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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

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AT SYDNEY

ON TUESDAY 6 AUGUST, 2019

AT 2.00PM

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THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Thank you, Commissioner. Ms Warren, where we got to just before lunchtime was I was asking you some questions, just dealing with this idea about whether or not the completion of forms, whether it be online or in some other way, was burdensome or costly, and to examine that issue a little bit. The first question I have is, it would not seem to be unduly burdensome or difficult to complete a form that contained information detailing the nature of contact, the date of contact, potentially the location of contact, and the general purpose of it. Would you agree or would you disagree with that?---I'd, I'd like you to be very clear about what you term contact as well, because - - -

THE COMMISSIONER: No, I think just do your best to answer that question, then we'll clear it up.

MR CHEN: I think what I've, I'll come to contact in the materiality and how we define that. But at the moment I'm just asking you, simply to complete a form requiring that kind of data input would not seem to be unduly burdensome or indeed costly. But if you have real-world experience to suggest the contrary, I'd invite you to say something about it.---Well, requiring somebody to record every contact and the nature of that is, can be burdensome if there are many contacts, and it would be, sometimes it would be like filling out a time sheet, and, and it does require quite a lot of administrative burden.

But just, let's leave frequency as a separate issue for the moment.---Correct.

And I appreciate that we have to look at this sequentially, and that's an important part of burden and cost, but the idea of completing that kind of information in fields on a form does not seem to be burdensome or costly, but do you agree or disagree with that proposition?---In my experience, organisations have a huge variety of admin systems - - -

THE COMMISSIONER: Oh, please, please, please, Madam.---So - - -

Please stop.---What - - -

Please.---Yep.

Stop. You may or may not be familiar with procedures of tribunals like this and courts.---No, I'm not, sir. No.

Procedure by way of question and answer format, as you can have already gathered, it is most important, occasionally I have to remind witnesses, to

listen to the question so they pick up the point of the question, then they respond by answering that point of the question. Now if you want to add something to the answer, then you can indicate that, but if that rule is not rigidly applied we could be here for many, many hours trying to get across a whole landscape of the area that you're dealing with. So if you would just bear that in mind, if you wouldn't mind, so that I don't have to keep interrupting you, amongst other reasons, so that we can get across this. You will not be denied the opportunity of adding to it if it's still responsive to the question. It's not an invitation to go speech making.---No.

10

But it is, you know, I think give us some credit for extending some fairness to witnesses but we do have to have rules. Okay, let's start again. This is the third time the question has been put now so just listen to it if you wouldn't mind.

MR CHEN: So I'm asking you to focus, Ms Warren, just upon the idea of completing a form to provide information and if the requirement to complete information, say online, dealing with the date of contact, who the contact was with, where it was and the purpose and what was discussed.

20

That does not impress as being unduly burdensome or indeed costly by any means, but do you agree or disagree with that proposition?---The, the, certainly reporting meetings is already currently required and is not burdensome. Okay, so if you seek a meeting with the government under the ethical standards that apply to all people in New South Wales. They must disclose to the officials before the meeting what is the nature of the matter to be discussed.

You're reading from the code of conduct at the moment?---I am.

30

That's okay.---It's excellent. And you were asking - - -

THE COMMISSIONER: Well, I'd ask you not to - please. Put that - - -? ---It's just - - -

No, no. Madam, please listen to me. Would you put that code of conduct right to one side for the moment.---I have.

40

And do not read it when you're answering your question unless you say, "I need to refer to a document," in which case I'll rule upon that. We're having a great struggle over this question. It's been asked three times now. I think you started answering it by saying reporting meetings is not burdensome. Now, is there some concise rider you want to add to that answer and if so, what is it?---The repetition of contact would, would, would significantly change the, the level of burden.

Okay, thank you.

MR CHEN: So frequency is a concern?---Correct.

And if the definition of contact is highly prescriptive and narrow, it may require, for example, on the evidence you gave before lunch, every time you contact a, a public official's office to require a form to be completed. That's the concern you have?---Correct.

