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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

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AT SYDNEY

ON TUESDAY 6 AUGUST, 2019

AT 10.00AM

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

THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Commissioner, I call Kate Griffiths.

THE COMMISSIONER: Yes, thank you. Ms Griffiths. Thank you, Ms Griffiths. All right. Now, Ms Griffiths, do you take an oath or an affirmation for the purpose of giving evidence?

MS GRIFFITHS: I'll take an affirmation.

10

THE COMMISSIONER: Thank you. I'll ask you to stand, if you wouldn't mind. My associate will administer that.

<KATE GRIFFITHS, affirmed

[10.05am]

THE COMMISSIONER: Thank you, Ms Griffiths. Just take a seat. Yes, Dr Chen.

MR CHEN: Thank you, Commissioner. Would you tell the Commissioner your name, please?---Kate Griffiths.

10 Ms Griffiths, you co-authored a submission to the Commission for this enquiry with Danielle Wood on behalf of the Grattan Institute, dated 30 May, 2019, did you not?---Yes.

And Commissioner, for the record, that's Exhibit 2, page 269.

THE COMMISSIONER: Page?

MR CHEN: 269.

20 THE COMMISSIONER: I'll just have Exhibit 2 obtained, thank you, yes.

MR CHEN: And Ms Griffiths, you also co-authored with Danielle Wood a paper described as or called Who's in the Room? Access and Influence in Australian Politics, did you not?---Yes.

A third person who made a contribution was Carmel Chivers, is that so?
---Yes.

30 Commissioner, I tender the article Who's in the Room? Access and Influence in Australian Politics, dated September, 2018.

THE COMMISSIONER: Yes, very well. The article co-authored by Ms Griffiths with Danielle Wood, entitled Who's in the Room, will be admitted. It'll become Exhibit 3. Thank you.

#EXH-03 – DANIELLE WOOD AND KATE GRIFFITHS, 'WHO'S IN THE ROOM? ACCESS AND INFLUENCE IN AUSTRALIAN POLITICS' SEPTEMBER 2018

40

MR CHEN: Thank you. We might just give you a copy of that as well, in due course.---Sure.

Now, Ms Griffith, I just want to ask you some questions, if I might, just about your background. You're currently employed, are you not, with the Grattan Institute?---Yes.

And have you been employed by that body for around four or so years?
---Yes, for four years.

And your current position is that of senior associate?---Yes.

Are you specifically working in the area of Budget Policy Institutional Reform?---Yes.

10 Before you commenced your employment with the Grattan Institute, did you hold various roles, including science and research policy for the Australian Government?---Yes, I worked for the Department of Innovation, Industry, Science, Research and Tertiary Education.

And for approximately how long did you hold that role?---About three years.

And you have qualifications, a science degree with honours from the Australian National University?---Yes.

20 And also a Masters in Science degree from the University of Oxford?
---Yes. I also worked for Boston Consulting Group between the position with the Department of Industry, et cetera, and Grattan.

And what was the work you did for the Boston Consulting Group?---I worked as a consultant in energy/health sectors, mainly.

I see. Would you tell the Commissioner a little bit about the Grattan Institute, if you might, Ms Griffith, it's an independent think tank, is it not?
---It is, yeah.

30 And where does it derive its funding from?---So it was formed in 2008, and its funding, it's funded by the endowment, primarily. So the endowment was set up between, with 15 million from the Commonwealth Government, 15 million from the Victorian Government, 4 million from BHP, and 1 million from NAB. That's sort of locked away and invested. Our salaries are paid largely off the interest on that investment. We also have ongoing contributions from affiliates, which are much smaller in scale and there's a range of consulting firms and private groups that, that donate through that. They're all listed on our website.

40 I see. Is the Grattan Institute primarily focused on Australian public policy?
---Yes.

Danielle Wood has been a co-author not only of the submission to the Commission but also the report Who's in the Room? What is her position?
---Yeah, she, so she's the Program Director for Budget Policy and Institutional Reform. So her and I work together in that program.

And for approximately how long has she been with the Grattan Institute?
---Oh, I think, it's certainly longer than me. Maybe six years-ish. Possibly longer.

I might ask if a copy of Who's in the Room can just be put before you, Ms Griffith.---Sure.

10 I want to ask you a little bit of, about that report before I move to dealing with your submission. The report was published, was it not, in September of 2018?---Yep.

And as I raised earlier, one of the co-authors was in fact Carmela Chivers. She's employed, is she, by the Grattan Institute?---She is, yes, she's an associate at Grattan Institute.

20 And did the funding for the report come from the sources you've identified earlier in your evidence or was it specifically funded from some other area?
---It was not specifically funded, so Grattan Institute research is not sort of funded by report, the institute was set up with the endowment and so the research that we do is funded broadly by that.

30 What was the background to why the report was commissioned?---So we, the researchers, decided to do this piece of work. Actually so it started with the observation that there's been a rise in the minor party vote in Australia over a fairly long period of time and Grattan Institute did a previous piece of work called Crisis of Trust, which looked at why the minor party vote has been rising and came to the conclusion that a major part of that rising minor party vote is to do with a loss of trust in government, in particular in politicians and political parties. Out of that work we then considered what, what the kind of consequences of a loss of trust are, whether it's sort of good or bad for policy and what could be done about improving trust and identified that sort of mistrust or distrust around the interests that government serves, whether it be politicians looking after themselves or government being run for a few big interests, those sorts of concerns have been on the rise, and so in terms of addressing those sorts of concerns we looked at this report topic which was, so Who's in the Room focussed at looking at lobbying, looking at donations, looking at the revolving door between political offices and lobbying groups and also looked at public campaigns to try to influence policy to determine what sort of level of
40 problem Australia might have with policy capture and what we could do about it.

THE COMMISSIONER: You spoke of the consequences of loss of trust. Is there any general acceptance with those concerned with public policy issues, so far as your reading and research has been able to determine, as to the causes of loss of trust, whether the loss of trust seems to have been on a sliding downward scale or whether it has its peaks and troughs over the last decade or so? Are you able to answer those sort of issues?---So on

measures like, so survey results that show that people think, people surveyed think that people in government look after themselves, that's the highest it's ever been on record, and survey results also have shown that people think government acts in the interests of, of, or for a few big interests, rather than for the public interest, that's the highest on record as well. So there is a trajectory there, although, sure, trust goes up and down, in terms of there's a whole range of causes that, potential causes that we looked at for this, some of which are things like, you know, leadership instability, over-promising, under-delivering, we've kind of done a little bit of work thinking about the weight of possible, possible factors, but one of the big ones that comes out pretty consistently is that there's a real suspicion about whether politics is working for the people, for the many rather than just the few.

And when you speak of the perception, at least based on the surveys, that politicians look after themselves, do you have an understanding of what that means, looking after themselves? Are we talking about something to do with the power game or are we dealing with something else?---So that particular survey doesn't dig any deeper, but there is other surveys that show that 85 per cent of Australians surveyed in 2018 think that some federal MPs are corrupt, so some, and so that would suggest that, that people think that there's, that they're making decisions for themselves or for their mates in some way. There's also, particularly, I think particularly concerning is that the suspicions rise for amongst those surveyed who'd worked in government, and they're even higher again amongst those surveyed who'd worked in Federal Government.

Just without going into too much detail, you talked about some of these perceptions having some out from surveys. How is the information captured if you like for a survey conducted so that you're not getting, as it were, a narrow view of these issues?---That's a good question. So they're telephone polls, so much like a range of other survey methods. The one that was done in 2018 was run by Transparency International Australia, so Transparency International Australia, there's one, the Australian Election Study which has been running for a long period of time, I think since about 1966, and that's the one that shows the sort of ongoing trend that people think that people in government look after themselves, that's where that one comes from. So there's a range of different studies, some run by universities, some run by not-for-profits.

Thank you.

MR CHEN: You've dealt with those and identified the surveys or at least some of them in your report, Who's in the Room, have you not?---Yes.

And that was actually the topic I was going to go to, these perceptions, but I'll move on. In any event, from Who's in the Room, similar to what has come out from the public submission, you, and by that I mean the Grattan

Institute, has promoted a number of recommendations across three areas, transparency, accountability and access. Is that right?---Yes.

I'll come back and deal with that in a little bit more detail, particularly in the context of the submission that has been put in, but I wanted to move now if I could, Ms Griffith, to policy capture, which is really chapter 1 of the report from Who's in the Room. Are you able to tell the Commissioner what is policy capture?---Sure. So policy capture is when special interests, so those with the resources or connections, manage to sway policy, public policy in their favour at the expense of the public interest. So we're not concerned with public policy swayed in their favour when it is also in the public interest, but just when it is at the expense of the public interest, and of course public interest is a very difficult topic to define and precisely adjudicate, but in terms of what we looked at, we looked at risk factors for policy capture using a framework that was developed by the OECD in terms of the kinds of things that can make the environment or can make policy capture possible.

Before we move onto those risk factors, did the conclusion you drew from the research that Australia was vulnerable to policy capture or not?---We concluded that Australia's vulnerable to policy capture, yes, that many of the risk factors are present in Australia, almost all in fact.

And could you identify now, please, what are those risk factors for policy capture?---Sure. So maybe I'll start by saying the one that we didn't think was particularly at risk in Australia because nearly all the others were, but the one that we thought was, was less of a concern for Australia is unchecked discretion. So ministers do have quite a significant amount of discretionary power, but they are part of political parties and there are checks through elections, through the media, through parliament, et cetera. So that factor, that risk factor for policy capture we consider to be of low risk in Australia, but there are a range of other risk factors, including the reliance of major parties on political donations, particularly on major donors. So we did some research looking at who funds political parties and we found that of the donations that are on the public record, 5 per cent of donors contribute more than half of party donations, so that's a fairly substantial sum that is coming from just a handful of donors, and that kind of reliance does create a risk factor, there's also risk factors related to relationships, so whether there's sort of, whether it's possible for a sort of cosiness to develop, and we can see that with things like the revolving door where people move from political offices into lobbying offices and back again. Relationships are cultivated through those sorts of processes, they're also cultivated through ongoing lobbying interactions. So that's definitely a risk factor that's present in the Australian system. I might draw on my table in chapter 1 to - - -

In other words, lack of transparency?---Another is lack of transparency, that's probably the biggest one actually. So the primary conclusion of that.

THE COMMISSIONER: So you're going to your paper, Who's in the Room?---Yes. So in the table specifically outlining risk factors - - -

What page are we - - -?---Let me find it. Table 1.1. I should know my way around my own report, shouldn't I.

10 That's all right. Take your time. That's all right.---If I just speak briefly to transparency, so the risk factors around transparency are largely that there's very little visibility of money or access at the federal level. And the problem here is that transparency is an important mechanism for accountability. It is what enables the public and the parliament and media more broadly to hold decision-makers to account. So without the transparency, there's real lack of accountability in - - -

You may be coming back to this later.---Yeah, sure.

20 But just while we're talking about transparency, it seems from the literature that transparency and accountability go hand in hand with one another, but they are different. Is that right?---Yes, that's fair.

And transparency embraces what?---So, transparency in terms of, in the context of this is, is about the visibility of lobbying activity, the visibility of major donors. So whether the public has an awareness of who, when they say, cast their vote, of who has funded the parties that they're casting the vote for, or when a policy decision is made, who's had the opportunity to influence that decision, and where a decision-maker falls, what inputs they've had to that process.

30 And when you talk about visibility, does that include the establishment of procedures whereby interactions, for example, between lobbyists and government officials, are recorded in some shape or form?---Yes. Yes, so, we would advocate - - -

And indeed, the very title of your paper, which you've co-authored, is Who's in the Room.---Exactly.

40 Is that part of the transparency issue?---Yeah, so I think in terms of public officials and acting in their official capacity, visibility around their decision-making process and who influences that, so who they meet with – ministerial diaries is something we advocate for at Grattan, the publishing of ministerial diaries. Also, in terms of contacts between lobbyists and government officials, understanding sort of the frequency of those, because access is an incredibly important part of influence. So understanding the frequency of, of access, but also who they might be acting for, if it's not for themselves, and on what sorts of issues that they're campaigning. That sort of visibility.

