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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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AT SYDNEY

ON WEDNESDAY 18 AUGUST 2010

AT 10.10AM

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THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner. We have Mr Nathan Rees present to give evidence, Commissioner.

THE COMMISSIONER: Mr Rees.

MR REES: Commissioner. How you going?

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

MR REES: Affirm the truth, thank you.

<NATHAN DAVID REES, affirmed

[10.10am]

THE COMMISSIONER: Mr Gormly.

20

MR GORMLY: Mr Rees, can you tell us your full name?---Yes. Nathan David Rees.

All right. And I think you're currently a member of parliament, the New South Wales, and I just want to take you briefly through your history, Mr Rees, if I may?---Sure.

I think for some time you were in staff positions, including chief of staff or various members of the New South Parliament?---That's right.

30

I think you in 1995 became an advisor to the Honourable Andrew Refshauge?---December, '97. Yep.

'97. Thank you. You were a minister for Water Utilities from April 2007 to February 2008. Minister for Water after that. I think you were Minister for Emergency Services, a Minister for the Central Coast, Minister for the Arts at the time as you were Premier of New South Wales?---That's right.

40 Now Mr Rees, I think during your premiership you introduced the current register for lobbyists. You took an interest in lobbying, formulated a Code of Conduct relating to lobbying and you also introduced the Government Information Public Access Act and the associated Act that created the position of an Information Commissioner?---Correct.

All right. So we're very keen to hear from you, Mr Rees. Is there some opening statement that you'd like to make about lobbying before we start on some more specific areas?---Yes, I will. I've read all the transcripts about yesterday, so in my opening remarks I'll try to skim across them and then

we can go into some detail and discussions proper. But, as you said, I've, I've worked in state government as an, as an advisor at senior levels and as a Minister and Premier for in excess of a decade now. And I've worked in local government previously. I've also worked in federal government. I guess there's a couple of issues that have emerged during the course of your hearing. At the outset I should say that I think lobbying, however you describe it or define it is a positive practice. And the best lobbyists, the professional outfits that, which provide services to, to organisations do value it and have a very significant contribution to make in the, in the vast bulk of instances. I think this inquiry is timely and worthwhile having. I would say that the perception issues are very real around lobbying and the perceived, the perceived influence that it has. I think the perception is much greater than any reality. And you've made a very sensible, logical extension of a discussion around your purebred lobbyist paid for service with a client base through to non-government organisations or trade unions or peak bodies or whoever it might be. You've also correctly alluded to the lobbying that can go on through the media. And there's been recent research that indicated something like 40 per cent of newspaper articles are based on research from a self interested form. So, it's a complex area. It is a perception issue that I believe needs to be dealt with. I started down that path and, and hopefully it will be continued. But I don't believe that there is anything like the activity that goes on, some of the more (not transcribable) associations have, the testimony from our friends (not transcribable) have stated earlier in your hearings were frankly fantasy land. And you compare and contrast that with the testimony given by the (not transcribable) or the (not transcribable) or the Wedderburn's or the Hawkers, people who actually know what they're talking about on this and a very different picture emerges. So I guess that's, that's, that's the opening for me. We had to respond as a government, we had a newspaper that was running a campaign that essentially asserted that as a government we were implicated in someone's murder. Absolute nonsense is probably the best description but nonetheless there is a very real perception issue when a newspaper or any other media outlet runs those sorts of campaigns and you have to respond to it. Similar to the law justice doesn't just have to be delivered it has to be seen to be delivered and same in government. So that's, that's the starting position and happy to answer any questions you may have.

Right. Thank you. Mr Rees, I want to ask you first about the existing register and the code. Can I just give you an indication of the areas that I'm going to ask you about?---Sure.

The first is to get from your description of the lead-up to that and in particular what you saw to be the particular mischief that the code would deal with and that the register would deal with but I also want to ask you about any relationship you saw between that process and your replacement of the old Freedom of Information Act system with the new Government Information Public Access system. Can we start first with the current code and register. Before I actually ask you to do that I'm just going to quickly

outline that for the general benefit. At present in New South Wales there exists an online register which can be searched by anyone which is managed by the Department of Premier and Cabinet. It requires together with its code of conduct that ministers and other persons in government do not deal with professional lobbyists unless that professional lobbyist has become registered on the public register and that that register when searched will show the name of the lobbyist, those person who work for the lobbyist and the client of the lobbyist. The code of conduct that must be adopted by those who wish to be registered require certain standards of behaviour, of honesty and integrity and in particular requires that statements made by a lobbyist not be exaggerated or false and that statements made must be made after the lobbyist has assured themselves as far as reasonably possible the statement is true and correct. There are various other requirements as well. So with just that introduction as to how the register and the code of conduct actually operates in New South Wales can I ask you to tell us about the background to it?---Well, as I, as I indicated in my opening remarks there'd been one particular set of, set of assertions that had been, had brought things to a head for us. This was an issue that had been around four years, the notion that there were various lobbyists both professional lobbyists whose primary purpose is to represent the interests of their clients through to individuals with solid connections across the political landscape who were guns for hire for private interests. The important thing for me to demonstrate to the community of New South Wales was that we were prepared to make it more transparent, that this was no longer going to happen in the shadows but there was actually going to be a register, there's going to be a code of conduct and that was the first step along, along a road to making things much more transparent in order to ally concerns that people had.

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20

30 All right. Now, by having the register of course you're able to expose that body of companies that do professional third party lobbying, that is, that they will act for a fee for anyone and go and lobby on their behalf. Did you at the time have in mind those sections of the lobbying community that don't fall into that category such as the peak industry body, the trade union, the employer organisation, charities, churches and other groups?---There was certainly an argument for ancillary lists. I draw a distinction and I think I may be one out in, in terms of the, the people who have given testimony here. I draw a distinction between your group 1 lobbyists, those that, whose primary purpose is to lobby and advocate on behalf of clients. I draw a distinction between them and a Cancer Council or an organisation that's got an in-house firm because it's not their principal purpose, it's not their primary commercial purposes, it's, it's incidental to it and everyone would expect that a Cancer Council or a trade union would talk to government about the particular issues that their members and their constituency have but that's not so clear where that's the group 1 lobbyists who are, will work for any number of clients, often with competing views.

40

MR GORMLY: Well, I suppose the group 1 lobbyist too is the group about whom one may not know the identity of the client?---Indeed.

Right. So the register exposed that and required that the group 1 lobbyist tell the minister who they were acting for?---Mmm.

As well as declaring it publicly?---That's right.

10 Would you accept that the odour of lobbying and the public scepticism or distrust of lobbying extends though beyond identifying who somebody is lobbying for and extends into problems such as the closed door and the fact that often meetings can occur without the public knowing?---That is certainly part of the, part of the difficulty but it also is, remedying that is fraught with difficulties and I've, I've read the transcripts closely, look, the, the issue you have, any government has is if the head of BHP or Wesfarmers or whoever it might be wants to come and talk to a premier or a minister they are entitled to do so in an atmosphere of trust knowing that or, knowing that there are boundaries to what they can reasonably ask a government to consider but equally they're entitled to have things such as
20 their commercial interests or their soundings kept confidential. Any, any move to require the content of meetings I think would seriously damage governments' capacity to get input from people who have broad experience in whatever the matters might be and that's precisely what you don't want. People need to be able to deliver a view to government, whether it's someone on the street who's got an issue or a captain or a coin of industry. People are entitled to put those views, they are entitled to have their, their, their views heard and considered in an environment where it's not going to damage them. Now, if there was a move to require contents of meeting that you have with, you know, the head of BHP or whoever it might be, there is
30 no question that the opposition or the fourth estate or whoever it might be will make mischief out of that, that will simply happen. They will then stop talking to and all of a sudden you have a lack of serious contribution to your policy making and your policy development and that's the unintended consequence of what is a well-intended push. Now, at the end of the day governments make decisions all the time about the political risk there will be on any given thing. You know, the most obvious example is politician pay rises. There's going to be a pay rise at some stage, you know you're going to get smashed up for it but you wear it. Now, there is also a point in these matters where you have to draw a very fine balance between being
40 accessible, gathering the views of the best brains across the land for your policy development on the one hand versus transparency on the other and it's a balance and at the end of the day premiers, prime ministers, ministers, should be able to put their hand on their heart and say we're behaving entirely ethically within legal boundaries and if anyone's got a view to the contrary take it to the courts.

All right. Mr Rees, just following that line then?---Sure.

I think what you're saying is that a meeting must be just that, there's no room for the public or the media to be sitting on the shoulders of people who are endeavouring to communicate with one another, is that right?---I don't - - -

10 I'm not disagreeing with you, Mr Rees, I just want to identify whether you are talking about the problem of having people in effect unable to say something in the room without it being immediate transmitted?---Put it this way, I would be much happier if members of the public were sitting in on the meeting so they could the nuance, they could get the subtlety, they could get the context than they have it reported third-hand the next day.

All right. Well that's, that's a different sort of complaint. But certainly so far as the persons in the meeting are concerned they are going to behave and speak differently if they think that every word they're saying is going to be repeated?---Precisely.

20 And that may well reduce the frankness or so we've heard - - -?---No question.

- - - in the course of evidence that it will reduce the frankness. Correct? ---No questions. And, and leads and would have a negative effect on proper policy development.

All right. It's also likely to stop the process of people exploring ideas or trying something out which they might subsequently abandon?---Exactly.

30 All right. So that everything however, however much an attempt it may be at a policy change is likely to be seen as a serious step when it's not?---Can you clarify that for me?

An unending series of problems because people will draw inferences from what's said before it's actually turned into policy?---Very possibly.

40 All right. Now I think that you had that kind of thing in mind when you propounded the Government Information Public Access Act. You wanted a change in the, in the Freedom of Information system. Is that correct? ---Mmm. Yes, again, and there's a view that government decisions and government material was enveloped in secrecy. The previous act, the FOI, Freedom of Information Act hadn't been updated in excess of 20 years from memory. It didn't reflect the electronic age, certainly. And at the end of the day, you know, the work of the agencies, the work of the ministers is taxpayer funded and people within appropriate limits were entitled to see that material.

I just want to move from what, what the, from the kind of meeting that we've just been talking about - - -?---Yep.

- - - to the operation of the GIPA Act?---Access, yep.

Now as I understand it, one of the, the principals of the GIPA Act is that it requires the divulging of government information wherever possible and subject to very defined categories. I think there are only 12 categories where documents cannot be disclosed and that relates to things like childcare, adoption, secrecy provisions in Acts of Parliament, prosecution, obvious areas - - -?---Sure.

10 - - - where there cannot be release of information. Otherwise the release is to be determined in the public interest and where there's doubt, then the document is to be released. Now that's a considerable step forward from the old Freedom of Information Act arrangement?---Yes.

Mr Rees, after passing the or after promulgating the lobbyist Code of Conduct and the register, I think one of the comments you made on 29 October, 2008 was that that was a small but important step in ensuring that the public can have confidence in their public officials. Now, firstly, I assume that the GIPA process, making information public was another step
20 in that process. Is that correct?---Indeed. That's right. That's correct.

Right. So that what, what you were doing was endeavouring to, through the register, make the, let the public know who it was that was speaking to government and lobbying it and then setting up a system where ultimately records of events could be made public in a way that was in the public interest?---Precisely.

All of that praiseworthy, Mr Rees. I'm not suggesting there's anything wrong with that system. What I do want to do is to explore with you what
30 the other steps might be. And in particular, seeking your views about the way in which lobbying and the lobbying activity in a ministers office or a director generals office can join up with the Government Information Public Access Act. Now firstly, would you agree that if people don't know that a lobbying act has occurred, that is that somebody has gone in to see a minister and lobbied them for some benefit that they're going to be to some extent stymied in their ability to get documents about that through the Government Information Public Access Act?---I would depend on the circumstance and how much material was entered on to the register.

40 Sure. What if just the date of the meeting was placed on the register, no content, just the date of a meeting so that the public knows that a public officer has been lobbied by this particular interest?---Well, as, as, as I understand it, you would, under the Act you would be able to request, and this is something I don't think has been mentioned by any of the previous, previous participants. But when there's a meeting, there's a departmental brief generated before that meeting for the minister or the premier or whoever it might be, which is the official record of, of the agenda of the

meeting and so on. There is nothing stopping someone requesting those briefing notes for that meeting between those people on that date.

