probably skip over that one, I think I've covered that one. Now, in terms of equitable access and accountability if that information had been made available at the time that those representations were being made it obviously would've put pressure upon the Premier to be more equitable in the access. As it was of course it didn't become available until nearly 20 months after the events which were the subject of the initial Freedom of Information request. Journalists often need to know where to look for freedom of information and a lobbyist register which contains the sort of information canvassed in the discussion paper for the inquiry would tell us what dates to look at, which agency to look at and that can inform Freedom of Information requests and so it's not a standalone thing this register. More broadly the thing which brought Doris and myself together and which has informed our current project for a public interest journalism resource centre is the government 2.0 agenda. Now, I'm aware through talking to officers of ICAC and also to my colleagues in journalism that the government 2.0 agenda perhaps hasn't got the profile in New South Wales that it has both nationally and in Victoria but it was a taskforce which was appointed by

Lindsay Tanner's department federally and which reported last December, the principles which informed it were the idea that the new technology of the web and particularly Web 2.0 creates the potential for collaborative tools and approaches between governments and citizens and so in other words it's a new approach to organising and governing with the idea that it can draw people into a closer and collaborative relationship in policy development and in accountability. This agenda, these insights have informed the Obama administration in the States and indeed many journalistic research projects in the United States which I can talk about in more detail if you wish. As I say the taskforce reported in December, the next slide please, that most of its recommendations have been accepted by the government, perhaps most significantly for this inquiry and the way in which a reformed lobbyist register might interact with this agenda the idea that public sector information should unless there are very good reasons otherwise be open, accessible and reusable or as the geeks say "mashable", that is, put into a tool such as LobbyLens as we've just said so that connections can become apparent. Now, how does my project interact with this or the public interest journalism centre's project. We want to establish a resource centre which will achieve a number of aims. On the one hand it will provide an ongoing source of educational and training ability for the industry. When I joined The Age newspaper nearly 30 years ago I learnt to do things such as company searches and title searches to search the register of lateral donations and so forth more or less by osmosis because it's the sort of thing that journalists did and I learnt that simply by working alongside them. The industry by and large is no longer doing that kind of training and so one of the objects of the resource centre will be to provide online a source of that training, if you like, an online manual which would teach you how to do a company search or a title search but also with our awareness of the government 2.0 agenda we are aware that there are going to, there is very likely to be much more public sector information made available and it's going to usable in new ways. Go next slide please. Already of course journalists would use these sources of information if they know how and quite often they don't. I do a lot of training of journalists who work in local media that I know of course that local government is a big focus of activity for ICAC. A typical local investigation that might be done on one of my training courses would be that I would encourage journalists to access the Register of Pecuniary Interests for a particular councillor about whom they may have heard something, well, then we'd do a personal name search through ASIC on that councillor and a title search in the name of the councillor as well and I would say that in more than 50% of cases when we run those checks over all the councillors in a council we discover that there are undeclared corporate interests and real estate holdings which should've been declared but weren't. Now, most cases of course it's an oversight or slackness it's not corruption, we wouldn't want to suggest that it was but it tells you something about the aridity of a piece of legislation that isn't understood and used where the connections are not apparent. The New South Wales Local Government Act is in my view and I do these kinds of training courses around the country, probably the best in the country from a

journalist's point of view in terms of what it says must be made available and yet it's not adhered to because journalists aren't doing this kind of work. In New South Wales there was the case of the Liverpool City Council for example which was subject to an examination, I'm sure people in this room will remember it, and one of the findings of that inquiry was that a great deal of information which should've been made public through the mechanism of public council meetings hadn't been council meetings, they've been closed down when under the Local Government Act they shouldn't have been, they couldn't have been in theory. Also that
10 journalists haven't used their rights to access information under the Local Government Act and that prevented things which perhaps should've been questioned from being questioned via the public.

MR GORMLY: May I stop you there for a second?---Yeah, sure.

So in essence you're saying there that the capacity of journalists and their ability to make use of the Local Government Act not being exercised means that there is in effect a corruption tool not being used?---(MS SIMONS) An anti-corruption tool which is of course - - -

20

An anti-corruption tool not being used?---(MS SIMONS) Yes. Yes, which is of course the underlying, I mean it's not only corruption it's also good administration that, or bad administration, prevention of bad administration but certainly the disclosure requirements in the New South Wales Local Government Act are very much about corruption prevention and making it more likely that both corruption and poor administration will come to light.

You're saying it depends really on journalists actually making use of it to disclose the information or to obtain the information through the Act?
30 ---Yes. And also of course local governments themselves adhering to the Act which they don't do.

All right. Thank you, I just wanted to be clear about that?---(MS SIMONS) Yes.