Thank you.

MR CHEN: Earlier in one of your answer, Ms Griffiths, you talked about, well, you qualified, there's very little visibility at the federal level. Is there any reason to think that at a state level in New South Wales it's any different?---So there's more visibility at, at the state level than there is at the federal level. New South Wales publishes ministerial diaries for a start, and we don't see that at the federal level. So there's some visibility of who ministers are meeting with. New South Wales also has a lobbyist register, although the federal level also has a lobbyist register. I think both forms, both the ministerial diaries and the lobbyist register, have some fairly obvious weaknesses in terms of the lobbyist register is very narrowly defined, so it's not capturing very much of the lobbying activity, and the ministerial diaries are also fairly narrow in what they publish, so in terms of going back to my point about visibility of, of who decision-makers, senior decision-makers our ministers meet with in forming their views, as, yeah, as part of their official capacity, that breadth of meetings is not captured in the ministerial diaries at the moment, because meetings that are happening, say, with the minister's office but not with the minister present are not included. Ministers' meetings that are happening potentially by phone call or offsite are not necessarily included. Events, party functions, et cetera, are also opportunities to influence, and they're not included.

THE COMMISSIONER: Do ministerial diaries address adequately the subject matter of discussions at particular meetings and/or decisions taken as a result?---So, there's a, there's a intention that they declare what the meeting's about, but the level of information is often inadequate. So sometimes it provides some clues, for example, a group is meeting with a minister about funding, but that, one word is a good start. It's certainly better than not knowing that that's not on the table. But, but there's obviously a lot more questions that that raises.

MR CHEN: Is the only difference in visibility between federal and state, so far as you've been able to identify from your research, the publication of ministerial diaries?---That and there's greater visibility of donations on New South Wales as well, in the sense that the federal donations disclosure threshold is higher than for New South Wales.

Can I come back to policy capture and just finish that topic if I might. The underlying concern, I take it, is the policy is being influenced, albeit in legal ways, to suite special interest groups. Is that the fundamental concern?---So the fundamental concerns are around having processes in place that enable policy capture, whether or not it's intended. So whether the decision-maker is aware that they are acting for the few rather than the many is actually, in some ways, irrelevant to – I mean, it's relevant to questions of criminal conduct but it's irrelevant to the question of good public policy if they're unaware of their influences because, simply, some groups are knocking on

their door and others are not, then that's a bad public policy outcome in and of itself.

Well, what are the problems across this area of policy capture in terms of influencing?---So some groups have a lot more access than others in terms of the analysis that we've done. We've had a look at who ministers are meeting with, particularly senior ministers. So we looked at the Premier, Deputy Premier and Treasurer and we've categorised, it's very difficult to say what a balanced set of consultations looks like, but we've had a look at the range of meetings held with senior ministers in terms of the different kinds of groups that are represented. And also in terms of when we look at, say businesses, their share of the economy, of the state economy. So on those sorts of measures, highly regulated businesses, those are businesses where government decisions make a big difference to the bottom line, whether that's positive or negative, those sorts of groups are over-represented in meeting with ministers. They're also over-represented in donations to political parties and in Queensland, in the lobbying contact starter that's available up there. So we see pretty consistently that these, in industries where government can determine winners, like mining, like property development, like transport, gambling, those sorts of groups are over-representative, over-represented relative to their share of the economy in meetings, in donations, those sorts of influence channels.

And the actual statistic you came up with for New South Wales was 62 per cent of all meetings, so far as you're able to discern, were with these - - -? ---With private interests.

Correct.---And in terms of, there's a kind of a range of different kinds of private interests. There's professional services firms which might be there on behalf of a client or they might be there looking to win work themselves. So there's different possible interests that they represent. But the biggest category was highly regulated businesses. So businesses in those industries I, I mentioned before. And it's, it's really not that surprising that these are the groups that are knocking on doors of government. It just suggests that government is, you know, is, is hearing the views of those, hearing the views that are made available to them rather than necessarily seeking a more balanced range of views. So particularly we were concerned by the lack of consumer community voices and we grouped together all not-for profits, consumer interests and community groups in a single category and that's a much smaller share of, of meetings.

Could I just come back to this area of influencing and some of the problems. One of the things that you've raised already is there's an increased risk of an unbalanced view in terms of policy?---Yep.

But I wanted to ask you some questions about this grey area of undue influence and what that might mean and you certainly refer to it your report. Could you just explain what you mean?---Yeah. So when we talk about it

as a grey area, it's because ultimately advocacy is part of democracy and lobbying plays a really important role. I mean, frankly, government could make lots of really bad decisions if lobbyists weren't there to alert them to some of the potential consequences of those decisions. So we want to see a wide range of groups involved in decision-making and the problem arises when you have the potential for undue influence. So because of resources or relationships you have the potential for additional sway or more opportunity in terms of access to influence a decision. And that's the real concern we see when we look at the evidence that's available in ministerial diaries, is just that that access is really quite skewed. So even if you just look within the business world there's a lot more access for high regulation businesses than for low regulation businesses. As I said, we were particularly concerned by the lack of community voices, community groups and consumer interests and again I think that that's kind of reasonably well established in the research literature why that would be the case, these are often diffuse groups that don't have much incentive to organise and might be, it might be a small impact individually but collectively a large impact, and so to get a group like that to advocate is much more difficult than a small group with a big, with a big potential impact. So we see those who organise and advocate for themselves do get more meetings and that isn't, that's not sort of equally distributed I suppose.

I want to move to just access generally, which is really the subject matter of chapter 2 of the report, Who's in the Room. One of the things you've told the Commissioner already is that access to the senior decision-maker is crucial to influence, and some of the themes that have come out from the report deal with the numbers or the percentage of meetings given by senior ministers to business, but one of the other issues is the lack of records as to who is actually getting access to government or senior public servants.

30 Could you talk a little bit about what other records are available in terms of senior public servants to try and track these movements?---So we, I mean we didn't look at for example public submissions process, but that's one way in which views are pitched outside of the kind of formal lobbying register, lobbying contacts which are available in Queensland. In terms of, yeah, the New South Wales information, really the only information about who's getting that sort of face-to-face opportunity to influence is in the ministerial diaries. There's obviously other avenues of influence, like party functions and we acknowledge that in our data for example, unions come out as looking like they don't have very many meetings, and this was a

40 surprise to us. This is quite possibly because they have other avenues to influence. So in Queensland in particular this was noticeable because they're very significant donors to the party that's in power and most major donors to the party in power in both Queensland and New South Wales are getting access, and so the lack, we don't see unions getting those meetings, but we suspect that that's because they're got other channels to influence through the party itself. And so that's yet another avenue that's not captured.

One of the things that's referred to in the report, and this is on page 19, is your research uncovered that there's increasing interactions with senior public servants.---So yes. So there's certainly opportunities to influence senior public servants. There's not much visibility of those, but as far as what's available in the, in the diaries, in some cases senior public servants are present in meetings, there's public servants, ministerial advisors et cetera are other avenues to decision-makers.

10 THE COMMISSIONER: Just on that, in terms of available reporting if you like publicly, you have the ministerial diaries, if there's a minister meets with for example a lobbyist, but if the minister then refers the lobbyist to a senior bureaucrat or public official, there's of course no publication of diaries by the senior public official. That's right, isn't it, is that right?
---Yes, there's no publication of diaries.

20 So in terms of record keeping if you like as to what transpires from that point forward, what sort of visibility is there so that either the interested bystander or the potentially affected stakeholder can inform himself or herself as to what this lobbying proposal might involve or does involve and the consequences of it? In other words, what visibility is there in the process from the time in the hypothetical example of the matter being sent by the minister to a senior public official?---Next to none. There are some surveys, so researchers have run surveys of public servants asking them what sort of contact they've had and who they consult with and that sort of thing, but as far as general visibility, no.

30 And beyond the minister entering it, making a note in his or her diary, is there any other form of visibility as to the role of that minister in relation to the lobbying proposal?---As far as what action was taken or - - -

Mmm.---No.

MR CHEN: Or of the interaction itself.---Or the, yes, yeah. The - - -

THE COMMISSIONER: Sorry, you go ahead.

40 THE WITNESS: Yes. I was just going to say in terms of, like it's, it's not I suspect ever possible to have visibility of the whole ecosystem. What we advocate for is to see, is particularly checks and balances around senior decision-makers, senior public decision-makers, and so obviously ministers with significant power and discretion are, should be a focal point for that, ministers' officers, because they are very much involved in ministerial decision-making, should also be part of that, so when we recommended that at the federal level they publish ministerial diaries like they do in New South Wales we also recommended that they include meetings with a ministerial advisor, even if the minister's not present. That's a form of, of the, how the minister's office works in its official capacity. In terms of senior public servants, there's, there are already some additional checks and

balances on public servants that don't apply to ministers' officers but senior public servants indeed could well be part of, of a broader scheme and should be in terms of things like lobbying contacts. So in Queensland which records lobbying contacts they're contacts with any government official, including senior public servants, including politicians.

THE COMMISSIONER: I mean the reality is that there may be a lobbying proposal made initially but it then goes through a whole range of stages, might be telephone contacts, short meetings, clarifying issues.---Mmm.

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In other words there may be dozens of contacts, if you like, between a lobbyist and a minister or senior official concerning the proposal, but at the end of the day if you were to focus upon what is the proposal, has it changed along the way, what are the main points, decision points that arise, I understand your evidence to be that aside from perhaps compulsory requirements by public officials to keep records of matters they're involved in, there's no other form a visibility if you like – or I withdraw that – there's no other form of transparency.---Yes, yes. So what we would recommend would be to have something like the ministerial diaries that actually flesh out what it is that a group is advocating for, sort of what legislation that might affect or what, you know, tender process is involved in terms of the meat of it, but something like the lobbying contacts register that exists in Queensland to capture the volume, so the frequency of interaction or the number of interactions, because that's quite revealing. So in terms of what we, we're able to see in our research, through the lobbying contacts, we're able to identify the most active lobbyists, the most, and in fact, because the lobbying contacts only captures commercial lobbying firms, third-party lobbyists in Queensland, which is a, a flaw, because it's not capturing all lobbying activity, we can see that the client that was most frequently advocated for in Queensland for Adani, which was obviously politically a, a big issue around the time of the Queensland election, which was the, the time period that we were looking at. And so, through the contacts, we're able to see who was, I guess, successful in their lobbying efforts in terms of volume. But through the diaries, we're able to see things like who the contact was with and that included six contacts with the Premier herself, which is a substantial, you know, the most senior decision-maker is, I guess, more substantial influence than lots and lots of contacts with, say, a backbencher, potentially. So, I think those dual checks allow a broader understanding, again, for the public, the parliament, the media, to think about what level of influence a group is having.

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Yes. In New South Wales, you say lobbying proposal, on examination, could have impacts on community groups or members of the community. Is there any process required to be followed that you're aware of for public officials to, as it were, sound the alert so that then action is taken to perhaps make that community group or individuals aware of the fact that there's a proposal on the table which might impact upon their interests?---I suspect the main process is transparency that something is actually on the table for

consideration and where that doesn't exist, then most groups wouldn't know that now is the right time to knock on the door.

But just talking in terms of visibility again as to whether there's an alert sounded by somebody requiring potentially-affected persons to be put on notice?---Not that I'm aware of. There, there is, there's often a kind of publication that there's an inquiry into X on some, in the depths of some government department website, but whether the relevant groups are going to find that, and I suspect those that are well-resourced and have people employed to actively keep an eye on these things, they will find those sorts of things, and groups that maybe don't have a, any formal advocacy arm but represent sort of broader disadvantaged people in the community, given that they don't have dedicated resources to advocacy, they probably won't notice these things unless they're alerted directly.

Yes, thank you.