10 Right. I agree with that. Can I suggest to you that we've got two realms operating here that if you are within the government realm you will know things like mostly lobbying is a clean activity, mostly there are notes relating to a meeting, mostly there are records relating to the meeting and that's all inside the government camp. In the public and media area of the world it's impossible to know what's happening there if you don't know
10 that the meetings are occurring, that is, that you need information passing from the public side to the private side, from the private side to the public side or the government side to the non-government side before GIPA can take effect?---But GIPA's not the only way of getting that information, I mean ministers stand up in front of press galleries everyday, a journalist only has to ask have you met with person X this week or last week or this month or will you meet with him next month and that's - - -

20 Yes, I agree with you, Mr Rees, that there are other ways of getting the information but would you accept that if there's lobbying activity going on over a period it may be that no one knows about that unless there's some public indication that it's occurring. You seem to have had that in mind when you formulated the register?---I wanted, I wanted to shine a light on the whole exercise and that's what, that's what the register was about and as you've indicated it was only a first step and of itself it's not earth shattering but it's a first step. So I guess as I understand the question you're asking it's around meeting dates and whether they should be publicly published.

30 THE COMMISSIONER: The fact of the meeting and the date?---The fact of the meeting.

And the date?---And the date. Look, I think there are dangers inherent in that but I can understand why everyone wants it. I'm simply, I'm simply suggesting here in that you don't want unintended consequences.

40 You can build a safeguard into that and make that information subject to the GIPA Act. In other words if there is, I imagine it would ordinarily, well, whoever doesn't want it, it could be the government, it could be the private person, whoever doesn't want the fact of a meeting and the date put on the register there can be a requirement, there can be the power built in to whatever regime - - -?---Well, with that, with that - - -

You can actually go to, to use GIPA to block it?---With that safeguard I would have no problem at all.

MR GORMLY: Do you accept that there would be a public benefit in it? ---I'd accept there would be a perceived public benefit in it.

THE COMMISSIONER: And that's a public benefit though?---No, it's a political, it's a political decision for a government of the day to make how much, how much opprobrium do you want to wear.

Well, Mr Rees, maybe it goes further than that, maybe the notion that there is something wrong with government or that there's corruption of government actually weakens the whole system?---No one's going to argue with you on that one, Commissioner.

10 So that the whole idea of actually, the idea of removing some of the causes of perception is really an attempt to bolster the belief in government?---Yes, it is and we were spending a great deal of time and obviously intellectual effort on this matter here today but once this matter is resolved we will then have to move on to the next matter that impacts public confidence and it's - -

It's never ending?--- - -?--- rabbit down a hole stuff.

Yes.

20

MR GORMLY: Right. Mr Rees, can you tell us what else you had in mind when you were saying that it was one step along the way, did you have other lobbying regulation systems in mind than the register?---It was to be seen in the context of a package that included things like donation reform and those sorts of elements as well but I was also of a mind to have an ancillary register around non-government organisations and peak bodies and so on. Now, and as I said I draw a distinction between the group 1 lobbyists and those for whom lobbying is incidental to their primary purpose.

30 THE COMMISSIONER: But if you have an ancillary register how would it differ from the main register? I know it would differ - - -?---I'm trying to be fair to those on the ancillary register, if we accept that there's, if we accept there's some distaste unfair or otherwise around the group 1 lobbyists they are entitled to not be sullied if they're out there - - -

They're not tarred with that - - -?---Collecting money for charity on a Friday night for example.

Yes.

40

MR GORMLY: All right. But there doesn't seem to be any doubt that the non-professional lobbyist and perhaps moving away from bodies like the Cancer Council there are plenty of private interests that lobby in their own - - -?---Absolutely.

- - - interests in very vigorous ways. Do you agree?---Absolutely.

Perhaps in some ways less subject to scrutiny than those who become subject to a code of conduct, for example the type that you introduced with the register?--I would agree with that and very, very powerful and politically potent.

10 Would you agree that if there were to be an ancillary register of the type that you've referred to that there would be no harm and there would probably be a substantial good in laying down rules about lobbying no matter who it is that's lobbying through a code of conduct?---Look, you can over-engineer your response to these things, in fact I can't think of an example of a non-government organisation or a peak body that has acted in an unethical fashion, certainly in my dealings and obviously robust discussion might be played out in the press but unethical behaviour is extraordinarily rare in those groups. So would a code of conduct help? Probably if they're, if they're having to turn their minds to being thought of as, as lobbyists as distinct from advocates for a particular social cause then it probably helps their cultural change on that front but again it's - - -

20 THE COMMISSIONER: It may help to support or to create a culture generally amongst lobbyists of professionalism?---Yes, yes, it may.

MR GORMLY: I take it that judging from what you're written and said at time, Mr Rees, that as a general rule you'd accept that the professional researching able lobbyist is actually a value adder?---No question about that. The good outfits and I won't mention them by name but everyone, everyone knows, knows, will know who I'm talking about will add value to a proposal, they'll add value to, to the information that's brought to bear in decision making by governments and ministers or departments, they will know how to navigate things, they understand that very often if you're, if you're someone with a proposal in which there's significant finance at risk they understand that a quick no is better than a long yes, those sorts of factors and I think the big outfits are very effective at what they do and do value add for both the client and in many cases government decision making.

40 We've heard too that the professional able lobbyist is in a substantial education role, that is, they're often advising or teaching their client about what can and cannot be done at government level?---Absolutely. And there is no, there is no euphemism I can think of for what I'm about to say but the, the lack of knowledge of how government works in even some of the top 100 corporations in Australia is absolutely astounding. They need these people.

Yes. I have to tell you, Mr Rees, we hear, we hear both sides of that, we hear too that the level of knowledge at departmental level about how private industry works is also equally at times a problem and that lobbyists can assist with that as well?---No question about that at all and that's why, that's

why the meetings, the discussions, the airing of issues from the commercial and business end of, of, of the state needs to be heard.

All right. In looking at possible schemes for regulation, Mr Rees, just before we move onto another topic, one group that has emerged as, as difficult to develop a system for is what's generally known as the in-house lobbyist, that is the, the person who works within a large corporation but specialises in government relations and they seem usually to be a small band of people within a corporation and not the only person who contacts
10 government, would you distinguish that group from any others as a lobbying entity?---Yes, I would put them in the ancillary list, in the ancillary column because as I indicated earlier, it's not their primary purpose. Their primary purpose is to prosecute the interests of the organisation they work with not lobby on behalf of clients. They've got one client and everyone would expect a big pharmaceutical company or a big mining company to have an in-house group that does that work.

20 THE COMMISSIONER: And what is the, what are the implications of that distinction? I mean, there is that distinction?---And it's a, I accept it's an arbitrary one, it's just my own distinction.

Does it have, it doesn't necessarily have implications as to behaviour of the lobbyist?---Well, I would argue that it does, in so far as if, if the in-house lobbyist or if the in-house public relations organisation isn't behaving ethically and within an acceptable framework then it will reflect on the firm as a whole and there's a safeguard there.

And the in-house?---That's who I'm talking about.

30 The in-house lobbyist, that will reflect on, on the in-house lobbyist, on the firm - - -?---If you've got a large pharmaceutical firm with their own PR - - -

Yes?--- - - - people, if they behave in, in, in an unethical fashion it will reflect on the firm.

But it would, wouldn't the same apply with a professional lobbyist?---Yeah, but they'll move on quickly with another client.

40 Yes. While we're on the topic, well, if, there are a number of - - -?---Can I also add to that, Commissioner, if I may that there are, and I won't mention names, but there are people around the place who have lobbied on behalf of interests in this town. Sydney, Sydney or New South Wales is a small place, you all know that. The dots that you can draw between different individuals are substantial. If someone doesn't behave ethically or there is a view that they don't behave ethically they generally don't get in the door so it doesn't serve their end to over-exaggerate their, their influence or their contacts or, you know, some, some will even assert that they can get a

decision made for someone. Now, that's just nonsense but those sorts of operators get found out pretty quickly.

Can I just run a couple of ideas past you, Mr Rees, based on, involving these, the different categories of registers?---Mmm.

If you have a professional lobbyist register alone it does have a number of advantages, not least that you can actually identify the name of each lobbyist and still keep the register manageable as it presently exists?---Yes.

10

Because if you do then add all the other categories of lobbyists to it, even if you restrict it to the name of the entity you're going to get a very big register which may be unmanageable. You could have a system where you have one register for professional lobbyists requiring each individual lobbyist to be registered, then you could have another category of register where, which deals with NGOs, charities and organisations of that kind, I'm not yet sure where the commercial organisation would go in with the in-house lobbyist but perhaps goes into this category, where you would only put the name of the entity and not the individual lobbyists because once you start requiring the individual lobbyists to be registered for this very large group of people who often have 20, 30, 40, 50 people doing the job, the register again becomes unmanageable and you could then though, you would then though impose on the entity the obligation to get each of the people who lobby for them to agree to the code of conduct. There is, there is still, however, a problem concerning, even if you do do, I mean, that system does have attractions of practicality, of separation between different kinds of work making one stricter than the other. We do know though, because we've been told, that you do get retired politicians working for the second category and lobbying, people who in the public eye have influence? ---Mmm.

20

30

And it does, it seems to me to be undesirable to allow that person to work, a person of that kind to work for an entity and for his identity not to be disclosed in the register so my question is do you think it would be unfair or wrong or objectionable if you, if you required only the entity to be registered but in the event that a retired minister or director general or chief of staff was part of the lobbying force of that entity they would be required to register those independently and personally?---I understand the point you're making. I, and I think in a broad, I think that's the system that I was proposing earlier, two, two lists, one with less detail than the other, with just the organisation. I would leave it to the board of the organisation to voluntarily declare that former, former MP X is now working with us, give them the option of declaring it, if they thought it was going to emerge down a track and that would be somehow deleterious to their, their, their purpose. Again, the fact that you will, you'll get into trouble and difficulty if there's an MP, a former MP working in a non-government organisation if they're not lobbying but they're still working in there providing strategic advice on how to deal with the government even if there's no contact.

40

Do you think that that would, what do you mean get into trouble?---Well, the, the perception, the perception.

You'd still have a perception?---Yes. Now that's, I think that's a call for the organisation to make around their reputation management rather than, rather than a code of conduct or a set of government rules requiring that it happen. I mean, some MPs may have been retired for 10, 20 years.

10 Quite so?---And it's not uncommon, in fact it's common for, I know lots, lots of examples where there's former ministers who, who have gone on to non-government organisation boards and charities and so on, they do it on an honorary basis simply because they can give advice on how to navigate government and so on. I don't think anyone has an issue with that but if they, if the organisation thought that down a track if they were being into a minister's ear on, on a particular proposal and it was going to subsequently be written up or emerge that a former MP or minister had assisted and that was going to negatively impact on them or their reputation I think it's up, it's up to the organisation to make that determination.

20

And I suppose using the GIPA procedure the press would be able to find out who lobbied on behalf of the entity?---Prospectively, yes.

Yes. One other question on the, these, on the two categories of lobbyist. We understand that lawyers and accountants and sometimes engineers do a lot of lobbying?---Mmm.

30 And some lawyers have, some legal firms have departments where the lawyers are mainly if not entirely concerned with lobbying. On one view they are indistinguishable from professional lobbyists because they are lobbying all the time for different clients. Should they go onto the, register 1?---Just so I'm clear, so it's the provision of, their, their influence derives from their technical knowledge and are now lobbying on behalf of a client in that field, is that - - -

Yes, and, and, and their, let's take firms in Canberra, legal firms?---Mmm.

40 Over time in Canberra they have got to learn government identities, senior bureaucrats and they've got to learn their way around and to understand government and how it works. They then become just as skilled in lobbying as a professional lobbyist because that's what they do but they are not now required to, to register themselves because they are not called lobbyists, they are called lawyers?---Well, why are they different to any other in-house lobbying group?

Because they act for different clients while the in-house lobbying group acts for the same clients using your own distinction?---I see, I see, okay. Look, I'm not going to, I'm not going to pretend to be able to provide a

comprehensive response to how you might deal with that, I understand the issue that you're getting at. Invariably when governments pass statutes relating to these sorts of things you have a mechanism in there for review of the statute, depending on how live and dynamic the issue is. You might review it after two years or five years I think is the, is the requirement at present. Some of these things you'd put in place, keep an eye on precisely that sort of an issue and if it has to be tweaked down the track you tweak it.

Yes, thank you.

10

Mr Rees, can I take you to another topic. As part of the process following the register of regulating lobbying you prohibited the, you prohibited lobbyists, registered lobbyists from serving on government boards and committees. They had to elect between one activity or the other. And that's still in place as I understand it today. Is that still your view that a registered lobbyist should not serve on a government committee or board?---My answer is in the context of a political climate. I would keep that safeguarding place until such time that I was satisfied that the public's confidence in the integrity of our decision making as a government had been all right.