10 But dealing with a general proposition, the idea that, for a substantive contact say with a public official, completing a form online with the detail that we've discussed is not unduly burdensome or costly, do you agree?---It, it currently happens when you're going to meet a minister. It currently happens and it's not, and it is applied to everybody externally. It's not burdensome.

Now, you had three additional points that I think you wanted to continue to read to the Commission as part of your statement and would you like to do that now?

20 THE WITNESS: Okay. All right. If that's – I think there, there are two, three other areas which have been canvassed. One of them is very, particularly short and it's also one that we have continued to seek to lower the burden across the states and territories, is that there are now eight state and federal territory registers, they all require the name of staff, they all require the identity of clients. This could clearly be centralised and all of the different state and federal and territory groups could access that and this would streamline the, that disclosure of who you represent. There may be other requirements in each state and territory that are established, particular for the requirements of those states and territories, but certainly a centralised database of third parties and the clients on whom they are representing to government would be helpful.

30 The other, another issue that's been discussed and was raised by the ICAC originally and then again this year is cooling-off periods and post-separation employment. The current legislation in New South Wales applies very appropriately to former ministers and former parliamentary secretaries. This imposes a responsibility that for 18 months after leaving their position they cannot engage in the lobbying of a government official in relation to an official matter that was dealt with by the former member, minister or parliamentary secretary. This applies whether or not they're going into a third-party consultancy, whether or not they're going onto a board of a
40 company, whether they're voluntary, whether they're paid. It is equitable, fair and well-known. The 18 months' timeframe equates with restraints of employment most often imposed across many jurisdictions in the Australian workplace. It allows new time for the minister, the new minister who's taken over, to firmly take control of the portfolio agenda in both body and spirit. Restricting employment of staff however, who are not the decision-makers, would not improve equity or fairness. Most likely it would incorrectly restrict employment opportunities for people. In fact these office staff are often paid fractions of the salaries of their ministers. They can

work in an office for a very short period of time, several months, and often termination can be as a result of a mere cabinet reshuffle or a much larger change of government, which has not been in their career plan. Members of parliament will continue to be employed but their former office staff are often unexpectedly on the streets looking for work and they were not paid the premiums to be out of work for longer periods of time.

THE COMMISSIONER: Could I just ask you to pause there for a moment.
---Yes, certainly.

10

What you're reading now, what do you say it goes to?---It goes - - -

What topic does it go to?---To post-separation employment, so employing -
- -

Well, it doesn't sound as though, with respect, a lot of that does go to the issue.---Ah hmm.

20

What's the point you want to make from the material you're now looking at or examining?---The material is - - -

Can you just encapsulate firstly, what's the proposition you wish to advance?---The current system that was adopted in 2014/2015 has been, is appropriate and it's well-known by employers, prospective employers.

And again, the system being?---Ministers and parliamentary secretaries have an 18-month non-exclusive period where if you were to leave your ministerial post I would not employ you as a third-party lobbyist.

30

Okay. Now, so - - -?---Or as a lobbyist, as a director you would not be able to contact ministers in that portfolio area again.

And what do you say is the secondary – sorry, I withdraw that.---Yes.

The revolving door principle as it applies or doesn't apply to senior public officials, that is appointed, not elected officials.---Public officials within the government departments?

40

Mmm.---And they're often people who - - -

What's your proposition about them, should they have a similar cooling-off period or not?---From my experience in workplace law I would usually expect somebody in a very senior position to have that.

No, no, I just want to know what you're saying, what's your contention, should they be regulated by the revolving door principle as it applies to ministers and parliamentary secretaries or not?---Senior department staff?

Are you saying it should or should not?---Potentially could. I'm not an expert in that area.

Okay.---But it could potentially be appropriate.

All right. Now, do you want to take this any further?

MR CHEN: No, I don't, Commissioner.

10 THE COMMISSIONER: All right. Thank you.

THE WITNESS: Is that all right?

THE COMMISSIONER: That's fine.---Okay.

I just wanted to clarify your position, that's all.---No, no, it's the junior staff I think that are the concern, that it's not spread.