MR CHEN: The Adani case study you mentioned just a moment ago in evidence to the Commissioner and also in the report emphasised the importance of access, namely because they secured access to the Premier. But also the means of, through which Adani secured that access. Is that not right?---Yeah, so the revolving door was involved in, in this particular one, in terms of former staffers being involved in setting up meetings. But it, I think it's, it's really an example of, of, it's often difficult to assess whether access is proportional, and in this case it was, is really stark because the Premier had 10 meetings with, with lobbyists on the register, six of whom were representing Adani. So there's sort of no other client who has reached that level of, of access. So it gives the opportunity to assess – and I think there was actually at the time around the election, Queensland election, a lot of public discussion and criticism of that level of access.

And that is a clear illustration of the point you make in the report that, quite often, influence is gained through in-house lobbyists or other persons who are secured to endeavour to get access and do succeed in getting access. Is that right?---Yes, so that, those contacts though are, are made by commercial lobbying firms on behalf of Adani. There would be other record, there would other contacts off the record which would be made by in-house lobbyists, so we wouldn't know about those because they're not captured, and that's true of, of, in terms of our work, we looked at the ministerial diaries in Queensland and New South Wales and we saw very few contacts made, so very few meetings with a commercial lobbyist. The vast majority, I can give you an exact number for New South Wales and Queensland, sort of on notice, but I'd hazard a guess that, that sort of less than five per cent of meetings were with a commercial third-party lobbyist. So the vast majority of meetings that senior ministers are having are with peak bodies, professional services firms, businesses, highly regulated businesses directly, so in-house lobbyists.

And your research also showed, did it not, that the movements of former politicians, particularly senior ones, was more likely to be into a role in-house rather than as a third-party lobbyist?---Yes, yes. We had a look at, since 1990, where have all former ministers or assistant minister at the federal level gone post politics. Some of them have retired and some of them have started their own business or gone into various other things, but more than a quarter – 28 per cent – have moved into roles with special interests as in-house, typically in-house lobbying and advisory roles, and so there's a large share of at least formerly powerful people in the lobbying business. We also had a look at the flip, flip side, so of registered lobbyists, again those who work for commercial lobbying firms, what proportion were former, were formerly worked for government, so former government representatives. That's something they have to declare on the lobbyist register, and that's grown over the six or so years that we had visibility of since the register existed basically. So that's grown from about a quarter in 2012 to over a third in, in 2018. So in terms of, you know, the revolving door is, is clearly a big part of, of the lobbying business and, and I think that just highlights the importance of, of relationships and contacts and connections in delivering outcomes. And as far as assessing the success of former government representatives, we can, we can see in Queensland that firms, lobbying firms that employ former government representatives in large majority get a lot more lobbying contacts. So there's some indication that they're a lot more successful and those relationships are leading to additional access. In terms of, in New South Wales we can't assess the success rate because there's no visibility of, of their contacts but we can at least see that the major firms employ a large number of, of former government representatives.

Former ministerial staff has also been the subject of your research and where they move and that was contrary to only moving one way, they moved back and forth. Is that so?---Yes. So there's lots of case studies out there of this. We haven't tried to systematically assess the movements of all of them but there's certainly case studies of, particularly in the mining and energy industries, of movement from say the peak body, the Minerals Council, into politics as an adviser, back again, a former minister or a former senior government official moving across. So we, we're seeing, we're seeing a couple of examples that are particularly worrying if, if we want to talk about specific revolving door examples, but mainly at a federal level.

The broad recommendations that you made, relevant to lobbying or influence, were really across three areas, to improve visibility of political donations, publishing ministerial diaries and also create a more meaningful register. Is that a fair summation of - - -?---Yes. So we focus, at Grattan we try to focus on practical recommendations like the, sort of, the next step thing you can do and those were three things that could be done tomorrow if, if, if there was political will and, and focussed on giving greater visibility of the, kind of, major channels of influence.

I want to move across now to take you through the submission by the Grattan Institute, if I can, and the submission addresses the topics by reference to the five key issues and 37 questions or measures in the discussion paper. I'll just take you through the substance of the submissions if I can. But could I just ask or seek your views on, the draft submission refers to lobbying activity. Do you have any particular definition in mind, and if so is it different to that which is under the Act?---So simple answer to that is no. I don't have a particular, but broadly speaking when our work captured lobbying of all forms, that includes advocacy for one's own interests in a personal capacity. So we consider lobbying to be a very broad concept, a positive concept in many respects, it's not, it's not the most useful definition though for, in terms of thinking about regulation because actually you don't want to regulate everybody and every kind of advocacy, really you want to focus on the most regular activity and the most senior sort of decision-making or the greatest discretionary powers. So that's kind of, when we talk about that in the submission I think we talk about distinguishing between regular like, lobbying on a regular basis from ad-hoc lobbying and the seniority of the person who is being lobbied has been factors in whether their activity is of public interests.

In terms of the lobbyist register, you had three broad points to make. The first is the lobbyist register itself should be broadened, the second was that the lobbying register should capture more information, and thirdly, it should be more publicly accessible and available. Are they the three key points to take from this area of transparency?---Yes, yeah.

Can I just start with the lobbying register. You understand of course the position in New South Wales only required registration by third-party lobbyists?---Yes.

And your submission suggests that perhaps it should be broadened to extend to repeat players and you seek to define that. Acknowledging that it's a difficult area to define, but as I understand it, the point you make is that it should at least extend to those who lobby regularly, but not to ad-hoc lobbyists. Is that the position?---Yeah, exactly. So I think getting the definition right is actually a really tricky part of that, but in terms of the general purpose would be to capture individuals and groups that are meeting on a regular basis or multiple times a year for example, rather than the one-off meeting that somebody has with their representative.

THE COMMISSIONER: Just before we descend further into the definition issue, so in terms of general, if you like, categorisation of lobbyists, there are those with, like we said, to be business or commercial interests, then there are, then there are others who might be described as non-government organisations, charitable institutions, other interest groups such as environmental groups, and then you get individuals, as you say, who want to lobby government for whatever reason. So I think what you're saying is

that if you're going to regulate lobbying as such you've got to distinguish between those groups for a start. Is that right?---No, no.

No?---I don't think that that's the important factor, I think the level of lobbying activity is the important factor, not who you're representing.

10 I see. So - - -?---So it's not a matter of saying that regular meetings by the Business Council should be on the record but regular meetings by GetUp shouldn't be, no, absolutely not, it should be just if, if GetUp is a regular lobbyist, and their political spending might suggest that they are, then they should also be on the, on the record and registered as should the Business Council, which is not currently because it's a peak body, as should, you know, the lobbyist working for Hawker Britton which, you know, is on there because it's a commercial lobbying firm.

20 So business, so lobbyists who regularly engage in lobbying – or perhaps I withdraw that. Organisations that regularly engage in lobbying of government or government officials, whether they be business or commercial organisations or whether they be perhaps other action groups or even other groups such as environmental groups or charitable organisations, if they're regular lobbyists then they should be subject to - - -?---Yeah, if it's part of their business - - -

30 And similar, the same regime or regulation.---Exactly. If it's part of their organisational purpose or their business to regularly seek access to government officials. So the way we specifically defined this in our recommendations at the federal level was around the access passes to Parliament House. If you've got a sponsored pass that allows you to access parliament unaccompanied and walk the halls, talk to whomever you choose, whoever will take your meeting, then that's, if in order for you to do your job you need that sort of level of regular access, then you should be registered, whoever you're representing.

Right. Thank you.

40 MR CHEN: And that was one way of controlling the numbers or identifying numbers, is that right?---Yeah. That was one way of drawing a line. It's, instead of, currently we draw the line at the federal level and at New South Wales level around third-party lobbyists because they're definable and they don't capture everybody else. This is a different way of drawing the line that doesn't specifically prioritise commercial lobbying forms because there's no good rationale for, for distinguishing them other than that they're easily identifiable.

One of, or perhaps, the most important object of a lobbying register is to enable the public to see who is lobbying government. Is that right?---Yeah. Absolutely.

And if you follow that through, would it not be important to know, say for example, whether a large say supermarket chain was lobbying government?
---Yep.

Would that not be important to know?---If they're regularly there, then yes, then they're a major player.

10 In many ways, the public may not know in fact that large corporations such as the example I gave, the supermarket chain, would even be dealing with government. Would that be fair?---At the moment you would only see it through ministerial diaries if you bothered to check.

20 Would not, subject to some possible exceptions, it be generally speaking a better idea to promote transparency to have more on the register rather than less? That is to say, to identify who actually is seeing government.---So I think the, I think drawing a line somewhere so as every single person isn't captured is important but I think the distinguishing between ad hoc and repeat is quite helpful in drawing an, an appropriate line. Because at the moment the way we draw the line is very arbitrary to single out commercial
20 lobbying firms as if they are somehow doing something different from what in-house lobbyists are doing is bizarre.

30 So far as you are aware, to the extent that a, I'll call it in-house lobbying for a large corporation does have regular access with a minister, would they be granted an access card to Parliament House or not?---As far as I'm aware, they have, if they can, if a, if a member of parliament can sponsor, is willing to sponsor their pass, they can have a pass. So it's a, the sponsored pass arrangement gives them then access to parliament. There's obviously, there's also the ability of you've got the right connections et cetera, to ring
30 someone up and meet with them in a, in another forum. Regular access of either of those kinds is of interest but it is much easier to identify and regulate the parliamentary pass form.

40 Would it not be easier to circumvent that by simply not meeting at Parliament House, say for example, or just getting direct access to a senior decision-maker? I'm just testing this idea, what are the appropriate ways to try and regulate a greater number of repeat players is through the access pass.---Yep. So you could meet, if, if the parliamentary pass is, is regulated and you wish to, to be out of the system, then you could meet not at Parliament House but if you're meeting with a minister then that should be in the ministerial diary. So it should still be recorded somewhere if it's a senior decision-maker. If it's with a backbencher and it's not in parliament then, as far as our recommended proposals, that would be off the record but having said that, there's a significant cost that you've, the, the parliamentarian has had to leave parliament in order to meet with you, that's an extra barrier, and you've had to meet with someone who has, sort of, less power in the, in the policy making process. So there's a cost to the lobbyist in terms of who they're accessing in order to be out of the net.

You also canvassed, as part of this idea of greater registration on a lobbying register, whether or not there should be regulation across certain industries or risk industries, I think as you described it, but ultimately you came to the view that wasn't a feasible way to approach the matter?---No. Because even though we do see that access is quite heavily skewed towards some industries, there's no particular reason why on, you know, as the policy, public policy agenda sort of moves, there's no particular reason why industries should be singled out. It's not, well, it's, it's a much more
10 complex regulatory system when you start to do that and then there's a lot of ways around that that you have to then think through. So the incentives there are problematic. I think we've already seen in New South Wales questions about whether banned donors are making donations through other kinds of firms, and that's exactly the sort of way around these kinds of rules when you specify who can donate and who can't. Better to set up a system where fairly simple principles apply to everyone and then that becomes simpler to, to administer and regulate.

20 In terms of detail of what should be on a register, the view you expressed, at the very least it should be improved by listing the industries in which a client operates, rather than just a name?---Yeah, so information about, about what industry they work in gives the ability to do the sort of analysis that we did that shows actually that some of these industries are having a lot more say than others. So I think it's, it's part of enabling scrutiny and visibility of the sorts of activities that are going on. It's also about identifying who some of these groups are, because sometimes a business name doesn't actually give away what they do at all, and it can be incredibly difficult to identify who they or what they are representing just from the name

30 You also suggested, I think, that in-house lobbyists to the extent that they would be captured by any lobbying register, should include their advocacy team, not simply all employees but their advocacy team. Is that right?
---Yeah, yep.

40 And what was the thinking behind that position?---So in terms of, I mean, I, I think arguably you could have just the, the organisation registered, as far as – but in terms of the individuals, really, some of these businesses employ thousands of people and it would be, for all of them to be registered under the business is, is elaborate, and so selecting the group that are most likely to be lobbying regularly is really the point. If somebody not officially in the advocacy team, say for example, the CEO, is doing most of the advocacy, then they should be registered.