20

All right. I take it that what you have in mind there is that sometimes by, by prohibiting the lobbyists, whatever their background from a government board, you are losing what could potentially be a significant contribution? ---Yes. But you have to weigh up again the mischief that may be made about that appointment. Okay.

Yes?---And that was the situation I found myself in.

30

Right. All right. I won't take it any further myself, Commissioner. Right. Can we go then to the, the more contentious area of the post parliamentary cooling off period.

THE COMMISSIONER: Mr Gormly, are you dealing, are you going to ask Mr Rees at all, excuse me for interrupting, but are you going to ask Mr Rees at all about the note taking at meetings?

MR GORMLY: I will, Commissioner. Yes, I will. Perhaps we'll deal with that first?---Sure.

40

Mr Rees, just by way of introduction, what we've been endeavouring to do is to explore a way of linking lobbying meetings through the GIPA Act, but exposing the process sufficient to enable people to use the GIPA Act to get documents but not impair government business, not impair the integrity of the meeting. One of the ways in which that can be made to work is by requiring a proper record to be kept of lobbying meetings. We understand -
- -

THE COMMISSIONER: Not a verbatim record.

MR GORMLY: Yes, not a verbatim record, just in effect a note that would detail date, venue, attendees, perhaps purpose of the meeting, depending how you defined it, any proposals put and an outcome.

THE COMMISSIONER: And the duration.

10 MR GORMLY: And the duration of the meeting as well. So we've seen examples from Mr Haddad's system. Generally speaking it seems to be capable of being fitted on a page. But it would at least provide a consistent type of record of a meeting. Now at the present time there is - - -?--- Provided it's a consistent format. Go on.

All right. A consistent format. I think I understand what you're saying, that the record may well be kept in accordance with what the parties want to be kept. Is that - - -?---I'm saying that half a dozen people in a meeting may have half a dozen different views on where the emphasis lay in your discussion.

20

Yes?---And for one person to write down that content, I think is deeply problematic.

Yes.

THE COMMISSIONER: It's better than nothing?---It depends who you ask.

30 MR GORMLY: Would you, would you accept this, that as a general rule a record between a government interest, sorry, between government and a non-government interest is something that is a matter of good business practice ought to be kept by a government officer?---I think that the record keeping is adequate as it is. As I indicated before, there are formal briefs for each meeting. Now in the vast bulk of cases there is a departmental officer present. Any action items that arise from the meeting are conveyed either via email or a phone call from the ministerial office to the agency.

40 THE COMMISSIONER: Mr Rees, we've been told by a number of bureaucrats that what you describe sometimes occurs and sometimes doesn't and the that situation varies from office to office?---It may. And it would depend also on the content of the meeting. You may, I mean, as I indicated before, Sydney's not that big a place. Okay. And after a government's been in for an extended period, there may be people who come in who are group one lobbyists, but you're not talking to them about anything related to what they're doing, in a business sense. It's an entirely unrelated purpose of the meeting. In that case, do you need an official there, no you don't. So, inevitably ministers will use discretion around these things.

I think that, my understanding of some of the witnesses was that it wasn't a matter of discretion. It's simply as a matter of course no record was kept of meetings in that particular office?---I can't, I can't comment on individual ministers.

Well, if that's the case one would, well do you agree that there should be a requirement that everyone should keep at least a minimum type record of, of business meetings?---All meetings relate to policy development or proposals in a portfolio. There is certainly an argument for that. Not all meetings fall
10 into that category.

No. Some are clearly for information I would assume?---Indeed.

You wouldn't want to keep that, there's no need to keep a record of that?
---No. No, that's right. I mean if, if a premier or a minister wants to talk to the head of, you know, a big, a big mining firm about what the, what the projections are for demand from China and so on, do you need an official there, probably not.

20 No. But if you could define lobbying reasonably accurately as a meeting where a particular commercial or policy or financial outcome is sought and discussed, that would exclude from the note taking requirement many kinds of meetings which are simply for the purposes of providing information?
---Sure. But - - -

And is it that kind of definition would you, would you comment on that kind of definition?---Yes. I mean you can, you can work towards that. I guess the definition (not transcribable) is hard work.

30 It's fraught?---Yeah. But I guess the, the point I would make is that it would be extremely rare and imprudent in my experience for any minister to meet with a private sector proponent on something that is currently under consideration by government. All right. If there's a tender out there or whatever the story might be, any minister who meets with one of those tenderers during that process is being reckless. And that's that side of the equation. And the other side in terms of like policy development and so on, I can see an argument for the sorts of, for the sorts of recording that you're talking about.

40 I mean some people have said that it might actually help the minister and certainly the bureaucrat to say, look, I've been happy to meet with you alone up to now, but we're now coming to a point in the meeting where we are discussing potential outcomes, where you're putting a proposal to me that we'll have to consider, but we have to stop the meeting now while I get someone in to take notes?---And that would be prudent practice for most ministers.

And, and it's said, well, everyone had to do that and that could be explained to the individuals that this is our policy it will actually be able to help them in the ordinary course of their business?---But most ministers will do that. Okay. If you're getting, if you're getting into territory where, I mean, ministers anticipate where things are going to go. Right. They anticipate the, the prospective negative impact of anything they do. All right. They're trying to do it in New South Wales or are (not transcribable) to do it if you like. And they will say to someone in a meeting, hang on a minute, I don't want to talk about this without an official present or I don't want to talk about it at all. And that's just, that's just the way you operate. If that helps.

Yes. Thank you.

MR GORMLY: Yes, it does. Yes. We're operating, I have to say, Mr Rees, from an assumption that good record keeping is, is or ought to be a standard government act?---It's in law.

Yes. All right. Look, so let me take you then to the cooling off periods in the post-parliamentary period. I think you having read the material you'll appreciate that it's a live debate and it's an issue on which you've spoken before. The question is when somebody leaves parliament and particularly if they've held a ministerial position or they leave the senior levels of the public service ought there be a period during which they should be prohibited from lobbying present because of the code of conduct that you introduced there is a period of 12 months prohibition?---And if memory serves if you want to lobby or do any related activity in that period there's an ethics, an ethics advisor that you can consult and get clearance from in the interim.

There is?---I'm of two minds on this matter. I think in terms of public perception a cooling off period, I don't think you'll get many people arguing with it. The other side of it is, and this is hypothetical, it's not the sort of field of work I would, I would intend to go into but if a parliamentarian decides to leave the parliament for whatever reason and then go about legally making a living they're entitled to do so and in many cases they would be parliamentarians who have had to put up with the misinformation that, that appears in media reports about their activities, they've had to put up with a whole range of unfair allegations and so on over the course of their, their, their period in public life. They are now out of public life and entitled to act within the law to make a bob and certainly anyone who stood on their (not transcribable) on that front would not understand entirely why.

Mr Rees, what would you say to the proposition that the determination of a proper cooling off period that protects public perception or prevents an adverse public perception forming has been confined because the post-parliamentary financial position and employment position of ex-parliamentarians simply does not provide for gaps like 12 months or two years that perhaps parliamentary salaries haven't kept up but more

importantly the pension has gone and there's no provision for redundancy payment of a kind that's found commonly elsewhere in the community and perhaps worse still the lead-up to departure from parliament is usually one so intense that parliamentarians don't make provision for future employment and even if they did that would frequently be a matter of serious public concern. It's clearly unhealthy for parliamentarians to be making arrangements with private industry perhaps with lobbying intention while they're still in parliament and particularly in executive positions. There seems to be a problem about forming a cooling off period because of those considerations. Do you have a view about that?--Look, there's the old and the new schemes I guess is the easiest way to characterise it and those of us who came into the New South Wales Parliament in March '07 are those affected in the new, in the new arrangements. Are they satisfactory from a personal perspective? No, they're not. Did I know the rules when I ran on the field? Yes, I did. And people go into public life generally for sound and proper purposes. If, if financial gain is your motivation you're in the wrong spot and you should anticipate that eventually when your parliamentary career finishes you're going to have to find something to do and make a living. Now, that, the current circumstances make it very difficult, they are in fact a disincentive for people to go into parliament and if you do go in they are an incentive to get out reasonably quickly. Now, how you address that without having page after page and barrels of ink spread about the place on more pollicie perks I do not know but it's just part of the landscape, it's certainly not the most difficult thing you have to deal with in public life.

Not - - ?--No.

- - - did you say? Yes. It does seem to be a difficulty in formulating a period for a cooling off period for lobbying?--Well, yeah, that's right and there's, as I indicated earlier there is a body of thought, not a very big body I suspect but there's a body of thought that says a cooling off period is a nonsense leaving aside whether you get it through all the legal, the legal complications around for restraint of trade and so on.

Well, that's the view is it that the currency of knowledge of somebody in an executive position, a minister is in truth very short so far as saleable information is concerned, that is, once a minister is out it doesn't take long for their knowledge to die. Is that a view you'd agree with?--No, not necessarily, not if they, not if they're, not if they're, and I think you've made an, made an additional distinction here around relationships versus knowledge but the fact of the matter is that you can't use material that has been considered in Cabinet, it's illegal. Now, if someone puts their shingle up and subsequently operates in the shadows that's not good business practice and they won't be around long in that, in that form of business.

You think there's an inherent safeguard there?--I just, the vast bulk of parliamentarians that I know and have known over the last 25 years are

people of integrity and take their ethical standing very seriously and that applies across the board.

All right. 12 months is the position in New South Wales at the moment, it's two years I think in Queensland and five years in Canberra, five years, I'm sorry, in Canada?---Canada, yeah. That's the equivalent of sending someone to Centrelink.

10 Right. You're ruling them out of the occupation?---It's, I just, I just think it's unworkable and unfair frankly, it's, people are entitled to make a living.

What would you say to the two year period?---I think, I think one is sufficient particularly at state government level.

All right. Now, let me finally take you, not finally, there's two more topics, Mr Rees. The first is on the question of donations and lobbying, the second is, you've had some experience with local government I'd just like to spend a couple of minutes with you about local government?---Sure.

20 Let's deal with donations first because that's a topic on which you have been vocal in the past. You'll appreciate that we're interested in donations insofar as it relates to lobbying. Can you tell us do you have in mind, what is your view about the appropriateness of prohibiting lobbyists from being involved in donations or fundraising activity while also lobbying government?---Again, you're getting into very difficult definitional areas. There are people out there lobbying who have strong allegiances to political parties who are entitled as individuals under the current laws to make donations, to organise fundraisers and so on as individuals and in that process entirely independent of the organisation they work for they may well corral a group of people to make, to make a contribution to a candidate or to a party on both sides. I'm on the public record as supporting public funding of election campaigns with provisions for modest donations to be made by individuals but safeguards and preferably a ban on corporation donations and high network individual donations. The, that's why I indicated earlier that the lobbyist register (not transcribable) was part of a broader package of, of the integrity agenda I was pursuing and if you move to very substantial reform of donations all of these discussions around lobbying and so on become far less important because there is no nexus, it has gone and a leader or a minister or a candidate can put their hand on their heart and say to their constituency there is no link and that's what I was after.

40 THE COMMISSIONER: Are you saying that a large cause, a most important cause of the perception, adverse perception that the community has about lobbyists is, is the fact that lobbying takes place in the shadow or political donations?---People see them as inextricably linked. Now, the, the political class and I include everyone in this room in that category, people who are clearly interested enough to observe today, the political class

considers donations to be part of the landscape but out there in, as one of your former participants described it, out there in lawnmower land the notion that someone would willingly give money to a political party baffles them and they just don't understand why anyone would do it, that's what most people think.

And - - -?---They then go the next step and think if you are donating you must want something and that's how most people think.

10 And some people find it very difficult to understand why large companies give amounts to both parties?---That's right, or anything at all.

Or anything at all. They always think, it's very difficult to attribute some notion of altruism to it?---Well nigh impossible, Commissioner.

Yes.

MR GORMLY: Mr Rees, would you, given that donations can be made by anyone at any time and you don't need a lobbyist to help you, if you
20 separated donations from fundraising would you agree that to prohibit lobbyists from being involved in donations by their clients would be a logical step? I'm not suggesting it occurs but just as a way, as a mechanism of separating donations from fundraising - - -?---That would fall within the rubric of my broad principles around public funding, minimal donations from individuals and nothing from the corporate or the high net worth individual.