Thank you?---(MS SIMONS) Well, some do, of course, but often they don't. So if can sort of take that a bit more national if you like, the government 2.0 agenda at both state and federal level and I'd certainly say this is deeply engaging the Victorian government at the moment, I gather
40 not so much the New South Wales government, anticipates that public sector information will lead to improvements in policy development and a more politically literate and active population. Now, of course, this is resonant with the issue of lobbying because if you have a more politically literate population the idea, as Doris often puts it, of the black box that the lobbyist sells, the idea that there is some opaque decision-making process which a small company or an individual needs to hire a lobbyist to assist with to a large degree decreases. In other words, if you improve the understanding of how government works among the citizenry and the

engagement of the citizenry then it has an impact on the lobbying industry. The next one. The area of my research interest and of the foundation's research interest is how is the role of information brokers, including but not confined to journalists, going to be changed by a world in which so much information is available. Traditionally we've had mediators or information brokers, journalists have been one obviously, but you could also include people such as public servants and librarians. Next slide please. So we hope with the resource centre and at the moment we're looking for funding to bring these aspirations to reality, to use the public interest lens, a developed LobbyLens tool to bring together a range of relevant information sources in an easy to navigate way, in a way that is going to be easily usable by journalists, obviously that's our focus, but also potentially by citizen journalists, also potentially by local councillors who want to know more about the people that councillors are dealing with, also potentially by ministers, by public servants, by others. We want to develop it so that it will allow for data entry and the highlighting of extraordinary relationships and we want it to be searchable and comprehensive in showing interrelationships. This would sit alongside a training resource which would teach journalists how to use the existing and if you like the traditional tools. So if we think about how a theoretical investigation might work in the future, that suppose a journalist and I'll stick with local government at the moment, becomes aware of a controversial planning or tender decision. The things in black are the things that journalists could do right now if they knew how and on the next page in red are the things which it might be possible for that journalist to do if the sort of access regime which is canvassed in the discussion paper comes to be. The tender matrix, there are some states in which under local government acts it's possible to access tender matrices and certainly under Freedom of Information it's possible here as well. That tells you both the assessment criteria for tender applications and also the ranking of each tenderer on each criterion.

When you say the discussion paper you're talking about ICAC's Issues Paper?---(MS SIMONS) I am, yes, I am.

Yes, right?---(MS SIMONS) Your Issues Papers, I beg your pardon.

No, not at all, I'm just making sure, that's all?---(MS SIMONS) Yeah. Now, what would the result of that be? Well, a piece of journalism, whether or not there was corruption, that would tell the public something about the mechanics or if you like the underbelly of a decision-making process, a piece of scrutiny that potentially holds government to account and a process that means that decision-makers will know that this sort of interrogation of the process is possible. Also of course the growth of a resource, if you anticipate that the products of this investigation are fed into the tool of the public interest lens which will then be available to assist others. So that's what we aspire to build and the reason that we came together.

Right. Thank you very much. I just have two, two quick questions arising out of all of that. Can you tell us, LobbyLens at the moment is or is not receiving any government assistance?---(MS SIMONS) No government assistance. (MS SPIELTHENNER) No, no.

It's not.

10 THE COMMISSIONER: Are you lobbying for any assistance?---(MS SIMONS) Yes, yes we are. Basically we, we are attempting to gain funding from a number of sources. We have come - - -

Sorry for interrupting and forgive me for asking the question but I couldn't help thinking throughout the presentation that this quite an effective form of lobbying?---(MS SIMONS) I'd be happy to fill out whatever register you recommend, Commissioner. But we currently have an Australian Research Council linkage grant in draft form, we are hoping to put that into the round which closes in November. We have interested in that process the Australian Broadcasting Commission as an industry partner and as I am sure people in this room know we are talking to people at ICAC about whether you would also be interested.

20 All right?---(MS SIMONS) We are also approaching philanthropic sources of funding as well.

Okay. All right. Well, I understand you are definitely out looking for funds?---(MS SIMONS) Yes.

30 Right. The second question is I know we partly covered this a few minutes ago when I interrupted, I think, well, anyway I interrupted, essentially this, this tool is, is a transparency tool. Is that, is that right?---(MS SPIELTHENNER) Yes, that's, yeah, that's correct.

Is it, is it intended that it has a commercial application as well, that is, would you have in mind that it's something that could be used commercially or could be in effect sold?---(MS SIMONS) If I can speak on behalf of, of the, of my project it would depend very much on the sources of funding which we obtain.

40 Right?---(MS SIMONS) Various models which we have considered include making it publicly available for free as a public good but obviously depending on funding we may sell subscriptions or something of that sort, all of those questions are really open questions at the moment.

Lastly I just want to check on this. That in New South Wales, I'm not sure if you're aware of this, but in 2009 there was a new Freedom of Information Act, you're familiar with that, the Government Information Public Access Act?---(MS SIMONS) In broad terms, yes.

All right. Are you, would you have a view about whether that is an improvement on the prior Freedom of Information Act?---(MS SIMONS) I'm less familiar with the process in New South Wales than I am at federal level I must admit. My broad and general impression is that it is an improvement but, but not sufficient but as we have discovered with existing Freedom of Information Acts the devil lies in the implementation rather than the letter of the law.

10 Well, I suppose the Government Information Public Access Act or any act like it is always going to be heavily dependent on the degree to which there is information that would lead one to that act?---(MS SIMONS) Yes, yes.

You agree with that?---(MS SIMONS) Absolutely which is what I meant about the lobbyist register interacting with freedom of information. If there was sufficient information on the lobbyist register to suggest and steer and guide a freedom of information application then that would be a more useful tool than a piece of information which simply sits alone and in isolation.

20 All right. Thank you very much.

THE COMMISSIONER: Thank you very much for your presentation and your evidence?---(MS SIMONS) Thank you. (MS SPIELTHENNER) Thank you.

THE WITNESSES EXCUSED

[3.57pm]

30 THE COMMISSIONER: And we now adjourn?

MR GORMLY: We do.

THE COMMISSIONER: The Commission will now adjourn.

AT 3.57pm THE MATTER WAS ADJOURNED ACCORDINGLY

[3.57pm]