Did you have a – you also expressed the view that the information that should be disclosed on any register would be much more fulsome than what is on the register now. Is that right?---Yeah, so I think it's really important to know, obviously if, if it's a third-party lobbyist, who they're lobbying for, but even if it's an in-house lobbyist what the topic is that they're there for,

because a lot of the groups that are advocating might work across a whole range of issues. If I go back to GetUp as an example, they've run some very different campaigns, and so knowing that they've have had a, that the group or someone from GetUp has met with, with a government official doesn't tell you what issue, doesn't give the opportunity for other groups that might want to have a say on that issue to put up their hand to.

10 THE COMMISSIONER: That seems to be a problem that applies across the board because the ministerial diary is in effect left to the discretion of the person whose diary it is to describe what the subject matter of the meeting was, and that discretion could be exercised by using very opaque terms.---It can. I guess the, having some overlap in the checks is really helpful here. So the, for example, if you have a register, a lobbying register that includes lobbying contacts and what contacts were made about, that's capturing a very different thing from ministerial diaries, but those two should have some overlap, and there would be some checks involved in that. I think we also put forward in the submission that some kind of sort of spot checking, random auditing of the material through verification with, you know, the appointments of other public officials, even if they don't have to
20 make their diaries public, they would still have diaries. They're busy people. I'm sure they've got diaries. If they could make them public to, to, oh, sorry, make them available for auditing purposes, then that would provide some checks on the, on, just, just with the intention of improving the integrity of the information.

Well, there's two aspects to that, isn't there? There's a question as to whether ministers and others, well, ministers, I should say, are required to provide some specificity and not left to their discretion to use opaque language if they want to. That's at the commencement of the process, and
30 as you just said, later in the process there's some form of checking which I imagine you'd envisage would be done by some independent officer. ---Mmm, yes.

Such as, for example, if it was a Commissioner for Lobbying.---Yeah, or the Electoral Commission or, yeah, yeah.

Or the Electoral Commission, who's the current regulator.---In terms of the
- - -

40 But that's not done at the moment. There's no spot-checking by anyone of the diaries to see if they're up to scratch or meeting appropriate standards. ---Not that I'm aware of. In terms of the, even in terms of the level of detail, potentially an independent administrator of the diary, say, could send them back and ask for further detail but then trying to apply a sanction around that if they don't, et cetera, becomes complex.

That feeds into a more general topic. We heard expert evidence yesterday talking about the legal principles that apply to public officers, elected and

appointed, and in particular the public trust obligation with which I'm sure you're more than familiar, and that associated with accountability principles is the requirement to be accountable for how they exercise power, which they possess on behalf of the public, for public purposes and not otherwise. And that in order to be accountable, there should be some form of record-keeping so that if an inquiry's made, it's possible to see how the lobbying process took place and how it came to the outcome that it did. You referred a moment ago, a little while ago, to "off-the-record discussions" in the course of lobbying. What sort of off-the-record discussions could there possibly be in the course of lobbying activity if there should be proper accountability.---That's a very good question. So in terms of – when I referred to off the record, I meant intentionally off the record, where somebody is choosing to be off the record. But of course that does require two parties to be involved in choosing to be off the record, and that in and of itself is a, a check because if a lobbyist is declaring their contacts with a government official and a government official isn't declaring, that's very revealing, just as it is vice versa. But in terms of, yeah, in terms of freedom of information requests and things like that, then of course, yeah, a meeting at a café that's not, you know, inside Parliament House doesn't mean it's not an official meeting in your capacity as a public official and therefore subject to those same conditions. It's more a question of whether it's formally and regularly disclosed versus whether it's ad hoc and specifically under, in an FOI request or something like that.

There is much literature, as you're aware, with the problems that can arise through secret lobbying, and the observation's been made that with lobbying sometimes both the lobbyist and the official – without articulating it – have a clear understanding that this is going to be confidential or private so that they, by engaging in the very process of lobbying, get drawn into what's been referred to as a culture of secrecy. So without anything being said, that that's a shared, common understanding.---And a big part of that is just that secrecy is the norm already, so there, you know, I think it's important that things like ministerial diaries become a normal, and sharing information about what meetings, become a sort of normal part of the system. But even where they exist now, they're, they're not as, you know, accessible as they could be, which means that they're, they don't enable sort of the level of scrutiny that would be preferable for transparency to actually lead to accountability, so there's, there's a lot of kind of room for improvement there. But essentially if it's, if it's a normalised, if disclosure is a normalised thing, it's a, you know, strong reminder of the public official acting in a public capacity, but it's also an opportunity for, for, to sort of level of the playing field in terms of advocacy because it provides critical information to groups that maybe don't have the resources to have, to have a say in every debate, to make sure they're on top of everything, to jump in when in fact something really does affect them.

Yes. It's possible, is it, to conceive that a lobbyist and a public official could well have what might be called a private meeting about a lobbying

proposal, but that that would be subject still to the requirement that a record be kept of the subject matter of that private meeting, so that the benefit is the facility for having a private discussion is still there, but transparency and accountability issues will not be impaired. Are you able to comment on whether that's a – that they are variables that have got to be considered and balanced and provision made, if necessary, for something that truly does qualify as confidential information can be safeguarded.---Yes. Okay, so I think there's a couple of things there. There's, there's meetings that a person has in a personal capacity versus in their official capacity as a public official. So private could mean that the meeting relates to their personal affairs and has nothing to do with their public position, and, but anything in an official capacity in terms of the diary system for ministers we would consider should be disclosed, but then there's a confidentiality or, you know, essentially where the public interest to, to not disclose is higher than the public interest to disclose, there's always got to be that consideration. It might be security concerns, national security concerns, something like that, where, where something should be redacted I guess would be the way that we think about it. So it's still better to show that there was a meeting and have it redacted than to not show that there was any meeting at all.

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Thank you.

MR CHEN: I just want to finish off this topic of the register of lobbying activities and disclosure. One of the matters that you have identified in the submission is that the information that should be disclosed on this lobbying register would be information that would be required to be disclosed by the lobbyist, not by the government official, is that right?---So there would be, so somebody who's a registered lobbyist would have to then disclose their contacts with government officials who they're representing, if not their employer, what their employer is advocating for, et cetera.

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And you envisage, as part of that, that that would be submitted as well. Would there be oversight by an independent body to ensure the integrity of that process and the records created?---Yes, so it's important that, so someone's who a registered lobbyist abiding by, have to abide by the Lobbying Code of Conduct and would have to disclose their contacts with government officials, et cetera, it's important that that is then administered independently to enable any concerns about a breach to the Lobbying Code of Conduct to be assessed, investigated independently, assessed independently of, say, the government official that is involved or the lobbyist themselves.

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One of the things that is put by groups on behalf of government relations bodies or lobbying groups is that that's a burden for them to be required, or that extra layer of oversight would be a burden that they should not bear. Are you able to identify whether in your research or in your analysis of other regimes whether there are any such burdens and what they might be? ---So it's a burden compared to no disclosure requirement whatsoever,

which is why we say that the lobbyist register should only apply to regular lobbyists, repeat players, rather than ad hoc lobbyists. If you've, you know, meet, if you meet with your local representative once, that's ad hoc lobbying. If you're meeting regularly, then that's part of your business or your organisation's interests and the burden of recording the number of those contacts and for what purpose is fairly minimal and seems to proceed just fine in Queensland, for example. So Queensland has got something quite similar to that. It's on third-party lobbyists only, and I think repeat players is a better definition, so that would include in-house lobbyists, but these are in-house lobbyists with advocacy resources and teams. That's why they're repeat players. So the burden should be minimised where possible but, but is kind of providing the transparency that's needed to assess the sort of level of influence of different organisations and what policy debates are happening behind closed doors.

I just want to go back to the topic of ministerial diaries briefly. It's been extensively covered already, but one of the matters that you do suggest in terms of consideration for reform is more frequent disclosure of ministerial diaries, is that right?---Yes, so timely disclosure is really important to make it useable. I think most, quarterly I think it is in New South Wales, whereas it's every month in Queensland. You know, timely disclosure is really important and quarterly is probably not particularly timely for a lot of policy debates, so you could miss the window, essentially, if disclosure comes after the debate's already been had behind closed doors. But as far as I think maybe the most important missing piece for the, for the New South Wales disclosures is the accessibility, like the ability to, they're currently sort of individual diary PDFs up there. To bring that together requires resources for a researcher, for a journalist, and if you lower that barrier, then – particularly for journalists – there's the potential to have greater scrutiny over what the meetings are and who's, the most important point we actually make in our research is not, it's not really as much about who's in the room as who's not in the room, and you only see that by seeing who's in the room and it lets you identify who the missing voices are, and that discussion, you know, a really, a more accessible diary disclosure system would enable that discussion of who are we missing in this policy debate, whose voices are not being heard. When we're talking about, you know, social housing and homelessness, are there some really obvious voices who are missing in this discussion because they don't have the resources to advocate for themselves.

THE COMMISSIONER: Can I just ask you a couple of points arising out of that last answer. You referred to quarterly requirement to disclose ministerial diaries in New South Wales and monthly in Queensland.---Yeah.

Are you aware of any practical difficulties Queenslanders have had in disclosing diaries monthly?---I'm not aware of any, no.

Can you envisage there'd be any onerous repercussions if ministers in New South Wales were required to report as frequently as in Queensland?---Sir, I think the fact that the diary disclosures are already only for ministers is about thinking about who has the resources to do these level of disclosures, and so ministers have got more resources than, say, opposition or backbenchers, et cetera, so I think that, that focusing on the group that have the resources to do this is, in terms of the value that they offer, it's got to be timely to be valuable. These people have diaries. If there's a, you know, if there's a heavy redaction process required for some particular kinds of portfolio responsibilities, then maybe there's a case there for, for a slower disclosure process, but most, for most public officials I wouldn't think that that would be the issue.

The other point you've mentioned in that previous answer was that the disclosure is in PDF form.---Mmm.

Are there complications because of that?---So essentially what that means is that you can't go – you have to know what you're looking for and you have to know when you're looking for it, so you have to know - - -

Just explain that a bit more.---Yeah, so you have to know who, you have to choose the, the diary appointments of a particular person. You have to know when because it's by three-month windows, so you have to know that something went down in a particular period of time and that's what you're interested in. And you probably have to know the names of the players that you're looking for to search for information. Essentially if you had a sort of (not transcribable) searchable database of this, then you could look for particular players whenever they've had meetings or, and whoever they've had meetings with, so you don't have to know who and when. If you have a downloadable system, then there's a lot more potential for, for analysts, for journalists to look at it in many different ways. But at the moment the process we undertook at Grattan in order to analyse ministerial diaries for a period of a year in the lead up to Queensland election and the New South Wales elections, was to download individually PDFs of senior ministers for each period of time, copy out of the PDF all of the contents, categorise each meeting, which involved finding out who they are, which is often not evident from their name, classifying et cetera and then collating that. So essentially that provided some visibility of, of – otherwise essentially you're looking for individual case studies and individual case studies, we did look at in the report and can be, can be quite valuable but it tends to be after the fact and it tends to be because we know something happened. So in our work we looked, for example, at the greyhound racing industry ban because we know that happened at a particular point in time, we know it was overturned at a particular point in time. So we were able to look at the diaries of the key ministers at that point in time and see who was meeting with them. But that's not always possible. Some policy processes are much, much longer and much less clearly defined and you, the resources required to then determine whose input to that debate is extensive.

Are you aware of more sophisticated technological innovations in other jurisdictions which makes the system of searching less, I'll use the word, clunky than in New South Wales?---Certainly not in Australia. I'm not aware of – so Queensland also uses the PDF system. They have a more searchable system for donations than New South Wales has. That's got some of the same problems in terms of trying to identify who's donated to who or who's a major donor. Again, you have to know when they donated, you have to have a pretty good idea of who you're looking for in the first place, rather than just being able to see who are the major donor. That's such an obvious question when you're looking at donations and in the same when you're looking at ministerial diaries, just who are the, the, the repeat players, who's, who are the regular meetings with. You, you can't assess that from the diaries at this point without extensive kind of work, research.