Right. All right. So you'd see those two things as aligned. There's really no room for a lobbying to be involved in the donations being given by their
30 client?---Look, it would have to be a case by case example. As I said, I stick with some, I stick with the basics on this one. The more public funding of campaigns you can have the better. Now, there are constitutional issues around an individual in lawnmower land who might want to donate to a, to a local independent candidate or whoever it might be and, you know, there are certainly strong arguments for that to be allowed but from a perspective of someone who in a previous role has had to be responsible for the integrity of the government and its processes, my strong view was that public funding of election campaigns was the simplest and most effective
40 method of removing the opprobrium and the reputational damage that occurred.

I want to move on. Can I take you to the question of, of local government. Now, Mr Rees, you, you may have seen this in the transcripts. It does seem as though local government problems about lobbying are quite different from those that one would find at state or federal level. Is that as a general proposition something you'd agree with?---Yes.

It would seem that the activities of the professional third party lobbyist at local government level are close to nil, they're very rare in that - - -?
---Sorry, say that again.

Close to, you, one would very rarely find the political third party lobbyist lobbying at local government level?---What do you mean by political third party lobbyist?

10 The registered lobbyist who (not transcribable)?---Okay. A group A, a group 1 lobbyist.

Group 1, yes.

THE COMMISSIONER: The first group.

MR GORMLY: Yes. One might find them at Department of Planning level where they seem to be dealt with by Mr Haddad's new lobbyist system but one very rarely finds them at local government level?---I think it depends on the size of the council but go on, yeah.
20

All right. Well, that's, that's the evidence so far - - -?---Sure.

- - - in any event, that when they do turn up it's, it's unusual and noted and not thought, it would seem, to be particularly helpful either because they're not speaking from a position of technical expertise. But nevertheless it would seem that lobbying seen more widely is an activity that produces some level of corruption at local government level?---Or potential for it, yes.

30 Or potential for it?---Yeah.

Certainly a perception of it?---Yes.

The evidence so far sought from people who spent, who have spent their lives in local government or some large portion of it seems to be that a, a register that required planners and architects and lawyers and so forth working in the field would not serve any utility. Is that a view with which you'd agree?---On balance, yes. Look, I should say that I think that of the three tiers of government that we have in Australia I think that the
40 community pound for pound gets the most from its local government representatives over and above state or federal, they work extraordinarily hard, every councillor has a pile of papers that high every week that they have to get through and the, and their, the remuneration is absolutely minimal, even on big councils. I was talking to one councillor the other week, she gets \$7,000 a year, okay, for what is effectively a full-time job for her. So I have utmost respect for those who, who, elected officials in local government but when a large organisation comes to a council with a public-private partnership proposal that can run into the billions of dollars in

terms of finance required and then argues that there's going to be a public benefit at the end of this, it is certainly the case that those large organisations have international experience in how to do these things, they can take advantage of councils that haven't had to deal with things of this complexity and magnitude before and are in a position, there's a serious power asymmetry there holding out a benefit down the track for something that's also going to make them a lot of money. Now, many councillors in your average suburban council won't have had the training or the expertise to deal with those sorts of proposals and proponents.

10

I accept all of that, Mr Rees. To some extent I'm sure you'd agree that, that that kind of problem has been ameliorated by the powers that enable the Department of Planning to call in - - -?---If they choose to call it in, yeah.

Yeah, large, if they choose to call it in, yes, large projects, but do you otherwise see any way of dealing with what seems to be a persistent low-level problem of corrupt conduct which we are told and which is the experience of this organisation frequently comes from the small to medium developer?---Mmm, mmm.

20

Would you accept that they are a bit of a corruption risk?---Yes, yes, I certainly would.

All right. I am not sure if this is a matter to which you've been able to give any thought but a register obviously doesn't deal with that kind of person yet they are lobbying, they are lobbying directly in their own interest and they frequently, or frequently they do it consistently enough in a way to be a cause of problem at local government level. Is there any particular view that you would have about how that problem might be dealt with, in the context of lobbying?---To deal with the lobbyist themselves or to deal with the receptive official?

30

No, the, the receptive official can be dealt with in other ways. It's really to deal with the, the, the external lobbying by the, the small to medium developer?---(NO AUDIBLE REPLY)

Unless you think that nothing can be done - - -?---There is no simple solution that springs to mind immediately. I mean, at the end of the day public officials, be they elected or, or staff have to be aware of their responsibilities to discourage that sort of activity and act on it if it occurs. Now, that goes to education, it goes to training, it goes to culture and provided all the mechanisms like this body exist that people can have confidence in when something is reported. It's difficult to arrive at a mechanism that captures all of that. I certainly can't think of it this morning.

40

Yeah, all right. May I take it that from your, from your opening comment that you, you would be inclined to see the solution more on the, on the

government, on the local government officer side rather than on the other side of the counter?---Look, history shows that we will never eliminate urgers and spivs, okay, they're going to be there. What we need to ensure is that we have the mechanisms in place to protect the decision-making processes and that goes for the paid officials and the elected officials. There will always be people seeking to make shortcuts and we just have to be live to it and act on it.

Yes, all right. Thank you, Mr Rees.

10

THE COMMISSIONER: Mr Rees, we are really deeply grateful to you for coming in?---Not at all.

It is difficult to get sitting members, particularly sitting members of any experience so your evidence has been very valuable to us, thank you?
---Good, thank you.

MR GORMLY: I have no further questions for Mr Rees, Commissioner.

20

THE COMMISSIONER: Yes, thank you, Mr Rees?---Great.

THE WITNESS EXCUSED

[11.19am]

MR GORMLY: Commissioner, I call next Mr Bruce Baird.

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

30

MR BAIRD: Under oath.

MR GORMLY: Mr Baird?---Yes.

Can you tell us your full name?---Ah, Bruce George Baird.

Mr Baird, you have a very substantial history which is very publicly known. It would take me some time to go through it and I would rather use the time,
10 if I may- -?---Yes.

- - -on the substantive matters. But, look, I have to do this much, because it assists us with the lobbying question. I think you've got an academic background with Masters of Business Administration. You've been an assistant Trade Commissioner in Bonn and a Trade Commissioner in New York. Is that correct?---Yes

You have been the government affairs manager with Esso Australia?---Yes.

20 Managing Director of Tourism Australia, a chairman of the National Rail Corporation and of course you've been, you're a long-serving member of the both New South Wales and federal parliaments and I think you've held a large number of ministerial positions, which I simply cannot take you through, Mr Baird, because there are so many of them?---No.

But it's fair to say that you've been an experienced parliamentarian in two parliaments and an experienced minister. And I think most closely related to this inquiry, you have had extensive experience of both being lobbied and I think also of lobbying?---Yes.

30 Is that so?---That's right.

Right. And that's in-house and in other ways as well?---Yes.

Right. Mr Baird, I'm not sure how much of this inquiry you have seen, but think you've had access to the Issues Paper?---I have.

40 Right. May I invite you, if you wish to do so, to make some kind of opening comments about lobbying and the role that it plays?---Sure. Well, thanks very much, Commissioner, and welcome your invitation to provide evidence today. I presume I've been invited in both of my capacity of a former minister in New South Wales and in the federal parliament, being a parliamentarian there and now in my capacity as the chairman of the Tourism and Transport Forum. And as you mentioned, I have, can speak both on behalf of the lobbyist as well as the lobbied. The Tourism and Transport Forum is a member-based industry association representing around 200 organisations in tourism, transport and aviation sectors. The members we represent cover the full spectrum of the tourism supply chain,

airports, Sydney, Newcastle, Bankstown, Qantas, Jetstar, Virgin, Emirates, Etihad, Singapore Airlines et cetera, hire car companies, hotel owners and operators, business events providers, major attractions like Luna Park or Bridge Climb, major public transport providers, major, and associated professional service providers, credit cards, software suppliers, market researchers, advertise et cetera, tertiary education institutions. TTF provides a wide variety of services to its members and its sectors. In general our goal is to represent the interests of our members and the broad interests of government and the media. In response to the Issues Paper I would make the following comments: Firstly it is my view that interaction between government and industry is fundamentally a good thing. To this extent we should be cautious about proceeding under the assumption that something is broken and needs to be fixed. I do not think that this is the case. TTF provides a forum for industry and government to interact, exchange ideas and discuss priorities. In a sector like tourism, the relationship between industry and government is essential. Close interaction can ensure coordination of product, investment and infrastructure and destination marketing. For example, there are sound economic reasons for the government to play an active role in the promotion of a state, territory or destination. Tourism New South Wales exists due to complex market failures which would see the private sector under-invest in destination marketing. In recent years, cooperative marketing between industry and government has become commonplace. From my observation, the best outcomes are achieved where government and industry work very closely together and it is not only appropriate as a way of maximising returns both for the private sector and for the taxpayer. While our involvement with government is crucial, I would add that the nature of this interaction is very different from a company which is using a third party lobbyist to seek outcomes from a government. My second point is that industry associations provide profoundly different services than third party lobbyists and much be recognised differently. It is quite clear there are profound differences between hired-gun third party lobbyists and industry associations. These differences are currently recognised in their different treatment under the lobbyist register. It is important this distinction is maintained. The first obvious difference is transparency about the represented interest. While the third party lobbyist would, could represent virtually any party for a commercial fee, it is self-evident that a group like TTF speaks on behalf of the sectors it represents and not on behalf of a single member interest. TTF and other industry associations are transparent about the members and sectors it represents. Secondly to the extent that occasional issues might arise around specific sites or projects, our argument are always about process and investment for the good of the sector. We do not advocate for government to favour one organisation over another. This has flow-through consequence to activities and interactions with government. We would never, for example, charge a success fee, indeed, since we do not advocate the interests of one organisation. There are numerous examples where contact between TTF and government has been initiated not by TTF, but rather by government to seek advice, guidance or industry input. I've

prepared a list of submissions which TTF has undertaken in the past twelve months or so to government inquiries across the country and I'd like to present that today. As you see, it's quite an extensive list of almost two pages in terms of submissions represented to government, and we have evidence of that if you'd like to actually see the submissions we present. You can see that our contributions to public policy development across Australia and New South Wales has been rich and varied. The difference between thirty party lobbyists and industry associations is perhaps best highlighted by my third comment. An industry is not just a shaper of policy, but a generator of policy. I'd like to use an example of the Sydney Convention Exhibition Centre at Darling Harbour. Our (not transcribable) number one priority for public investment in our sector in New South Wales in expansion of the convention centre. Capacity constraints the convention centre have significant impact on business events (not transcribable) capacity. The recently-developed facilities of Melbourne Convention Exhibition Centre have significantly enhanced Victoria's ability to attract international business events which are some of the most high-yielding and profitable tourists to visit Australia. Sufficient convention space is not about the convention centre itself. The tourists generated by the facility benefits surrounding hotels, attractions, restaurants, retail et cetera. Indeed in Melbourne industry confidence generated by the convention centre has been sufficient for surrounding businesses to invest in refurbishments, new rooms, stock, new staff, additional marketing campaigns et cetera. TTF has played a central role in identifying the convention centre as a priority in Sydney. We initially brought it to the government's attention. We invested in major research projects to illustrate the scope of the problem and the opportunity provided by an expansion. We participated in government committees to review Sydney's convention needs. We chaired the Tourism Investment Regulation and Planning taskforce to formally look at this infrastructure needs. This level activity was focused squarely on improving the industry as a whole and creating economic drive for New South Wales and not providing favourable outcomes for a contract or a private operator. Given the observations and the fact that I do not see any evidence to the system being currently broken as it applies to industry associations, my final point is, increased regulation should be introduced cautiously. We urge government to tread very carefully before increasing the impediments to interaction between government and industry. Introducing onerous requirements about interaction between government and industry could have two major risks. One is the cost of doing business in, here in New South Wales. We've laboured behind other states for too many years when it comes to attracting new business and industry. Once red tape is introduced it's difficult to roll back. And the second one is symbolic. We should not be putting up barriers which suggests to public servants or ministers or staffers that it is bad to be engaging with industry. With those comments I look forward to taking your questions.

All right. Thanks, Mr Baird. Well, Mr Baird, I'm going to be putting a pro-regulation view to you- -?---Yes.

- - -your comment. Let me start at this point. I understand your point that there is a difference in the mode of operation between the hired gun- - -?
---Yes.

- - -third party lobbyist and the kind of body that you're talking about. Would you accept that the hired gun third party lobbyist is somebody who lobbies within the usual understanding of the democratic tradition of lobbying, that is that there's room for them?---Yes.