MR CHEN: It's really a single searchable database across all these information platforms that you're suggesting?---That's the ideal, yep.

And uniformity of descriptions would be one way to ensure that you could actually find out precisely when a particular is consulting with government or who is not, for example.---So I think it's, I think it's Queensland has database for the donation side of things which means that when, which allows kind of more real-time disclosure of donations and when information is input it has basic things like defaults to particular names so that spelling errors in names don't mean that donations get counted to different parties which gets, gets counted to different groups which happens all the time in other forms. In PDF there's lots of spelling errors and things like that that'll go through which means that if you do try to categorise these things, you can find that the same group has many, many names.

THE COMMISSIONER: Is that a feature that you've become aware of that there can be different names or abbreviations used in ministerial diaries which, as you say, in effect frustrates the ability to search?---Yes, lots. And it's, some of them are, are quite obvious and simple mistakes to make if you think about a group like ClubsNSW, whether you spell that with a space or not, whether you remember the S and you go ClubNSW, yeah. You can easily end up with multiple versions of the same group's name and often, if it's an acronym then it's the acronym spelt out, not, yeah. So a lot of these are probably just honest mistakes but they have the effect of making, of essentially hampering transparency.

MR CHEN: I want to move to another topic now which were measures to improve integrity, and in that part of the submission you dealt with matters such as, clarify responsibilities of current and former public officials as well as post-separation employment issues, that is precluding government officials from undertaking lobbying activities for a defined period. I want to just ask you to focus on a particular area. There is a form of regulation, as

you would know, in terms of ministers and parliamentary secretaries in New South Wales?---The revolving door ban?

Yes.---Yep.

10 But at the moment that does not extend to senior government officials outside of those two. Did you suggest that perhaps the post-separation cooling-off period should extend to those senior public servants?---I think theoretically, yes, it should, but the bigger problem with the revolving door is actually setting up an enforceable ban in the first place. So our research at federal level focussed on making sure the current restrictions that exist already at the federal level are enforceable, and then at that point you can start to look at who else they should apply to, but at the federal level they do already apply to ministerial advisors and senior public servants. So yes, they should apply in New South Wales too.

20 How is the post-separation employment period, that is to say when a senior government official moves into a particular consulting role or government relations role, how is that enforced in New South Wales?---So there, I mean the New South Wales system has at least the requirement that when a former minister seeks a new job, they have to get advice on whether that job meets their obligations under the Ministerial Code of Conduct. So that advice is a really important step, that advice is, is independently made on whether or not the new employment offer meets the requirements of their code of conduct. That step's missing the federal level. Then my understanding is that if they choose to accept the employment offer, they have, that advice has to be tabled in parliament. So that provides transparency around what the verdict was on whether or not that job was okay. But at the point where potentially someone has sought advice and ignored it and it becomes public that they've ignored it, that system of enforcement is relying on media scrutiny, public outrage, parliamentary scrutiny and the parliament itself holding them, the individual, to account in some way. I think there are fines as well under the NSW Electoral Commission, I think they have the ability to enforce fines, but in general revolving door bans are really tricky to enforce because actually it's not about fines, that's often just the, the cost of hiring someone really valuable, no problem, happy to pay the fine. It's the, what, what the revolving door ban should be trying to enforce is restrictions on access if it's being breached, because access is what, is what a well-resourced special interest is buying by getting a former government official.

40 THE COMMISSIONER: How does it work in New South Wales if for example a, for example, a significant commercial operator, company, indicated to a public official or a minister if you like that when they retire there will be a position for you in our organisation, unspecified. In other words this is different from the case you addressed a moment ago when you said there was an offer made. In the case where there's no offer made but the indication is made clear that come retirement we will look favourably to

employing you, is that a situation that's dealt with by regulation or parliamentary practice or anything of that kind?---I think it's exactly the sort of situation we are trying to deal with by having a revolving door ban or a cooling-off period. There are three big risks that a cooling-off period is designed to minimise, one of which is the decisions that a minister or senior public official makes while in office with a view to their future employment, so, you know, they're approving contracts now for someone that they might want to employ, be employed by in the future, that's a real problem. So the decisions they make in office is a really big one. Second is the relationships and connections they have that they can then bring to their new employer, and that's a sort of privileged level of access that can be purchased or level of influence that can be purchased by hiring a former senior public official. And then, third is the information that the public official has when they go to their new employer. So that's privileged information they had because of their public role that might be very valuable to the employer and might, even if it's not directly used, influence their advice or how they, they proceed. So I think all three of those risks are problematic. All three of them cool over time, which is why we call it a cooling off period. So clearly if, currently the 18-month period that applies to ministers or, or the 12-month period at the federal level that applies to senior public servants, that allows some cooling off of the relationships of the information, maybe the, maybe a tender process has finished by the time the job is taken up, which makes the information less valuable or maybe there's been a change of government in that time which makes the relationships less valuable. There's things that can happen over time that help to reduce those risks. Whether that's exactly the right period is, is, is a balancing act between the imposition on the, the public official's future employment and the imposition on, on the, the public, in terms of those, those three risks I mentioned. But all of that is to say that the cooling off period plays a really important role if it can be enforced, and the, the challenge is around how you enforce that, because of course an offer of employment, once, once you leave parliament, then becomes an offer of employment 18 months after you leave parliament. That's a longer, longer deal, a longer time frame which, you know, reduces the risk.

Thank you very much for that. I think we'll take the morning tea adjournment. Is that convenient?

MR CHEN: It is, Commissioner, yes.

THE COMMISSIONER: All right. I'll take a 15-minute adjournment.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Thank you, Commissioner. Ms Griffiths, I'm just going to move through a couple of topics perhaps briefly. The submission by the Grattan Institute sought to cover a large topic, namely measures to improve fairness, and particularly that was to address the potential skewed access that some groups have when compared to others. Is that a fair summation of that part of the submission?---Yeah, yeah.

10 And one of the ways in which the submission deals with that is a, or as a measure was to embrace policy review processes that actively seek out ranges of voices, and this is on page 11 of your submission. Would you be able to tell the Commissioner very briefly what some of the suggestions or measures that you identified to improve fairness in that respect?---Sure, yeah. So as I said earlier, one of the concerning factors is, is who's not in the room, and so actually diary disclosures do actually help with this as well, or transparency more generally helps with this because it allows various groups to call out when there's somebody who should have been consulted. But essentially the, the, the responsibility for public engagement, for citizen engagement, falls on the representative, the public official. In representing the public, their electorate, et cetera, they should be actively
20 seeking out those sorts of, a range of voices, and one of the ways, one of the sorts of processes that can help them in doing that is when a sort of major piece of policy is on the table, having processes that go and seek who are the potential groups that could be affected by that piece of policy. Let's seek their views on this in whatever way makes that possible for them to contribute. They may not be able to be in Canberra. They may not be able to write a full submission. So thinking about different ways of garnering their views on a particular issue makes it possible for them to contribute is a big part of that. We refer to specific processes, like the Productivity Commission's got a policy review process as an example of how that could
30 be done for, for major policy issues, but more generally I think transparency is a big part of how you make sure there is room for more voices in policy debates.

THE COMMISSIONER: So if there was a lobbying proposal and it, on analysis, was seen to have implications that could affect others and that it would be beneficial to get the viewpoint of others, to get a balanced perspective, you'd need to establish some form of protocol or procedure which would trigger such a process, would you not?---Yes.

40 If for example, you've referred to the Productivity Commission process, there would need to be, wouldn't there, if you like, a protocol, I'll call it a charter of action for want of a better description, at an initial point someone would have to have the responsibility of identifying that this particular proposal has wider implications.---Mmm.

Now, whether that's the minister or an advisor to the minister or some independent person, I'll invite your comments on that in a moment, and if there is a requirement to actually examine a lobby proposal to see if it could

have or is likely to have implications beyond the lobbyist's concerns, then someone would have to, as a filter, if you like, pick up on that and then to make it a practical process, to trigger some form of process whereby somebody would have an obligation to give notice to those persons who've been identified as likely to be affected and a process either by way of written submissions and/or, if it was significant enough, followed by a hearing process perhaps so that the issue can be dealt with. Now, is that the sort of process you're talking about or is there some other process?---So I think for, and you're right, there's a trigger around what counts as major
10 policy review and when does this process apply, but I think for, for the big items there should be a formal review process that actively seeks out voices that may be missing otherwise. So conscious thought put into, yeah, the kind of green paper/white paper process or the Productivity Commission process is a good model for the big things, and then around that you need various other kinds of checks that enable other voices to come into smaller debates on the side that might not pass the thresholds required for that and so transparency is a big part of helping those smaller, helping groups participate in those smaller debates that might not pass those thresholds.
20 And even just more broadly thinking about things like, you know, the role of the parliamentarian and what role they play in citizen engagement and how they can better do that, what sort of professional development they get, et cetera, helps to shape that broader environment for maybe smaller policy decisions that come up along the way but which have a big effect on, on one group here or there. I think a central process for the big policy decisions though is, and there are best practice examples of that out there.

So as you've indicated, and considering processes that do perhaps provide access to others to have a say, there's got to be some distinction between what you've called or referred to as major policy matters or the big items.
30 In other words, it wouldn't necessarily be a process that would be applied to every lobbying proposal but there would have to be some criteria by which it determined when it's necessary or appropriate. Is that right?---Yeah, and I wouldn't necessarily apply it to a lobbying proposal, I would apply it to a policy question under government consideration, or under parliamentary, so a major piece of legislation or something that the parliament's considering.

Yes. Well, I mean I suppose you can categorise, you probably can do it better than I, I'm sure, the lobbying proposals around establishment of perhaps a new government policy, you might have a proposal that has
40 something to do with contracting with government or you might have a proposal that's dealing with and seeking licensing or authorisations and there are maybe a proposal, as you say, for the enactment of new law. So all of those different categories throw up their own individual issues I suppose in terms of how do you go about ensuring more equality in access and opportunity to be heard in relation to all of those or some of those and in what circumstances. Can you, can you venture into that minefield?---I'd start with the big things and then work out from there. In terms of formalising a process I'd start with the big things. In terms of, at, in

parallel, I think it's also important to do the, the transparency and professional development type measures that mean that people understand what citizen engagement is and that that is part of a public official's role, whether they be a public servant or whether they be a politician, I think those sorts of supporting mechanisms are really important, and in fact if, if one of the benefits of diary disclosures is that people are more conscious of who they're meeting with and whether it looks bad, then that's actually, that's a good incentive to stop and think about, who are you meeting with, who are you hearing from, and are there some other groups that would
10 balance this out. That's part of the sorts of incentives that could be created by a strong transparency regime, and as we've discussed before, there is the diary disclosures already, but their accessibility limits the scrutiny on those, so, if they were more accessible, there might be more scrutiny, which, you know, all it takes is, is, you know, one embarrassing situation to make a minister's office think more carefully about the sorts of, the range of people that they're meeting with.

Just one aspect of that answer you gave, you referred to professional development.---Mmm.

20

We heard yesterday from Dr Longstaff who indicated in so many words, you don't just issue instructions, but what you do is you build up a culture of integrity. And do you see professional development programs, perhaps both for public officials and lobbyists themselves, as desirable or necessary in this space that we're now discussing, namely, lobbying practices?---I think they are desirable, and I think that, that particularly for public officials in the sense that ultimately, it is their responsibility and they are the ones to be held to account on this.

30 And that last point you made does underline, I take it, the importance of not, as it were, destroying autonomy of public officials to be able to make the call, the right decision as to whether or not a particular process should be applied in this particular case.---Mmm.

And if they are equipped, perhaps, with professional development state-of-the-art knowledge about integrity in lobbying, they should be equipped to be able to make the call. Is that right?---Ultimately, yeah, ultimately, they adjudicate the public interest, and if they're given better information and better equipment to do that, then that is in the public interest.

40

Yes, thank you.

MR CHEN: And just picking up on that accountability theme you just mentioned, Ms Griffith, in part 4 of your submission, you suggested to the extent that any further regulation occurs in the area, that that should be on the lobbied rather than on the lobbyist. Is that right?---Yeah, so wherever possible it is the responsibility of, of the public officials to do, to do this right, and so they're the ones with public resources behind them to ensure

that they meet obligations, et cetera. So, yeah, it's part of their job, if they also have resources, regulation should be imposed on, on the lobbied first.

And in terms of lobbyists, that's part of why we, we recommend that any particular burden is, is limited to the repeat players, those that have greater resources to manage that burden when it comes to the lobbyists. It's not to say that there shouldn't be any regulatory burden on, on lobbyists, but that, but that the, the proportionality has to be there.

10 So when, as I started with, when lobbying includes everything from advocating for yourself in your own personal interest through to, through to the kind of more professionalised, more regular lobbying, then drawing a distinction there is really important when you think about the burden.

THE COMMISSIONER: And what would you say in relation to what you referred to as major policy or big items, that there should be a requirement placed upon a lobbyist to identify upfront other potential stakeholders if you like who might be affected by what's being proposed? In other words, that they are required themselves, self-reporting almost to identify for
20 government those who might be affected?---I think, I think that's a really tricky one to ask them to do, in the sense that they, they may not know. They may not have thought it through. And they may not, and they, and I don't think that they're the best person to identify the other players.

I suppose I'm assuming that they can work it out for themselves, and they do have knowledge that if the proposal is granted, it more than likely will have an impact on one sector or another. In those circumstances, what would you say as to requirement for them to be upfront about disclosing their knowledge on those matters?---I think it's critical that they're upfront
30 about why they're lobbying for and what they're lobbying on but I think it's the public official's responsibility to seek what those other affected parties might be. That's not to say that it isn't, sort of, welcome information but I think that the information the lobbyist provides is always through the lens of, of who they representative and what they're lobbying for, including identifying other parties that might be affected is still coming through that lens and the public official has to look at it through their lens which is a broader view and so helping them in terms of upskilling them, in terms of providing information to them and greater transparency et cetera is more important in terms of getting the opportunity for, for sort of a more level
40 playing field in this space.

MR CHEN: In the measures or possible measures in terms of further regulation in this area that you've identified in your submissions and in the Who's in the Room report, what do you say to the suggestion that any further regulation across the area may have the effect of dampening lobbying activities or driving the activities further underground?---So I think advocacy is, is really important and we want to encourage advocacy. We're talking about encouraging a boarder range of advocacy, we're talking about

making the advocacy that happens more transparent. Frankly, if, if groups want to not be seen, keep things behind closed doors, then perhaps they can choose to by not lobbying the more senior officials, if the senior officials have disclosure requirements, and they choose to go to more junior officials, that's probably at their own cost. If they, if they really want to keep things sort of unseen, there should be a, a cost in their access and their influence to that and I think that comes about by regulating the big stuff, the most, yeah, the repeat interactions, the most senior decision-makers.

- 10 Just one last topic. Are you able to comment on the appropriate penalty if a lobbyist engages in a minor breach, for example, fails to lodge paperwork on time?---Yes. I think the, the most important thing with, with penalties is that they're linked to, to what it is the lobbyist is trying to achieve. So if it's, effectively that would be a, a breach of the code of conduct that they're not disclosing information that they need to disclose, wherever possible access should be denied. Basically access is, is the currency of lobbying, and in that case it might be very minor, so access is denied until they meet, until they submit the paperwork and then they're fine. I think that that's why it's, it's important to have a system in place where, where it is possible
- 20 to, to, for example, remove things like parliamentary passes which actually make it quite easy to remove access and then return it when the obligation is met.

Commissioner, those are the questions for Ms Griffiths.

THE COMMISSIONER: Well, thank you very much indeed for your attendance here today and for your evidence. It's much appreciated.---My pleasure.

- 30 You're excused. Thank you.

THE WITNESS EXCUSED

[12.08pm]

THE COMMISSIONER: Yes.

MR CHEN: I call Annabelle Warren.

- 40 THE COMMISSIONER: What page of the exhibit is it? Sorry, there is an index here. Yes. Just take a seat there and just when you're ready I might get you to take an oath or an affirmation to give evidence.

MS WARREN: I'll have an oath, thank you.

THE COMMISSIONER: Thank you. Yes, very well. Thank you. If wouldn't mind standing.

THE COMMISSIONER: Yes, thank you. Just take a seat. Yes.

MR CHEN: Thank you. Would you tell the Commissioner your name?
---My name is Annabelle Romaine Warren.

10 And just by way of background, Ms Warren, you're the founder of Primary Communication, a multi-disciplinary communication consultancy which includes a team of government relations professionals?---Correct.

You are a former National President of the Public Relations Institute of Australia, were you not?---Yes. I was.

You were on the national board of that organisation from 2003 to 2009?
---Correct.

20 You held the role of national president between 2005 and 2007?---Correct.

You were the New South Wales president between 2003 and 2005.
---Correct.

And between 2008 and 2015, you were the PRIA National Chairman Registered Communication Consultancy Group.---Correct.

PRIA is the peak body for professional communicators in Australia, is it not?---That's correct.

30 And its membership includes a range of professionals, not simply third-party lobbyists.---That is right. We have in-house people who work for government, non-profits, employee communications, financial communications, and quite a number who work for, who are involved in lobbying, and we have about 15 members in New South Wales on the lobbyist register and many more in Victoria, the ACT, Western Australia, et cetera.

40 What are the approximate numbers at the present time of PRIA across Australia?---I understand, and I don't have the current figures, I understand it to be about 2,000 individuals on the PRIA membership, and we have over, approximately about 100 consultancies.

And what about across New South Wales? What proportion of the membership are in New South Wales, consultancy or otherwise?---About one-third of members, individuals, and probably about a half of the consultancies.

Are you able to be a bit more precise if you can about what approximate numbers in New South Wales would be, within the definition of the Act, third-party lobbyists or in government relations?---The third-party lobbyists, there are, I understand a month or two ago it was about a dozen, 12, New South Wales based consultancies who are on the New South Wales Register of Lobbyists, and there are also some of our members from Victoria and Queensland who are also members of the New South Wales Lobbyist Register.

10 Now, you have been, although you don't hold the position currently as chairperson of PRIA, either in the New South Wales or national role. You are authorised, are you, by the board to speak on their behalf?---Yes. The board saw the submission before it was put in. Allison is no longer the chair. She's had to step down for family, of the Communication Consultancies Group. But the full board, national board of the PRIA did see the submission before we put it into ICAC, and they are aware that I am representing them here today.

And they've authorised that, have they?---Yes.

20

And the submission by the Public Relations Institute of Australia is the one dated 12 June, 2019?---Correct.

And that's Exhibit 2, page 394, Commissioner.

THE COMMISSIONER: Page?

30 MR CHEN: 394. Now, Ms Warren, you wish to make a statement to cover a number of points and I'll invite you to do that now, but you obviously had access to and read the opening, did you not?---Yes, I did. Thank you.

And your comments are partly in the way of clarification or response, but partly a number of other topics that you wish to address now, is that right? ---That's correct.

THE COMMISSIONER: Could I just say, Ms Warren, I think you made a number of criticisms of the issues paper.---Yes, that was a separate submission.

40 That's a separate submission.---And that I did myself. Because I'm also enrolled as a student at ANU in lobbying.

That's right. That's right.---And so that's (not transcribable)

Yes, I just wanted to clarify that was an earlier submission.---Yes.

MR CHEN: I think that submission might be private or might have been marked private, Commissioner.---Yes.

THE COMMISSIONER: Oh, is it? Oh, I see.

MR CHEN: Yes.

THE COMMISSIONER: Okay. Very good. All right.

MR CHEN: I'm sorry, was it a private submission or made in a private capacity?---Both. I thought it might be more helpful if it was private.

10

I see. Let's just clarify the definition of private.---So that it's not a published, it's not to be published.

I understand. I understand. Yes.---But certainly made available to the Commission to inform the Commission and assist.

THE COMMISSIONER: Yes, well, thank you for making your views known, and that will be taken into account so that we can determine the accuracy of material that's in the issues paper and take that into account.

20

---Thank you. I really appreciate that.

Thank you.

MR CHEN: Did you want to start now, Ms Warren, by addressing or making the statement that you desired to make?---Okay. Thank you very much.

THE COMMISSIONER: You can do it either one of two ways. I mean the document will speak for itself, but insofar as the matters you want to raise in this public forum, you can, if you like, headline the principal matters that you want to reinforce that you've already put in writing. It's a matter for you.

30

THE WITNESS: Well, I have discussed this broadly with a number of members since putting in the submission, so there's probably about 14 or 15 different issues, I've got a little headline and a little bit to build it out which might help to inform the Commissioner.

THE COMMISSIONER: Certainly, if you'd like to deal with those headline issues, that's fine.

40

THE WITNESS: Okay. And ask me questions as we go along, I'm quite happy for that.

THE COMMISSIONER: Sure.

THE WITNESS: So on behalf of the PRIA I do really thank the ICAC for the opportunity to review the regulation of lobbying because it's an

absolutely crucial part of democracy. We seek fair and equitable access and it's important for all types of organisations across New South Wales, large and small, for profit, for community purpose or commercial. PRIA is the peak body for professional communicators in Australia and we advocate ethical communication, including lobbying, and we are very pleased that 10 years ago this discussion was started and there is now a code of ethics which applies to all people lobbying in New South Wales. And I'll talk more on that in a moment.

- 10 We do think that there are a number of areas for improvement and welcome the opportunity to discuss those with you today. Lobbying should increase the reach and efficacy while building trust, and we should look at proved systems of integrity, very positive transparency and provide equity and accessibility to all.

There's a requirement of ongoing disclosure for third parties which we would like to streamline and encourage. We'd also like to see a central third-party register so that all governments can easily access the information for third parties and who they represent. We do believe education is
20 absolutely essential and it is something that there has not been enough of for the different players in lobbying. And we do want to encourage reporting and have a culture where people welcome the ability to report and that it's evenly done across the sectors.

We also did suggest and welcome diaries and we do think that a monthly option would be positive, because that was introduced in Queensland in 2013 and New South Wales is introduced in 2014 is still quarterly.

- 30 So on behalf of the Public Relations Institute of Australia I've actually participated in four New South Wales lobbying reviews over the past 10 years since appearing at the initial 2010 ICAC hearing, and during this last decade or nine years to be accurate, there have been a number of significant changes. There have been strong curves introduced, a common code of practice for all people, ministerial diaries and also limits on donations. ICAC actually reported in the New South Wales Government review of 2017 that many of the initial ICAC 2010 recommendations have been explored and clearly addressed through mechanisms such as ministerial reporting and no exemption code of conduct. The majority of those that were not addressed actually apply to the very specific issue of local
40 government.

Just because one jurisdiction has a novel piece of law, it doesn't mean that that law is good. The impact of any law is the most important thing, and while we can sometimes feel that a new law would be great, this is very symbolic, and we really do urge people to look at the impact of laws and to also spend time making those laws that have been well thought through or those regulations and supporting them to become effective and widely spread to propagate wildly.

We do need further analysis on the issue of risk and public trust and I think that would further inform the Commission in its work. While developing new rules may provide satisfaction, some new rules can stymie legitimate and just activities, while at the same time leaving deep shadows unfettered. Too much change is frantic and it can also contribute to the erosion of trust. Red tape should not be allowed to diminish access to government engagement. Access needs to be increased and it needs to be supported. Greater consultation and ways to interact would be greatly appreciated by many organisations. Developing, improving regulations, improving legislation and providing greater access to government programs is a complex issue which involves politicians, government employees, and many Australians who really want to participate in processes and programs. We urge the ICAC to look forward and focus on two factors. One is risk. Who are the participants most likely to offend and to have the biggest impact? And efficacy. How do you improve and coordinate current systems and processes, not just create new ones? We are looking for positive change.