10

All right. Would you, I don't know if you heard Mr Rees' evidence?---I did.

Right. Would you, would you agree with his view that a good lobbyist can add value just as much as any other entity that lobbies?---Yes, absolutely. And you know, when I was a minister I found lobbyists and associations very useful, particularly associations. For the seven years I was Transport Minister, I've had constant interaction with associations to provide me with details and often to work to the improvement of industry, et cetera.

20

I take it that that was virtually essential not just (not transcribable)?---It was. It was. You couldn't do it without the associations. You couldn't speak to them all individually and Bus and Coach Association would be a prime example where not only did we have constant interaction about day to day issues, and we do that on a regular basis, but also we introduce legislation which, you know, with their agreement provide the, the average minimum age of buses, you know, so that we can introduce some after hour services, weekend services, so a quid pro quo for what we were offering them. So it, it, you know, in terms of improvements you need to work through the associations.

30

And that inevitably involves constant consultation no doubt?---Yes.

Mr Baird, among the various complaints that have been heard in the course of this inquiry and that led to this inquiry, have been that lobbying activities in effect private interest on the whole, private interests seeking to achieve something or derive a benefit for them - - -?---Yes.

40

- - - from government, but that it, under the current system largely occurs outside public view, that is that it is behind closed doors. That there's no method of reporting on it other than - - -?---Yes.

- - - by media attempting to question later. And that it is a closed process?
---Right.

Which is largely inconsistent with the general need for transparency in a democratic system. Is that, is that an array of complaint of a type that you would accept does seem to attach to lobbying?---Yeah, I broadly accept that

in terms of when I was minister, I always made sure that I had a staffer, departmental person in there to take notes of what went on, and as a check. But in terms of associations, we basically don't go up and lobby on behalf of a project but rather in terms of the industry overall funding and convention centres, et cetera.

THE COMMISSIONER: Mr Baird - - -?---Commissioner.

10 - - - I'm just trying to think of the way this is best put. But I heard you mention buses for example?---Yes.

Are manufacturers of buses part of your organisation?---No. In terms of, of TTF, no.

No. So when you make representations about the life of buses, that affects the livelihood of manufacturers of buses does it?---Yes, it did. But you know, I'm talking in terms of my role as a minister.

20 This is just, this is just, it's just, let's just stick to the facts. And I think the fact is that you, that, that you, a situation can arise when you're association could make representations to the government for legislation or a change in policy which will affect the lives of buses, the useful life of a bus. Is that right?---Well, our association is not doing that. It was more - - -

Just that it - - -?---No, the example I was using was when I was a minister and, you know, my contact with associations, so together we brought in some very useful changes.

30 What I'm really trying to get at is that whenever you have a group of people banding together to seek a favour or benefit from government or influence the course that government is taking, that band, that group of people although perhaps acting in the firm belief that everything it's doing is for the benefit of society as a whole is usually in conflict with some other group of people because whatever they want, more for them is less for the other? ---Yeah. But I think you need to, well, I think you misunderstand the associations and how they work. There, there is conflict within associations between what your approach would be on different issues. Unless there's general agreement in terms of it, then you, and you are unable to, to lobby on, you know, a particular issue and if one particular group was wanting to
40 push their line and you to represent them then the whole concept would change. And that's not something we'd normally do.

I accept that once you start your lobbying whoever you represent are all at one mind?---Not always. You know, you take for example International Trade reps travel to the US, Singapore Airlines and (not transcribable) would like to see that, that deregulated, open skies, and Qantas wouldn't. And so there was quite a lot of discussion within before the paper was

submitted, which then represented what people thought was in the overall interests of tourism, not particular operators.

That may be, but what might be in the overall interest of tourism may not be in the overall interest of the environment or some other group?---Well, if there is, if it was not interest of the environment there would be, you know, comments within the organisation that this was not so. So there is very much a checks and balances.

- 10 Are you suggesting that whatever your association does, there is no group outside the association who has a contrary interest?---I, no, look, there, there is always going to be somebody who might disagree, but on balance there's, there's very little opposition to, to what we are putting forward.

Well - - -?---If you can bring forward examples - - -

- - - how do you know?---Well, because we would be getting letters of them. There is more letters, the only complaints we would get are from individual operators who think that we are not, you know, the question of, of
20 privatisation of ferries, for example, it was a view that, you know, we would have better services if they were privatised overall. You know, and the unions objected to that. So that's, that's my only kind of touch (not transcribable)

- That's a typical example of what I mean. I know there might be a glowing feeling of self-righteousness on the part of associations, but somewhere else there might be somebody whose, whose income is being affected or way of life is being affected?---I can't, I can't think of too many examples, because, as tourism in a broad sense is the largest employer in the state, so in terms of
30 employment opportunities and, you know, for development of the economy, there'd be few industries that would provide that. Now it is not an industry that creates high passion in terms of in opposition. And I can't think of, of very many examples where that was the case. I can certainly think of when you, when I was minister and building roads of the, of various opponents to building roads with strong, active often aggressive in the extreme. Including bullets in the mail, but that's another question.

- There are many, well I can think of many examples of, of undertakings that have been embarked up on to advance the cause of tourism which a lot of
40 people don't like. I mean like having motor car rallies - - -?---I don't think you'll find that our association was there recommending that.

You are, you are an ardent defender of your association?---No. I'm, I'm reflecting that, that we are not one, I mean if we were out there strongly we'd be getting letters complaining about it. We don't, we don't get letters because there would be a view that, you know, just because it's a tourism event it doesn't to say we're going support it.

I'm not really, please will you accept that I have no axe to grind - - -?---No, no, I saw that.

And I'm not really focusing on your associations?---No, no, no, I mean it's symbolic of others.

10 I am focussing on the general position and while your association might be the most pure of all and might have the most support of all there are other associations who do try and influence government to do things which come at the cost to other people?---Well, then it's governments, you know, that's why they're paid to decide between competing interests of the bottom line.

Undoubtedly. But each lot lobby?---Well, yeah, but it's, if you - - -

20 And all I can see is the difference between say a large company that lobbies for itself and an association that represents a whole lot of like-minded companies that lobby for all like-minded companies is one of scale?---Well, I disagree because, you know, you're there for, one is there for the outcome, commercial outcome for one particular company.

The other is there for the commercial outcome of a large number of companies?---But without any individual company being the beneficiary and without, without the input of the associations it's very difficult to - - -

30 With the mass being the ultimate beneficiaries, the mass of the association is the ultimate beneficiary of the work you do?---Yeah, yeah, but if you start to differentiate, I recently undertook for the federal government review into international education. The starting point was talk to all the various groups and associations from universities, private college providers, schools that provide it as well and also English language, you know, of course they've got a commercial interest but should you be then call that, you know, direct lobbying and they should, everything that should be recorded. I mean, they presented, it was transparent the same as, as our submissions to the government are all provided, it is, it is a transparent operation whereas with private lobbying it is not transparent, you know, our submissions go on the public record and we often take part in committees and so on formed by the government - - -

40 (not transcribable)?--- - - - it is not a private - - -

Sorry, I beg your pardon?---No, no, no, but the problem is if you start introducing arrangements so every time that an association meets with the minister everything's got to be minuted and the difficulties of, you know, of that. I mean, I, I basically don't lobby.

I thought that good practice, I mean, Fred Chaney told us that good practice amongst ministers was to require everything that happens in his office to be minuted?---Yeah, but I think that, you know, if you push this into the same

category as, you know, the guns for hire then people may become very nervous about the interaction and at the moment there's a lot of interaction and free-flowing development of concepts and ideas - - -

But it's no intention to do that, the only intention is to require a minute to be made and according to the evidence before us that's good practice and it should apply to everyone?---Well, by all means a minute to be taken as long as it doesn't create the environment that this is something that, that the contact with associations is not desirable and in some - - -

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No one suggests that at all?---No, but when you move it into the same category as guns for hire it's a very different, you know, a very different modus operandi. I'm not, I'm not running for example up to Parliament House hardly at all till I have contacts with them and, you know, it is, it is a separate arrangement.

MR GORMLY: Can I go somewhere else, Commissioner?

THE COMMISSIONER: Yes.

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MR GORMLY: Mr Baird, with the, I think we were discussing earlier the fact that there is a perception about lobbying that's a problem?---Yes. Well, certain kinds of lobbying, I mean, you know, think of Wollongong Council and land developments and so on, I don't think lobbying by BHP or Rio or so on is normally seen as being - - -

THE COMMISSIONER: The mining tax is a prime example?---Yeah, yeah, but one would suggest if I may say, Commissioner, if there'd been a bit more consultation with the industry before that was announced Mr Rudd may have his job today. It's a classic example.

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Whatever the position is there is a great deal of lobbying by mining companies which led to a change in the mining taxes and the perception is, you just have to read the newspapers, this happened behind closed doors, it was not open, the law was changed and a lot of citizens were offended? ---No, but Commissioner, with due respect there is much comment that was inadequate, poor communication between the two that led to the announcements that happened. So I think that, you know, if you put up more impediments then these types of outcomes you're going to see. I mean, you know, the same with the, the roofing insulation that, you know, the lobbyist said, We weren't being listened to. And if you put up the restrictions the same way as you have, you know, private lobbyist association that's going to be the outcome.

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MR GORMLY: All right?---I think that's the problem.

All right. Can we just divide up in what's occurring. I accept your point that a great deal of difficulty is going to occur is there is not consultation between government and private industry, that a first proposition?---Yes. And that's part of the democratic process and it's essential. Secondly, I don't think anyone would argue that that is the kind of behaviour which, or action which should not be impeded in any way?---Yes.

10 I accept the free-flow. But thirdly, when one is dealing with government one would expect that there would always be a degree of regularity, it's always acting in the public interest rather than the private interest and that regularity would require as a minimum ordinary business practice and that, Mr Baird, I suggest and I gather that you adopted the same view would include at least note taking?---Yeah. I mean, there's one thing between note taking which ministers and then there's another one with putting, you know, in a whole classification, these people lobbies, they've got to be registered (not transcribable) people, you know, I would object being, being classified as a lobbyist as a chairman of association because I just don't do it.

20 Yes. All right. Well, what you complain of there is - - -

THE COMMISSIONER: (not transcribable)?---Well, I'm not sure whether that's quite the case if you read your paper but anyway.

MR GORMLY: What you complain of there is in effect the label, the adverse label that comes from the word lobbyist?---Yes.

Yes?---Yeah. We see ourselves as somebody very different.

30 Yes. All right. Well, I want you to accept - - -?---Not that I, you know, think negatively of lobbyists only some.

Yes. Yeah, I understand that but that lobbying to some extent has got its bad reputation from some bad individuals?---And I like to approach in terms of going to local government earlier when I, I heard you talking to Mr Rees because I think that's a real focus (not transcribable).

Right. All right. Well, can we come to that in a minute because I'm just trying to, I'm seeking your agreement on certain things?---Yes.

40 The bad individual is certainly someone who affects the reputation of what is otherwise a very essential activity but another problem is a lack of transparency. Would you agree with that?---Yes. Yes.

All right. And transparency as a general principle is that whole problem of the public being able to know what's occurring in government or what's occurring between private interests in government?---Yeah. But the difference you see with associations is, it is transparent because if we make representation it is on the record because of all the papers that we do and all

the submissions that we do are publicly on the record and they often have to be cleared by a whole number of people before - - -

Yes. I accept that in the association that you're talking about the probabilities are that virtually all of the time it's going to be an open process but you would no doubt agree that there are lots of associations that don't have the repute or the standing that yours might have who do consent with government for outcomes about which there may be community dissention. A classic example is property development, some may be very in favour of property development others who are affected by it may not and so there's contention. One logically view might be that there is a balance to be achieved, government has to make decisions about it so you have the contenders approaching a minister for a decision. Is that - - -?---Yeah, I think it's probably true to say that I can't speak on behalf of other associations and what they might do.

THE COMMISSIONER: They have given evidence though?---Well, it's, who, the other association?

20 (not transcribable)?---Well, that's fine. No, no, no, no, I mean in terms of if I'm asked the question, I don't know how they operate, I only know how we operate.

MR GORMLY: I understand that. I'm not asking you to comment on other associations it's more the principle of seeing by what mechanism one can achieve a greater level of transparency if transparency is a problem for the perception of lobbying?---I understand that.

30 All right. Now, I think you're, you have some familiar with the freedom of information process?---Yes.

And I assume, may I assume that you adopt its general principles as desirable?---Yes, yes.

In New South Wales there's been a new government information, it's a new Freedom of Information Act process with which you are probably familiar? ---Right.

40 It does seem on its face to be desirable and useful to allow what lobbying occurs in private and in an appropriate frank fashion without having people sitting on the shoulders of those meeting, watching everything that's going on, it does seem desirable to enable the public at least through the safeguards of a freedom of information system to know that that lobbyist - - -?---Yeah, yeah, but it's, I think the problem with, with this is it's a kind of a normal government regulatory, they go to see the minister but a lot of things don't happen that way anyway. Now, what are you going to do with the Opposition? Are you going to require every time that the Opposition meets with various groups and lobbyists that they are going to do it?

No, they're not decision-makers?---But, you know, in terms of where we sit in New South Wales at the moment they're probably more important to speak to than the government and how do you, how do you that? But the other factor is a lot of these things occur, lobbying in my observation occurs at social events and informal events where nobody is ever going to know what goes on and how are you going to, how are you going to require that so you've got one end and, you know, like most things in terms of regulation you push and squeeze at one end and you're going to have, you know, shifting - - -

Yes?--- - - - of the process.

All right. Now, I need to put this proposition to you, Mr Baird, for your comment, that there are two views that can be adopted and I suspect you're in one view so let, let me put it to you for your comment. There are two views one can take about public scepticism concerning lobbying. The first is that lobbying at state and federal level is generally speaking a clean, efficient process - - -?---Yes.

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- - - that is of assistance to government and of assistance to those who lobby?---Yes.

And that whatever public scepticism might exist about it, it's ill-founded and if they - - - ?---Yes.

- - - hold that view then that is simply an aspect of democracy which one has to wear and there's nothing to be done about it unless you want to get caught up in some regulatory regime and red tape. Now, that's one, that's one view?---Yeah.

30

The other is that the public perception of lobbying is actually damaging to the faith and integrity and trust that the public has in public institutions and that if something can be done which is not too bureaucratic and not too tied up in red tape then it is worth doing?---Yeah.

There are two competing - - -?---I mean, I agree with then to a certain extent so - - -

40 I thought you'd be firmly in the first camp?---Well, you know, I am, I mean, but recognise but, you know, when you talk about lobbying you're talking about that, you know, developers wanting, you know, some high-rise built, I mean, that's where most of the odium has come from and, you know, so, but if you use the big mallet to crack a nut it may have unintended consequences so, you know, look, there's no question that, I mean, this is the very reason that this august institution was set up and I was there, part of the cabinet that decided we would do it because there has been in New South Wales a long tradition of, of corruption and so on at the public sector

as well as the private. So there's no question, the need to have to control of lobbyists and so on. The question is are associations lobbyists in, in your sense of the word and has there been examples where associations have provided any evidence of corrupt behaviour that you would want to address.

Yes, and the answer to that is no?---That's right.

10 But so far as you're, you're aware it's a concern?---As far as I'm aware. I mean, certainly if you could show that associations have breached that requirement then, you know, any actions for regulating that would be appropriate but, you know, there may be some unintended consequences there.

Let me put to you a proposal to see whether this was one which you could accept with reluctance?---I would guess that my, my acceptance or otherwise would not come into it but anyway, yes.

We're interested to see what, what degree people - - -?---Yes.

20 - - - would be willing to accept a, an arrangement. Let's assume that one was endeavouring to expose the process of, of lobbying to greater transparency, that is - - -?---Right.

- - - let, let the public know that's happening?---Yes.

30 But at the same time not interfere with government business. Let's assume that associations were a panel on a register and that the name of the association had to go on the register if it wanted to lobby government but if you're going to step from the private sphere to the government sphere then you must declare yourself.

THE COMMISSIONER: A separate register.

MR GORMLY: A separate register.

40 THE COMMISSIONER: There'd be an association's register, not a register with lobbyists and that, it wouldn't simply be a name, the requirements of the professional lobbyists register would be different. The requirements for the associations register would be minimal.

MR GORMLY: But it would at least tell the public that there was lobbying going on by that association.

THE COMMISSIONER: And when?---And sorry?

And when?---Yes.

MR GORMLY: So there's a date of, a date of contact.

THE COMMISSIONER: But lobbying, I think lobbying is a broad concept, we'd have to define that too, the lobbying that's, that's, that we're talking about is a meeting, a more formal type of meeting with a minister or a director general or a senior bureaucrat, the purpose of which is to arrive at some outcome?---Yeah.

It does not cover social contact?---No. Well, you know, it's always that, that decision of what is what - - -

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(not transcribable)?--- - - - you know, I mean, as much happens and private luncheons and so on and, and dinners as anywhere else.

Well, we're told that normally, maybe you won't, don't agree, we're told that it's very rare if ever that a decision is made in a social context or over lunch?---No, that's, that's true. There's also the balance and checks. I mean, we normally, we have luncheons with ministers and there's often 20, 25 so while you, they often, we often go around the table and people make their comments but it's brief and, and - - -

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Yes, but that would not be covered?--- - - - and it's restricted.

But if as a result of that social contact the minister said well, I think I'd like to discuss it with you, you better make an arrangement and come to see me in my office - - -?---Yes.

- - - it's that meeting that would be covered?---Yeah, but see, if they said that it's not, we wouldn't be going. If one of the people around the table said, you know, for example, the cruise lines which we've, you know, certainly spoken to ministers about and it depends on how many there are, you know. In the case of the cruise line there's one that's of major significance although we've got more, we've got two members who are cruise companies and, and one about to become, Royal Caribbean and Carnival Line which is a big one. So they would be the one who would be going to do the lobbying.

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Well, then you wouldn't have to register?---Sorry?

You wouldn't have to register?---Yeah, yeah, but, but it is, if the discussions comes up it's usually not the association that's asked to come up and see the minister it's the individual. But I, I mean, I certainly hear what you're saying and I would presume that prudent ministers would have someone in there at any time - - -

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MR GORMLY: Yes?--- - - - recording.

Would you have done that yourself?---Yes.

Was that the practice?---And any time, I've been in discussions with ministers infrequently because the CEO and other people will have their day to day contacts, often with public servants and so on, but when I've been there there's usually been an array of public servants who write things down so I can't recall where anybody has called me up and said Bruce, just come over and we'll have a bit of a yarn about this. It hasn't happened in my experience.

10 THE COMMISSIONER: Well, nothing in, nothing in what, in this proposal should concern you?---Well, unless it's, unless the whole environment changes. These people are now being deemed as lobbyists. We've got to treat them differently and whereas the nature of associations is, you know, have a yarn about this, what do you think, you guys, bring some people over and we'll toss it around and, and it's often a whole group of people that will come and meet with a minister and express their views and we just facilitate the meeting.

That's not, that wouldn't fall under the definition of lobbying?---Well- - -

20 MR GORMLY: They'd still have to register?---Yeah, we would. I mean, you know, for example, Martin Ferguson. I mean, I know you're not dealing with federal, but there's a classic example just recently (not transcribable) had a whole array of people around and that's the norm. I mean, you get the cases when you've got a concentration of industry such as the cruising one where we'll become involved much more closely. With the Carnival Line which represents Cunard and P&O and Princess line et cetera, or Orion, where in both cases we were involved in individual representation on their behalf.

30 Do you, you appreciate the mechanism that's being proposed to you, that is that there would be a register where your name would go up or the name of the association?---Right.

40 And if there were a meeting with a minister or a director general, say, that there would be a date as well and the purpose of that date is not to provide any content, but to simply enable an application under a Freedom Of Information process to occur?---Understand that. You know, I just, just, my concern is, and I understand what you're saying, and you know, there's some merit in it, but it just, do we then get people ah, very nervous about interchanging with association? Because it is- - -

All right.

THE COMMISSIONER: There would be no name of the individuals on the register.

MR GORMLY: Only for the third party professional lobbyist. But, Mr Baird, your reservations are that you are, I detect two. The first is your

concern that it may change the behaviour of people or the attitude of people towards an association?---That's right.

Is that correct?---Yes, exactly.

All right. Is- - -?---And the ability to interchange with, with public servants, with ministers, on behalf of industry as a whole.

10 And as I understand that concern, it's because, and I think you just articulated it a moment ago, that you will be labelled now as a lobbyist?
---A lobbyist, that's right, yeah, rather than somebody who brings together the industry to, to represent the wider view of the industry.

All right. Well, definitions are important here?---Yes.

But my understanding is that you, you would not see that, those actions as lobbying?---Ah, it's lobbying in the wider context.

20 All right. Okay. The second reservation, as I understand it, is the- - -?
---Yeah. And can I just say- - -

Yes.---?- - -that very often it's the other way round.

Yes, that government will seek you out?---Government, yes.

30 Yes.---And ask us to, you know, because we have, you know, in fact I don't know whether we've got those here but we've, just in the last eighteen months there's submission that we have and papers that are done are of that type of size and ah, it is ah, you know, significant where they ask us ah, to come back to them, you know. The White Paper on aviation, the long-term tourism strategy- - -

Right.---?- - -rental cars, taxi, whatever it might be.

And that's because your body has knowledge and expertise on that field- - -?---That's right.

40 - - -and they want it?---We've got a range of policy people and sometimes we have more policy in an area than government so- - -

Right. So that's part of that interaction process?---That's right.

Which, which government needs?---Yes.

Yep. And do I understand that your second objection then is a composite objection which is to avoid unnecessary regulation and, and a bureaucratising of the process?---Yes, yes.

Yes. And to avoid the possibility that it will amount to an obstacle to the interchange?---Free flow, yes, yes. And you might find that then government would go their own way and think that they're, you know, helping industry rather than the having a yarn type of basis, using a Ruddism.

Right. Well, now, I want to try, try this idea, Mr Baird. It's difficult of course, generally speaking, for government to try things out, to, to give things- -?---Yes.

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- - -a trial for a period. But there does seem to be a significant perception problem about lobbying at the moment and it is related to the difficulty of extracting information from government through the old Freedom of Information process?---Yes, yes, it's true.

Now, a way of dealing with that is to at least try a register for a period? ---Once it came in, that would be it. I could just see it, it would be in and then it would be more regulated and, and then you'd have a different kind of body, but- - -

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I want you to know, Mr Baird, there has been serious consideration to recommending the abolition of the existing register, but it seems that more benefit might flow from expanding it than, than getting rid of it. I understand your point, that once a system is in, it's harder to get rid of? ---Yeah. And I certainly wouldn't be in the former category, that your current system you abolish, I think there's real benefits in having lobbyists be registered.

All right.

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THE COMMISSIONER: You just don't want to be registered?---Well, we have a- - -

As long as you're not registered it's okay?---No, no, no, no, no. No, I come back, Commissioner, to the question of guns for hire. I mean, my, there's no commercial imperative for me in terms of if I'm successful in lobbying for a separate terminal, a new terminal for the large cruise ships, there is no, there's nothing, I don't get a bonus, I don't get any premium payment at all, but, you know, so the ability to talk to them is about the wider, you know, all the shop owners, the hotels, the hire cars, the airlines are very keen because it's growing at 25 per cent per year increased. Cruise companies, that's a classic example. The two big ones in New South Wales. New cruise terminal, new convention facilities. And that's the type of thing where it's obvious what we're about and ah, you know, it's, you know, whether you want to change us into another kind of beast.

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Right.

MR GORMLY: All right.

THE COMMISSIONER: But I mean there are, many of your members could give donations to the government?---Well, I'm sure they do.

And they probably do. People would want to know whether you'd been meeting with government representing them, wouldn't they, once they've given donations?---Well, no. If they want to meet with, with governments, then they do it on their own, own account and terms to lobby their case.

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But you're lobbying their case for them?---Well, because only if we think that it's in the wider interests of the- - -

I understand.---?- -of the industry. That's all. That's the criteria that's different from the guns for hire.

So that's their benefit in being part of your association?---Where they, yeah, if we, if we believe it's in the wider interest- - -

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Yeah.---?- -of all the people. I mean, you get a, you get a- - -

Just, so just, sorry to interrupt. Excuse me, Mr Baird. But that means that, that let's say industry or organisation X, which is part of your association, can make a substantial donation, political donation, not get involved in any lobbying, but be secure in the knowledge that you're lobbying on its behalf for an object that it wants?---It would be, the only, I mean, you've got to, individual ones like Carnival Cruise Company and Orion, you know, they're examples where you've got a very narrow base, but you know, several companies that are represented by them, but otherwise if they've got their own case, they do it themselves, you know. Unless it's a broad industry objective, we don't get into it, they do it themselves and they hire their own lobbyist who'd go and represent them. And ah, you know, that's the, the way it goes and, and if they want that we will ah, suggest they go and talk to lobbyists to go and speak to the minister. And what, what people donate to individual parties I've got no idea.