The Lobbying Act is just one segment of a holistic New South Wales preventative and detection system to preserve the integrity of New South Wales Government decision making. In the Federal Government alone there are I think eight or nine separate laws currently impacting government information and access to that information. It is a complex area. Please don't make it more complex. Please make it easy and simple to understand and use. That will improve the efficacy. I'd just like to take a moment as well to talk about the activity of lobbying. PRIA has many professional members working inside ministerial offices, that work inside government organisations, non-profit groups, Cancer Councils, corporations and consultancies. Some of those people do lobby government. Many of those other people are actually in government being lobbied. But unfortunately the term lobbying is often very loosely applied and quickly morphs into a discussion of third-party lobbyists.

Third-party lobbyists only participate in a tiny sliver of lobbying activity. We urge a lobbying review such as this to look at the activity of lobbying, not at a subgroup of participants. Professor Solomon, who is in University of Queensland and was the Integrity Commissioner in Queensland, said that, estimated that less than 20 per cent of all lobbying has any involvement from third-party lobbyists, so I guess we're talking 80 per cent of lobbying, the vast majority does not involve third-party lobbyists.

At the same time, lobbying always involves the members of parliament and government employees, so therefore parliament and the NSW Parliament, its committees and the Public Service Commission have key roles to oversee and manage ethics and the conduct of public officers, both those that are elected and employed.

Up to 50 per cent – we now talk about the external players. Up to 50 per cent of the biggest companies in New South Wales, the top 20 companies in New South Wales, do not use third-party lobbyists to approach government, and that’s from looking at the clients on the register. Two or three years ago I went through all of them and then I compared it to the (not transcribable) top 20 lists of companies in New South Wales. It must be noted that, going through these, at least 20 per cent of people that use third-party lobbyists are non-profits or they’re charities, and they rely on third-party consultants to help them access government, and that’s to help them to put together their submissions, to participate in reviews, not just to arrange meetings. There are many other things that you do when you are lobbying.

So small businesses, charities, non-profits often rely on third-party lobbyists. So it’s actually very important facility that is currently provided to many non-profit organisations. And the other group that does help non-profit organisations is industry associations. You might have the Council of Social Services who help with advocacy.

Now, lobbying is an activity, it’s not an employment status. It can’t be something that you only half do. For instance, some American states do regulate lobbyists who spend 50 per cent of their time talking to government and they don’t classify anybody who spends less of their time. So a CEO of a major media global conglomerate can go and meet with any minister and yet a public affairs officer for a charity, who spends all his time trying to get public programs and change research policy has to be registered because they’re a full-time employee working in government relations. But the impact that somebody who is operating a very large company and spends only five per cent of their time is, it could be much greater.

So it’s generally agreed that you can’t be half pregnant and, but we would also quite clearly say that you can’t just half lobby. You are either approaching government or you aren’t approaching government, once a year or once a week, and we really do urge everyone in New South Wales to work together to build a clear, consistent system that can be trusted, there are no loopholes. If you only work in something five per cent or only turn up once a year, you are not exempted from the same oversight and transparency as other players.

THE COMMISSIONER: Thank you, Ms Warren.---I’m not finished.

Oh, sorry, I thought you had.---Well, you asked a lot of questions.

I haven’t asked you very many at all so far. Sorry, I thought when you looked up I thought you were - - -?---I’m having a breath, sorry.

That’s all right. Take your time.

THE WITNESS: So it is, it is quite extensive and I know that representing the people who work full-time on the lobbying side, and doing that, so the, and there, quite a lot of issues were canvassed. So what does the lobbyist do, and I'm talking about people who are lobbyists if you don't, if you're careful about not talking about third-party only, that we, that people lobby to communicate and to achieve a new position, to make an improvement, what they really believe is an improvement and it's a two-way process. It can often be very complicated. Sometimes it can be very quick, in a week, and sometimes, if in the case you're dealing with health issues or
10 vaccinations, it might go on for decades.

First time government, people wanting to get access to, to meet with government might often start, "I want to see the premier." Well, if you talk to people who have got experience they might say, "Well, that's, there are ministers responsible or government officers responsible. This is how to present your case, this is how to, the options to present to be positive when you're working with government." Quite often you meet professional whingers and they and they complain a lot in lobbying but really positive people in lobbying are helping to explore options to, to make good things
20 happen, to make improvements.

So, and what is the difference between an in-house lobbyist and a third-party lobbyist, well they do exactly the same thing, it's just that the external lobbyist, the third-party lobbyist has multiple client organisations and they aren't monopolised by a single employer.

So who is corrupt? As recently as December, 2018, in the annual report, ICAC itself said, reported that it had not made a corrupt finding against a registered third-party lobbyist. It also further stated that the evidence
30 suggests public officials need to be most wary of individuals and, and organisations lobbying on their own behalf. The NSW Electoral Commission backed this up last month when they provided information that they had never put a third-party lobbyist on a watch list which they've been operating since around 2014.

There are indeed some companies which have been suspended for administrative failures such as not lodging reports on time. But they have not been suspended for misconduct, and I think it would be a great
40 improvement of the system if there could be a warning process. Most consultancies, third-party consultancies are not large businesses. Many of them have five, 10 maximum people, or they're two or three people within a group of 20 or 30 communication or other consultancies. So if somebody is on holidays, and there's a quarterly requirement or to report, then they can suddenly suspend every client from access. So a warning system would be helpful.

Two years ago, I conducted a meta-analysis which is just a, a look at the role of external people who were found to corruptly influence a public

official in New South Wales. This was part of my PhD work. The study – so I looked at all of the ICAC cases between January, 2009, and July, 2015. During that time, ICAC found around 181 people to be corrupt in New South Wales. Nearly half, 46.4 per cent, of corruption findings were made against businesspeople, and by far of the majority of people in business were the owners of those business or the directors of the companies. They were not middle-level people. They were owners or directors of those companies. Of, another 36.4 per cent of all people found to be corrupt by the ICAC during that period were government employees, and this also indicates where there are risk factors. There were also found to be seven New South Wales state politicians to be corrupt. That’s about six per cent. Not a single registered lobbyist, or anybody claiming to be a third-party lobbyist and wasn’t on the register, was found to be corrupt. This would indicate the focus of improvements could, should target the business community, the elected officials, and government staff.

Now, we’re not exempting third-party lobbyists from oversight, but we do have oversight now. The Electoral Commission, we have to be registered, we can be reported by any government officer or minister, and you can be onto the watchlist or, or suspended. That system clearly is, is not indicating that there’s a, a huge problem there. But there is a system that the, through ICAC itself, indicating that more work needs to be done to prevent corruption by working with business owners, business directors, and with government, elected and employed officers.

So if non-registered direct lobbyists – which are, according to Solomon, 80 per cent – we need to make sure, actually putting all of those 80 per cent who are not on the third-party register but are involved in lobbying, it would not be practical to have everybody there, and it can obscure things.

So what, why do we have the lobbyist register here in New South Wales? The New South Wales Lobbyist Register is unequivocal in purpose. It provides transparency of representation with a sliver of lobbying – well, up to 20 per cent, it’s a proportion – which is conducted by third-party representatives. Moves to piggyback and regulate the entire activity of lobbying through a register of representatives is backward thinking. And then trying to work out how to draw a boundary line between people who might be five per cent or 50 per cent is arbitrary and not useful, and it also doesn’t address risk factors identified where corruption has been found in the past.

Now, we have, the Public Relations Institute has long been urging, since 2010, that all third parties use the register to list their clients so that there’s very clear transparency about who you represent when you walk in the door of a minister. Now, when we made the submission in June we once again asked that all third parties be included, including accountants, lawyers, engineers, surveyors, investment bankers. Well, there was a brilliant moment last week, Mr Commissioner, when the NSW Electoral

Commission actually issued a media statement on 29 July, and I'm quite happy to offer up a copy of it.

THE COMMISSIONER: Yes, thank you, if you have a copy.

THE WITNESS: So, which is – and they have clarified the classification of who is a third party. Lobbying is the client of clients. This I think accurately, we, we believe accurately reflects the current legislation and it's, this interpretation by the NSW Electoral Commission that solicitors or
10 accountants will need to, if they are representing as a third party to government, and it says, "The Commission stresses that in order to comply with section 10(1)(d) of the Act, a third-party lobbyist must include on the register details of all entities that have retained the lobbyist directly or indirectly." "Having regard to the," and then it goes on, "Having regard to the nature of individual instances, this may include both the names of professional firms such as solicitors or accountants as well as their clients." So this is new and this is very positive. We welcome this.

20 Work does need to be done to recognise that third-party registration is a positive action and that it helps to identify the clients of groups dealing with government and that many of those groups, if they didn't have third-party lobbyists, would not be able to put together a case, a one-page brief and an argument and positive solutions that would actually mean that they have a good hearing at government and have the ability to put forward their case.

30 So now that we actually have lawyers and accountants and large industry business advisory firms who will also be on the register, listing the clients who they represent, I think that this could work to be a positive force for ministers who, there are certainly one or two ministers who refuse to meet with properly-registered lobbyists, this has always concerned us as it shows a preference to meet with people who aren't registered and perhaps not recorded. So if going through any of the diaries there are notes where one or two ministers have absolutely no meetings with registered consultants it does mean that they may be manipulating their meetings and we hope that working on a culture, as you mentioned earlier today, is very important, that transparency, and, and having a system where they're comfortable about disclosing a broad range of interests, not just those that align with their base or political areas.

40 So the NSW Electoral Commission currently is real time, their web updates are publicly available. It may be clunky to do some analysis and one or two other jurisdictions provide a more friendly database, but they have also been, we would like to mention that they have been very positive to register people quickly and this encourages people to register.

So the application of rules and ethics, New South Wales does do something that is very innovative, it does do something that is truly interesting, and that is that it applies a code of ethics to every single person that approaches

10 government. Now, if you ask a director, if you ask a CEO are they, do they know about the code of ethics when they talk to a government minister you will most often hear that they have never heard of them, and it wouldn't apply to us, it would only apply to third-party lobbyists. So I think a lot of work needs to be done in education and also for the ministers and for staff because there is also a very high churn of ministers and staff, so you can't do a one-off education when ministers and their staff are changing every one or two years or sometimes every three to six months. PRIA has 18 universities, four of them here in New South Wales, and is happy to work with government on that education.

Diaries are a big part of the discussion and they certainly could be improved by disclosing them every month, as they do elsewhere, but we would never endorse secret meetings. It is clear that there must be protocols and processes to record meetings and that the details should be available in a way which provides transparency and also facilitates a constructive, open and candid discussion about different issues.

20 Putting rules on one party that are not applied to another party is uneven and inequitable. It's also costly, burdensome and provides people with a chance to say we've done something by (not transcribable) this system when they're actually allowing, by, by putting that in place, you're not addressing the real issues. It has to be comprehensive. So PRIA strongly believes that the recording of meetings by all ministers is equitable and relatively simple to track interactions of government office holders with all people seeking, with everybody seeking to influence decisions.

30 The NSW Government made a very clear decision when they implemented the diary regime to manage the activity of lobbying, and that those be recorded through the office of the government representative. This means its consistent training processes and resources can be applied.

40 Within the diary recording system, there are clear protocols for protecting commercial in-confidence and other sensitive matters such as whistle-blowing, and there are already legislative requirements but if, it's better to I think work and improve those than just put another layer on top as some people like to suggest. It's a simplistic approach. The developing of culture (not transcribable) might be a little more difficult but it would have a great deal more effectiveness. We need to minimise red tape and we need to make sure that expert resources are easily available to organisations as and when needed and ensures that there's a consistent approach.