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MR GORMLY: Right. Can we just pursue donations?---Sure.

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I've got two, two or three more topics I want to deal with?---Yeah, yeah, no. That's O.K.

Mr Baird, with donations, there doesn't seem to be any basis for a third party, the hired gun lobbyist, or indeed any other body that lobbies on behalf of something else to be involved in someone else's donations?---Yeah.

Do you agree with that?---We, we don't get involved, we don't make donations.

Yes. All right. Can you see any down side or any harm in prohibiting the hired gun lobbyist from being involved in their clients' donations?---Ah- - -

I'm asking a general policy here?---Well, yeah. I mean, it's, I would see that that shouldn't be a problem. I mean, you know (not transcribable) we don't give direct donations so it's not an issue for us.

Okay. But I'm going to move away from those fields all together- - -?
---Sure.

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- - -to another topic, about which I think you will have some expertise, and that is, Mr Baird, the whole problem of post-parliamentary- - -?---Right.

- - -employment- - -?---Yes.

- - -which seems to be a substantial difficulty involving on the one hand ensuring that there isn't a misuse of knowledge acquired and relationships - - -?---Yes.

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- - -acquired in government, and on the other hand, making use of people who have knowledge and expertise that have arisen, that's arisen from public life. And the two to some extent conflict. So far the way those two have been managed is by the imposition of cooling off periods?---Right.

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As a general proposition firstly, are you, do you accept that there is any, that is a value in cooling off periods or would you say that that is purely a perception?---Well, you know in terms of what I did when I came out of state politics, then I would've breached the guidelines because I went straight in, worked for the Tourism Council, which was a competitor to the organisation. I now chair that organisation subsequent to my leaving disappeared. So there's one main group that lobbies on behalf of tourism and that's, that's the one I now chair. But I found it rather ironic that quite a significant person without naming him at the time when I left, you know, said that he hoped that I wouldn't be working for, for a tollway lobbying organisation. And I took that, you know, I noted that he said that I wasn't about to work for a, for a tollway lobbying company. That particular person had initiated a no confidence motion in terms of Macquarie Bank had a clause in relation to a toll, a impediment clause and we swung for a week while the Auditor General was called in. Subsequent to his own retirement from politics, then it's interesting to note that he went to work for one of those organisations. I did think it was a bit rich, but you know, in terms of my view, one of the big problems is the decision by Mr Howard and Mr Latham and that joint agreement that they would scrap parliamentary pensions. I think that was a big mistake. And both of them are enjoying the fruits of sitting on pensions. But there are a lot of people, and I know quite a number who came out the last election, federally, in particular and in state who just struggled to get another job. If you cut out the super component, what are these people going to do? You know, and I mean my son is an

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example, because he, despite my efforts of talking him out of going into politics, he was earning literally four times the amount and for various ideological reason, he goes into politics. When, you know, if he, if he does become Treasurer (not transcribable), he's Shadow Treasurer. When he comes out and there's no super for him as there was for me, what is he then meant to do? You know, his background is in banking. And I think that's, you've got to look at the unintended consequences, but also some of the people, I can just think of some of the people that I was in federal parliament, who are struggling to, to actually, if they didn't have, they're not covered by the super scheme, what are they going to do? Because often people won't take you on if you're a former politician. It's, it's, you know, and they've lost their previous trade and, you know, I mean (not transcribable) most sympathy in terms of super. But it is a question of that, you know, there should be some component when people are suddenly thrown out of politics, what are they going to do, you know, if they've got a, you know, I'm in a different situation because I was covered by super and so it's, it's, you know, I was offered these things. There is, there is merit in that year that you, you, you know, you, they have a non-compete clause or whatever it is called. But you know, I just ask you, as Nathan Rees said, that you look at what, you know, by, by making the changes and it was always meant to be that they were going to be compensated, the new people who arrived. It never happened. There was no change in terms of the income to separate, even if one group were given an amount that was different because of the super component, but they weren't, nothing. One person could work, parliamentarians who would get no coverage and the other one had this nice super going along, of which, you know, I'm, I'm part of that group. And so that's the unintended consequences of what happened there.

30 THE COMMISSIONER: I assume also that it has an affect on the quality of people who are prepared to go to parliament?---Absolutely. I mean, I think that's, the numbers, when I stood there were 16 people that stood in my seat. If you have a look at the number of people that stand for seats now, it's a couple of people. People are not prepared to put their careers on the line because you know, the public, public attacks, the low income and then when you leave, what do you do when your career has, has gone?

40 So would you, is it the case that if there is proper remuneration by way of superannuation or some similar - - -?---It's a recognition or redundancy payment that takes some, enables them to survive for at least one or two years.

In the absence of that there is unfairness - - -?---Yes.

- - - in preventing parliamentarians from getting whatever jobs they can?---I, I believe so. I mean, you know, the question is if you've been working all the time in one field and then you come out and the only offers you get in that field, it does seem unfair. I mean I recognise the conflicts, but you

know, in my, example of myself when I had Tourism, it was very much the lesser issue then looking after Transport as I had roads and ferries and buses and, and trains, et cetera. So Tourism was there and in terms of when I came out was there any conflicts or any knowledge that I had inside the government which I used, no, no. But that doesn't meant to say that there, there's not the potential there.

10 Sure. So subject to there being appropriate protection for ex-parliamentarians, you would see some value in retaining a cooling off period of say 12 months?---Yes.

All right. Given that the old pension system is unlikely to return, I take it that you - - -?---But I, all I'm hoping is that - - -

- - - (not transcribable) anyway?---that, you know, that you make, that if you do a report and this, you know, if it's retained, then some concern is expressed about the implications. Because we haven't really seen a whole lot of them come out the other end.

20 Yes?---But they will be without any coverage.

We've heard, Mr Baird - - -

THE COMMISSIONER: Sorry, what do you, sorry, what do you mean come out the other end?---Well, the people who came in from 2004 on got no super cover, state or federal.

30 Yes?---So all the people that came in (not transcribable) there's no superannuation coverage. So when they go out - - -

THE COMMISSIONER: It's to those that you're referring?---Yes. Yes. Not the ones before.

Yes.

40 MR GORMLY: We've heard Mr Baird from a number of sources including Mr Hawker from Hawker Britton that parliamentarians or people who formerly served, are of value in the lobbying ranks, if they are the type of person who, who wants to lobby and can lobby?---Yes. Yes.

That they're a value because they have this body of knowledge about how government works, which is it seems a relatively rare resource outside government circles?---Yes.

I think we've heard other evidence too that former parliamentarians are also a principal source of the concern about lobbying because they have relationships - - -?---Yes.

- - - and they have knowledge?---Yes.

So two conflicting sides of the one story. To what extend do you think that lobbying does represent a career option for the ex-parliamentarian?---Well, it obviously is, 'cause there's so many who do it. And if you come out of politics and it's (a) the only thing or (b) it pays more money, then, you know, you're out of politics, as Nathan Rees said, you know, they need their own career. But you know, my chairmanship of this association is one of ten boards that I'm on. So it's not the only thing I do and I'm not involved in direct lobbying at all.

Right?---But you know, certainly there's, there's a few of my colleagues, but not many, actually.

THE COMMISSIONER: Mr Baird, you are of the, you are of the opinion that it's unnecessary and undesirable for any kind of restriction to be placed on, on associations in general. I'm asking for your considered view?---If it could be proved that, you know, that nefarious deeds are being carried out by associations, then, yes, I would. But you know, from our point of view, as I, to repeat it, we're just concerned about what this might, you know, special - - -

I understand that. I understand that. There is no suggestion that any association is involved in any nefarious deeds. But there is a suggestion that associations are part of the overall perception and you may or may not agree with that. And - - -?---Well, I'm not - - -

So I'm not saying that that is a, that is true, I'm just saying that there is evidence to that effect anyway. And so, I can assure you that your evidence will be concerned with, with utmost care. And we don't, we do not want to do anything that's wrong.

So that's why again I'm asking you if you could step back from your position involving TTF and return to your position as a representative of the people in senior office if you could say to us whether your considered view is that there should be no regulation whatever of associations meeting with government ministers and lobbying in the broad sense?---I believe that if, if they were representing one, I mean, I don't see a problem in someone minuting what went, you know, when you're standing with the minister, you're meeting with a minister and somebody minutes it. But in terms of, you know, moving to, obviously if you're representing on behalf of one company which sometimes happens as I've given you the example with Carnival Cruises then clearly there is a need on that occasion because you'll move from broader association to a company. Now, while we would say that that's on behalf of the wider industry and there's no one I'm sure in the tourism industry in New South Wales who would say otherwise that nevertheless it becomes, you know, it does come under the agues of what does lobbying mean.

So how would you define the group that would exempt you?---That you represent an association which is, is defined and on the public record and that - - -

(not transcribable) large?---Well, I'm not about to - - -

Well, you can have small?---Yes.

10 You can have small ones?---Yes, yes.

Do you say they should be treated in the same way as very large ones?
---Well, you know, I'm not about to start to make arbitrary requests but obviously you have very small groups and the chances are it is, you know, something else.

Well, I've been thinking about what you've been saying as you've been giving evidence and I do understand that the, the more people you represent and the greater the number of entities that you represent the less prospect
20 there is of - - -?---Narrow based - - -

- - - singular interest being advanced at the cost of others. But you will appreciate that there are associations which don't have a broad base and which may represent a number of organisations but all have the same goal and so I'm saying narrow goal because the goal itself can be broad or narrow?---Yeah.

So it becomes really difficult to say that I will exempt all associations because the law of unintended consequences will then actually result in a
30 whole lot of new kind of associations springing up all over the place?---Yes, yeah.

And you will in small associations of the kind that I've mentioned to you one wouldn't ordinarily want to leave unregulated be unregulated. So I'm really, it may be really difficult for you to come up with an answer sitting there but I wonder if you would be prepared to think about this problem of definition or exemption?---You're right.

Put it as a basis of exemption based on - - -?---I will promise that we will go
40 away and think about that and make a separate subsequent comment but, look, I understand that for the reasons of probity and, and transparency and so on why there'd be an interest in doing this but, you know, and so I can see why you would consider that but from our perspective, you know, the downside might be, you know, less interaction with - - -

No, you have put that point very eloquently and I can assure you it's understood?---Okay.

MR GORMLY: Right. We've kept you longer than we intended to, Mr Baird?---(not transcribable).

I have no further questions and I'm grateful to you.

THE COMMISSIONER: Thank you very much for coming, Mr Baird, and giving us your time?---Thanks for your time.

10 And for your stimulating evidence?---My association (not transcribable) is stimulating. All right. Thank you.

MR GORMLY: Thank you, Mr Baird.

THE WITNESS EXCUSED

[12.25pm]

20 MR GORMLY: Commissioner, I next call The Honourable Robert Furolo who I understand is present in the hearing room.

THE COMMISSIONER: Mr Gormly, I don't want to inconvenience Mr Furolo but I have a problem, I have to stop at quarter to 1.00.

MR GORMLY: I was aware of that. Commissioner, I haven't spoken to Mr Furolo about it, can I raise it with him now?

THE COMMISSIONER: Yes.

30 MR GORMLY: Mr Furolo, we will not, there is a considerable body of material we need to cover with you well, partly because you're state and local government. We can't, we need to rise at 12.45 and not reconvene until 2.15. What we'd like is if possible for you to come back at 2.15 as well. Is that feasible?

MR FUROLO: If we need to.

MR GORMLY: We will, we will.

40 THE COMMISSIONER: Thank you very much. I'm really grateful, thank you, Mr Furolo.

MR FUROLO: No trouble.

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

MR FUROLO: I'll affirm, thank you.

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

Right. Now, Mr Furolo, I'm just going to take a minute to get some material about you personally. I think you started off in the transport industry and small business and you later did management training programs in the ACT. Is that right?---If you call the management development program of McDonald's a training program that's what I did.

I do, I do, yes. No doubt it was pretty good was it?---Well, I didn't do too well with it but some think it's quite good.

We won't go into the depth then but you subsequently studied economics and industrial relations and I think that you began in public service in 1994 first in an electoral office for a member of New South Wales Parliament. Who was that?---Morris Iemma.

20

Right. Thank you. And you continued in that role for about five years and then you then became a senior advisor to Mr Iemma?---Correct.

Right. And I take it that that was a period where you were exposed to a considerable degree of policy formulation as well as the other activities of government?---Correct.