So members have provided examples of feedback in other jurisdictions where ministerial officers are required to actually log every single phone call that's made. Now, they're allowed to take phone calls from third-party lobbyists, but if you represent a business – say a bank – then you can make calls and adjust the time of meetings, but if you're a third-party lobbyist, every single time you make a phone call to adjust a meeting, the diary

secretary has to fill in a form, quite a comprehensive form, and this takes so much time that they start to refuse to talk to third-party lobbyists. And this means that if you've got, and in this particular incident, it might be in a state where not a lot of people have offices at all, and they come in (not transcribable) to talk about things such as education and other areas, but if, if the minister's officers say, "Please don't call us. We can't, we can't deal with the administrative burden of this trivia" and it's not going to improve the oversight. What happened when Barack Obama got into the White House, he's very, I think it was his first act was to declare that all contacts at the White House be logged, and there were about 3 million pieces of data that suddenly came through in Excel sheets, so you couldn't see who was meeting. So that was one thing. That actually meant this, this avalanche of data wasn't giving you information.

The other thing that happened is that people who wanted to have meetings, they went to coffee shops, and there was a very large growth in the coffee sector around the White House. Now, there is an academic paper on this and I have provided it to the Commission as background papers if anybody wants it. It was an academic research paper. So I think it's very, it's, it's, it's, it's, it is very interesting about the issue on transparency and there is actually quite a body of academic work as well on transparency and sometimes it is a good disinfectant, sunshine, but it can also be very detrimental and lead to stopping activities totally.

MR CHEN: Ms Warren, before you go on, it may be more convenient if I ask you questions on topics rather than come back at the end.---Yep. I'm nearly finished but you can do that.

I might just follow up some of the examples you have given just so we can understand the context of them. You reported that you'd received information that members in other jurisdictions that ministers' officers would not take phone calls because of the red tape. How many reports are we talking about?---Oh, I, I, I had one instance when, when we were discussing with people, people gave me that as an example.

And what's the jurisdiction that - - -?---It was Western Australia.

And what's the extent of disclosure, so far as you understand it, that is required of a diary keeper, I think that's the description, or something similar in a ministerial office, is required to complete in Western Australia when they are contacted by a third-party lobbyist?---Every telephone call, every email every conversation.

Well, an email will provide the record but let's - - -?---Yes, yes. But it doesn't mean that, that, even if you send an email, you might still have to fill in a form.

But what's, do you know the form? I'm just trying to the bottom of - - -?
---No, no. I don't know.

And do you know what information is required to be put in at all in any general terms?---I'd certainly, I'd be happy to talk to our colleagues in Western Australia and get you that information.

10 The other issue that you raised was some ministers refusing to speak to third-party lobbyists.---Correct.

But they were still prepared to discuss issues with business interest groups and I think you may have used the expression, that suggested or possibly was manipulating the system?---Avoiding the system.

20 Sorry, avoiding the system. One explanation might be, for refusing to meet a third-party lobbyist, obviously that they're busy and they have to pass the work on to somebody else, that would be one explanation, presumably?
---Ministers can decide who they meet but they can also issue directives to staff and to then also decide to do that, that they will not meet with the registered lobbyist or a person from any sector.

Is there anything – sorry. I think you reported, certainly through some of the members, that ministers have refused. Is it a widespread practice, is it a narrow practice? What's your understanding of this?---Probably a small proportion of ministers, three or four.

And in what time period are we talking about? Is it current, is it many years ago?---No, no, it's current.

30 THE COMMISSIONER: Has it been taken up with the government?---Yes but it is up to the minister to decide who they will talk to. So if they don't want to speak to people from, you know, an animal liberationist groups or they don't want to speak to mining groups or, they can decide who they wish to talk to and they can put their own rules in place. There is no requirement for that broad community consultation which is actually something that I think could benefit a lot of government.

40 But you said that this issue, ministers not speaking to third-party lobbyists, has been raised with government?---Yes. It has.

And when and how was that done?---That was done, it's done, it's been done, the last time I was aware of it was about three years ago, about the time of the (not transcribable), the regulatory, sorry, the review in 2017 and that was certainly raised in the official submissions then. It was raised with the NSW Electoral Commission in 2015 and it was raised in the 2014, it's been – because I have consistently raised it and they have been, so it's an ongoing issues.

And the response from government has been what?---Many ministers are terrific and they're very, they want to hear from diverse groups, they understand that many lobbyists, third-party lobbyists, represent groups which wouldn't represent themselves and need extra support. And so we have, most people I think have been very positive but there are still one, a couple - - -

10 Has there been any constructive responses, is all I'm asking, by government to these submissions?---There has been, there has been from a broad group, and I understand that chiefs of staff have also undergone education and discussions, so, with the NSW Electoral Commission. I think there are now modules of education that are provided.

20 So has this refusal to speak to third-party lobbyists improved over the last couple of years or so, two or three years?---I, I, I think it has, and I think it's, but it's when you go into a meeting, you are requesting a meeting usually through emails, confirming the diary notes, and there's some briefing papers and other materials, so it's usually a very transparent and open, and the minister can decide.

MR CHEN: Has there been any formal position taken by PRIA and any representations by letters or otherwise by PRIA to take up these three or four ministers that refuse to deal with third-party lobbyists?---It is, a lot of work has been done through these formal processes.

30 THE COMMISSIONER: Well, can you just answer that question, though, first.---Not, not with the individuals that I know. I think it's been relied upon to go through a government thing. It's not something to personally pick up. It's something that this is a system that is across the NSW Government. It is for transparency and we've asked the government to support and endorse that process.

MR CHEN: I'm just trying to understand. Has the peak body, who's identified concerns with access to three or four ministers, made representations – by letter or otherwise - raising this issue with government that three or four ministers are refusing to meet with third-party lobbyists or not?---Not in, not since the last risk - - -

40 So 2017?---Correct.

And in 2017 how was the communication or issue raised with government at that time?---It was through the review process.

Was it through somebody turning up and speaking through that process or was it through a submission?---It was a formal submission.

I see.---And then I'm not - - -

THE COMMISSIONER: Was it raised in that formal submission?---It was raised in the formal submission.

So if requested you could provide that?---Oh, absolutely. I think I – yes. I could - - -

MR CHEN: I'd like to just deal with the topic, if I can, of access, and unless there's something else you want to go on to, I'd like to complete that topic now if I could.---Sure.

10

Could we start with some of the basics, Ms Warren. How is it that a third-party lobbyist ordinarily would arrange for a meeting, say, with a minister? Is it through contacting the office directly or is it through some other means?---Well, in the same way that anybody would, would have contact. You ring the officer or make an appointment, send in a request.

20

And is there any particular criteria that's applied, so far as you're aware in your experience, for securing a meeting or not?---It's the case that you put forward. So usually in a meeting request, whether it's by telephone or by email, or, yeah, through participation in a submission or a committee process, and then there'll be a request for a meeting.

And is that the same process that's adopted by a third-party lobbyist to arrange a meeting with a senior public servant?---Yes, that's the same process.

30

Now, I think the thrust of what you were saying earlier – and certainly what's come out of the submission on behalf of PRIA – is the position was that the balance struck by what's disclosed in the New South Wales ministerial diaries was about right. Is that the position of the body or not? ---The use of the diaries is right. The disclosure, the amount of information that's in the diaries is actually at the discretion of the minister, and those ministers vary on how they disclose and what they put into them. So I couldn't come up with a blanket balance, and I haven't analysed it in that detail, so I can't give you a proper response on that.

40

I rather understood that the submission that PRIA had put, though, was that the current meeting records are a good balance of information on timing, participants and purpose.---The information that's, it's currently on three months. It could be helpful to be on monthly.

Sorry, we're at cross purposes.---Yeah.

I'm not talking about cycles or frequency of disclosure. I'm talking about content of disclosure.---The people, if you actually participate in a meeting and you're recorded, and the purpose of the meeting is there, that should be enough. There are as well other records that are, are available, and those records are also often quite public, like submissions or documents that

people put on their website, "We met the minister today," media releases that go out. There's quite a lot of public information that is, surrounds the meeting.

10 There's other information, documents, and it might be given to the minister's office, and they're, they're generally available under the GIPA process. And there would be a criteria under which they were decided if they were confidential because it was a whistleblower or because it was a privacy or legal concern, part of a due process, et cetera, and commercial interest.

So if a meeting is with a senior public servant, how would that access to information operate?---It would operate according to the New South Wales legislation.

20 Right, so a person who was interested in, say for example, contact made with, let's call them an in-house lobbyist and a senior public servant, that is, somebody beneath the status of a minister how would they first identify that there's been a meeting, and secondly, get access to the information?---That would be (not transcribable) to the record keeping of the New South Wales public service, and I'm, I'm not an expert in that area.

The other topic that I wanted to ask you about is the submission adopted by PRIA is that, to the extent there's any form of regulation or dealing with disclosure of meetings and interactions between a public official on one hand and those that seek to engage with them on the other, that obligation should be on the government official or the public official - - -?---Correct.

30 - - - and not on the third-party lobbyist in particular. Is that right?---Well, the third-party lobbyist or the representative for the Cancer Council or the CEO of BHP Billiton, oh, sorry, or the major mining company, all of them should have the same oversight, the same transparency. They're all lobbying government. And so the responsibility should be with the government and the government officeholder.

40 And part of that justification for adopting that position is you see that as more consistent with the obligations on the public official, firstly?---It's actually two, two or three things. Quite often, it actually comes back to being practical, and effective, and where the resources are. So, if you're a small organisation, but you might be seeking a big land use change or some such thing, might have a very big impact, you don't have the same resources, training, you're only, this is the first issue you've ever engaged government in, how are you going to know what the systems and the processes are? So, you need to have the same information. Now, government can provide the training. It can provide the databases, the systems, and the reporting. So it is properly done at a higher, at a, at a higher quality.

In relation to burden or cost to - - -?---Ah hmm.

And I'm just using the word or the definition of third-party lobbyist, but understand I'm seeking to cover every person who lobbies government in the sense we're describing.---Right.

10 What's the actual burden or cost in filling in a form? What are the difficulties and what's the cost?---Well, you might, if, if there's an issue that just comes up on education, they're going to close public schools in a certain area, some sort of big issue, you, there might be 20 or 30 phone calls made to find out who's working on the policy, where's it going to be, is there going to be a commission hearing, what's the review. And if you have to log every single one of those phone calls, that's not physically possible.

20 If you're, are you familiar with, say for example, any of the systems in Ireland or Scotland, or Canada, for example?---The last time I looked at them was 2014, 2015, and at that stage, the Scottish Government was looking at introducing some things but it hadn't. I have not looked at it in the last three years.

The Commission yesterday saw some material that identified what's required to be put on a register.---Ah hmm.

And that requires information such as who you are, who you were meeting, when you are meeting, and where you met them.---Ah hmm, ah hmm.

30 That's not difficult to complete, surely?---Well, that's what we call an appointment process. So it's very interesting that now, and it was a very positive step since 2010, is that if you're in an industry group, and I was standing next to one of our members or colleagues in an industry group the other day, they were filling out the appointment details for a ministerial meeting. And they're the same appointment details that anybody has.

THE COMMISSIONER: That might be so, but would you now answer the question?---So - - -

MR CHEN: There's no difficulty. I'm just trying to - - -?---So, so - - -

40 Just pause for a moment.---Yeah.

I'm just trying to examine this idea that on the one hand the obligation should be on the public official and examining for the benefit of the Commission whether the burden could be placed or should not be placed on those who lobby the government, and that's the issue I'm exploring, and I want to do it because I understand the submission that's put on behalf of the body you represent says it's burdensome and costly and I'm just trying to examine that. If there is an obligation upon a party that lobbies government to fill in a form, what are the burdens and what are the costs that you are

talking about that should, in any recommendation, put any obligation on the government as opposed to others?---So if you, if you're looking at the burden of participating in the third-party lobbyist register in New South Wales and you fill out a form, and you have to do it tri-annually, every, three times a year, not tri-annually, the, that is not a great burden just to put that data out there, that is not a real burden, but if you're talking about logging every single phone call that you make while you were prosecuting your case, talking to different people in different levels of government, then that is a huge burden.

10

THE COMMISSIONER: No, I don't think that's what's been put to you at all.---Well, that's - - -

Look, I think we might come back at 2 o'clock and have that question put and then we'll deal with it.---Sorry, yeah, okay.

I'll take the luncheon adjournment.

20 **LUNCHEON ADJOURNMENT**

[1.01pm]