Now, at around about the same time you entered local government for a ward of Canterbury City Council and successfully got the position of a councillor. And then in 1999 I think you became a Deputy Mayor and became a Mayor in the year 2000?---Actually I became Deputy Mayor in 2003 and Mayor in 2004.

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Thank you. And I think in fact when you were appointed Mayor you were the youngest person ever to hold that?---At Canterbury, yep, that's right.

Right. Now, in 2008 you were elected to the New South Wales Legislative Assembly as the Member for Lakemba on 18 October, 2008 and I think you have served or do serve on the Legislative Review Committee, the Children and Young People Committee and you're also chair of Electoral Matters Committee?---Correct.

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All right. And I think you remain Mayor to the present time?---That's right.

All right. I think also in the interim period at some point you're going to have to assist us with this, Mr Furolo. You have had a consultancy in government relations?---Correct, yep.

So that's meant that you have been both a lobbyist and lobbied as well?
---That's right.

Right. Can you just tell us briefly before I ask you to make an opening statement should you wish to about the government relations period. When was it and with whom?---After I finished working for a minister in the end of 2003 and at the same time as I became the Mayor I realised that the role of being Mayor and working for a minister would be in time conflict so I decided to work for somebody who would give me the flexibility to meet
10 those obligations to my civic duties so I started working for myself. And so I set up a very small, I use the term boutique government relations service, a one man band and did what I could to pay the bills while I was performing my civic duties.

All right. So you were doing, I'm sorry, Commissioner.

THE COMMISSIONER: Was this while you were mayor?---Yes, that's right.

20 Right.

MR GORMLY: But before you became a member?---Correct.

Right. Do - - -?---And I ceased by public relations business, I wound it down before I contested the election for parliament.

Right. All right. Do you have a view about whether it is possible for a backbencher to carry out a lobbying consultancy?---I think it's conceivable. I chose not to.

30 THE COMMISSIONER: It's dangerous?---Yeah. Well, that was my view for me. I certainly didn't want to be in a situation where the, the, an apparent conflict or the perceived conflict of my role as - - -

The danger is that people might think that you're asking questions or voting because you're paid to?---Correct, and that's why I chose not to take up that option.

40 MR GORMLY: It'd be almost impossible to separate one from the other, wouldn't it?---Well, it would depend on what issues you've got, you were, I guess involved in. If you were a member of parliament and a backbencher and you were dealing with issues related to federal government it could be said that it wasn't a direct conflict.

But in a sense a backbencher is almost a professional lobbyist - - -?
---Absolutely.

Yeah.

THE COMMISSIONER: But always in accordance with his bona fides, in other words, a backbencher is always a lobbyist in a sense but not a paid lobbyist?---Some say they don't get paid, some say we get paid too much.

Well, you're not paid by an individual?---No, no, we're paid by the community.

10 In other words, you're expected, I mean, our system of government works on the assumption that the members of parliament speak, ask questions and vote in accordance with their conscience, not in accordance with the, with the interests of someone who's paying them?---I agree.

And so there is, that is the basic problem because if you, if somebody takes on the job as a lobbyist, a professional lobbyist while being a member, one never knows even when voting whether there is a conflict of interest. Would you agree with that?---If the information hasn't been publicly made available that's true.

20 But even if it had?---I understand the point you're making.

Yeah.

MR GORMLY: Anyway, you, you didn't?---No, no.

I'm not suggesting you did but - - -?---I'm not advocating it as a, as a course
- - -

30 THE COMMISSIONER: The questions I asked you were simply to test this because it is conceivably part of our inquiry as to what extent can members of parliament be lobbyists while they're members of parliament?---I know of some members of parliaments previously who have done that.

Do you?---Well, I, if I'm not mistaken I think one of the former opposition leaders had at some stage had an external consultancy. I know it was an issue at the time - - -

MR GORMLY: Yes?--- - - - and he resigned from that consultancy.

40 Yes, yes, that's true. All right. Now, Mr Furolo, so you have a history in both state parliament and in local government so, and of course in lobbying as well so are there are preliminary comments that you would like to make about lobbying before we get down to some particular questions?---Yeah, look I, a couple of things. I didn't bring a written statement to, to read out. The first thing is I understand the intention of the Commission with this inquiry and I support what you're trying to achieve. As a mayor or a member of parliament I wouldn't ordinarily want to be sitting here but given the circumstances I'm more than happy to do so. Also I don't come with an

agenda, I'm not representing an industry group or a company or a business but I do come with some experience and, and some views which I'm happy to share. I also, and I've been reading some of the transcripts of, of the hearings and I'm not sure if I, if my view about lobbyists is as negative or as prejudged as some others. As I think has been explained by some people I think the role of a lobbyist is quite important and the distinction between an association, lobby group and a, a private lobby firm or individual, I find the term hired gun to be very emotive but not very helpful. A private lobbying first is no less or more altruistic than an association who's lobbying for their members, I see them all being the same. But lobbying is a kind of a difficult thing to define, I'm sure that you've looked at a definition but if I put my local government hat on I'm lobbied all the time by community groups, representatives, volunteer organisations, environmental associations and, and other groups as well as, obviously, being lobbied by people who have a, an interest in seeing projects being approved or policy being changed or, or what have you. So in that sense, you know, lobbying is part of the fibre or the fabric of, of the democracy that, that we live in. People will lobby against something, people will lobby in favour of something and as a public representative, as an elected representative it's part of the job to listen to people and to hear their views and I don't see that as being something we should be afraid of. I don't see it as something that we need to be embarrassed about and the people who do lobbying I don't think need to be ridiculed or held up for derision. I understand the premise of the inquiry is the perception of undue influence from lobbying and, and I understand particularly in relation to some events that occurred last year and perhaps a little bit earlier that this was a very topical issue. If, if I look at my experience in public life I think more people have a concern about the perception of inappropriate behaviour resulting from political donations than they have from the perception of influence from professional lobbyists or community advocates or associations. That's not to say that concern doesn't exist but I think there's been a bit of a blurring between the influence of people who influence with donations as opposed to those who seek to get outcomes through a legitimate process of lobbying and so I don't see lobbying as being the, the, the serious issue compared to the issue of donations and public funding of elections.

All right. Thank you. Mr Furolo, I want to, if I may, just test some matters concerning donations and I'd like then to go straight to local government. First of all, on the, on the donations issue obviously there's been a parliamentary inquiry but so far as it relates to lobbying would you accept the general proposition that lobbying and donations are two activities that really need to be kept separated because it's impossible to determine whether a donation is a donation or is a bribe in effect?---I think that the, the rules and regulations regarding donations and the proposed rules that are hoped to be brought in soon regarding donations will go a long way to addressing the perception of influence that is linked with, with financial contributions. I'm not quite sure if I followed the question but you're

suggesting that lobbyists shouldn't be able to make donations. Is that, is that - --

No, that lobbyists shouldn't ever handle their client's donations, that is, they shouldn't be making donations on behalf of any client or any interest that they represent?--I think the issue with donations is as long as it is clear who is making the donation, as long as it's clear where the donation is coming from then whoever handles the money is insignificant.

10 THE COMMISSIONER: Well, that brings up the question of fundraising because you can get a person who gets a lot of donations and these moneys are paid to that person who then hands it over to a party. The party is then grateful to the donors but also to the person who has organised it. So if the person is a lobbyist and the lobbyist's clients make the donations and they make the donations because the lobbyist has organised fundraising events, that perception arises?--Yeah. I think the issue of donations is one which goes to the very heart of the confidence in the decision-making process and that's why I think reform of the political donation system is absolutely
20 paramount. I also think though that when it comes to donations, and I think this was ICAC's view at the inquiry, disclosure, disclosure, disclosure. Clarity about who makes a donation is critical.

MR GORMLY: Yeah, I agree with that, Mr Furolo, but I'm really putting a slightly different proposition. It's that if a lobbyist is lobbying for a benefit, and I use that in the broad sense, for a benefit from government, they want something from government on behalf of a client, and they're also proffering or acting as a go-between for a donation, that the interplay of
30 having a donation in one hand and seeking a benefit in the other becomes a problem of perceived corruption or perceived bribery. There may be no link between the two, but because they're happening in the same person, it's impossible for the public to know whether the ultimate decision made by government is influenced by the donation. Anybody at any time can make a donation. It's difficult, I suggest to you, to see any justification ever for a lobbyist on behalf of someone to be involved in the giving of a donation? ---Look, I don't have an issue with that proposition.

All right?--Is that, the extension of that would be that a lobbyist can't make a donation of their own?

40 Well, there's something in that, Mr Furolo, because a lobbyist is someone who is at all times cultivating a relationship with government officers and acting for interest to derive a benefit from government and for a lobbyist to give a donation is, could easily be perceived to be operating in one of two ways, either they're endeavouring to curry favour with the donee or alternatively they feel that if they don't make a donation, and we have heard this complaint in other ways, Mr Furolo, if they don't make a donation then they feel that they will lose whatever ear of the government they have. And while one can be too clean-handed about these things, it appears to be a

problem. Would you accept that that may well be a problem?---I think in the community there is a wide range of perceptions. There's also, I believe, not everyone has a clear understanding of the processes of government, the decision-making process, and so when they hear about money and when they hear about donations it can present in their mind a confusion about whether a decision has been reached appropriately.

Yes, yes?---I accept that.

10 All right. So a healthy way to deal with that might be to separate the two?
---And I go back to the point which I think is really important, is disclosure.

Yes?---I think at the end of the day- - -

As long as there's adequate disclosure then the problem is covered?---Well, I think if, if a lobbyist acting on their own or a lobbyist representing a client makes a donation, then it's incumbent that, on the people making the decision, that they can justify the decision outside of the framework of the donation.

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Yes?---And having the donation recorded and publicly available I think will put additional pressure on them to make sure that the decision they've made is appropriate and above board. People can always make political capital out of the, the perception of influence from donations and that's why it's important that the government's reforms on, on donations deliver more confidence in the process.

Right. I'm afraid we've reached a time, Mr Furolo, Commissioner, I think we've reached a time.

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THE COMMISSIONER: Yes. Do you want to go for another five minutes I think?

MR GORMLY: All right. Thank you. All right. Just, well, just lastly on the donations issue then, Mr Furolo, we've had a long series of witnesses giving evidence in this hearing and I think every one of them who has offered a view on the topic so far has been of the view that public funding of elections is probably a good thing, together with perhaps some capping of - - -?---Spending.

40

Of, yeah, well, no, of voluntary donations. Perhaps capping of expenditure as well?---If I may - - -

Yes?---Because I did have a little bit of experience chairing the inquiry and I actually think it's a suite of those solutions that's essential. To look at one aspect, whether it be donations- - -

Yes.---?- -or one aspect being expenditure caps, in isolation is probably not going to be a solid foundation for proper reform.

Right. You'd see it as a range of activities to enable some donations to be still given, cap them- -?---Public funding.

Public funding?---And caps on expenditure to control the demand for funding.

10 Right. All right. Thank you. Now, can I take you then, let's start on the local government field. I'm sorry, just before we do. Have you ever been on the register of lobbyists?---It didn't come in while I was a lobbyist I believe.

I see. All right. Do you support the idea of a register for lobbyists at state government level?---I don't have a problem with it personally. Again, it's about disclosure and transparency.

20 Yes. What about extending the register so that it would include a meeting date for lobbying events, that is organised lobbying events by way of a meeting with ministers or directors general?---I can see the value in that for people who are trying to seek information about what occurred at a meeting. Knowing when a meeting occurred means that when you put your application for information you target it to that request.

Yes?---That makes sense to me.

THE COMMISSIONER: This is not intended to cover social get-togethers?
---Yep, I accept that.

30 MR GORMLY: Do you see that as a problem, that social events are not covered?---On a, on a, personally I don't see that as being a problem. If it, if it's a genuine social engagement. I think they're very hard to document and minute. I think they're very hard to codify.

We understand there's no serious business done on social occasions anyway?---Not in my experience.

40 All right. Topics may be introduced, a view may be put, but there's no decision-making or negotiating?---If, if anything it's identifying that there is issues or concerns or from a government's point of view it's, you know, flagging that you have intentions in a certain area so that people can prepare for, you know, prepare themselves to put, put a case together. But um, no decisions are made, that's right.

Right. All right. Commissioner, may I, I'd be grateful if we could stop.

THE COMMISSIONER: I think it would be a good time for me to adjourn, Mr Gormly. So we'll start again at 2.15.

LUNCHEON ADJOURNMENT

[12.48pm]