20 Okay. I understand your concern.---Yeah. Another issue - - -

No, just I'm sorry, just wait for the next question.

MR CHEN: I want to go back to one - - -?---Sure.

Or deal with one other topic, but I wanted the witness to finish just in case there was others that arose, and perhaps she can more conveniently do that now, Commissioner, just finish.

30 THE COMMISSIONER: Yes, yes, by all means.

THE WITNESS: Yep. Okay.

MR CHEN: I think she's dealt with two of the three topics.

THE COMMISSIONER: I'm sorry, you dealt with two of the three, I'm sorry, there's a third?---The cooling-off periods I've done. Gifts and donations was another issue that was raised.

40 And what would you like to say about that?

THE WITNESS: There are very clear rules for gift limits when you are dealing with members of parliament and with people that are employed by government, very, very clear, and they vary, but they, but you know when you're dealing with them. And that's very appropriate, there may need to be some further education work on that, but not particularly a requirement for further regulation, greater exposure and understanding would be helpful. The donations are very, are clearly omitted for both individuals and organisations in New South Wales, and this is a very positive, clear thing.

An issue that's not yet been resolved in New South Wales or in Australia is the funding of political elections. And this also goes to pay for access, which is the situation where you might have a \$10,000 dinner for 10 people in a private home, and it's called political fundraising. There's no disclosure of participants in those meetings. There's no records. And that is an issue which was not resolved by the Schott, Tink, Watkins review. It was canvassed, but I think it's still an open issue for, for the government to grapple with.

- 10 We main, we remain concerned that at times these are closed-door meetings that involve large amounts of money. And they're not available to, they're not, there's no equity and parity. People who are in smaller organisations or don't happen to be in those social circles don't have access to ministers and offices of the government within that environment, and that is a concern.

We really look for simplicity and clarity, which is consistent for everybody. This increases trust. Not, it's the loopholes that really drive trust down, and undermine community belief in our government.

- 20 The other, one of the other issues is the communication profession is very concerned about the contraction of the news media and the ascendancy of the star commentariat, and the impact of 24/7 social media. This can contribute to the polarisation of debate into black and white. When we're talking about large government issues, there are many people involved and many different views and discourse should be encouraged with analysis and exploring options and coming up with new ideas. And that's why I think that the community consultation issues that you've raised is very positive and I think could do with some more work from the NSW Government to have a, systems that encourage more people to be involved, and to have equitable access, because we not, there are some large businesses and they do have in-house people who can interact with government, but it's the, it's the broad organisations, not-for-profits, mid-size organisations, occasional people, they need to have access.
- 30

- THE COMMISSIONER: Have you formulated any ideas as to how community consultation can be advanced by government?---There are, many of us in communication, we've done community consultations and there's open government processes and (not transcribable). There is more community consultation process in NSW Government laid out in say, property, that area for development approvals, sometimes it's very managed. But there is no requirement on ministers in other portfolios or, or government, people in other portfolios to seek a broad range of views.
- 40

And do you think they should?---I think they absolutely should. And there should be a greater understanding that people will have different points of view, and it is sometimes different for a minister to come up with a final decision. But having more input is very positive, and it will create trust. It, and it's really important, it does not happen. They don't say, have you

actually met with those people. When you're building a case for government, if you can bring a, a good, strong community coalition and show a broad thinking and review, then that gives people a lot of credibility and confidence and – but it is not something that automatically happens in government.

Thank you.

10 MR CHEN: Ms Warren, does PRIA hold any concerns that if there is any further regulation of lobbying, such as requiring the recording of lobbying contact, that that would have a negative effect on lobbying engagements?
---The, it's absolutely shown by the Obama type of research and by the transparency research that some processes will drive people to go underground or to avoid systems and reporting and that is our very large concern. It should be consistent and it has to be, if you're looking at lobbying, you've got to again look at where has there been the risk and so is it businesspeople, is it directors, is it the government people themselves, are we regulating them and are we encouraging a positive culture and positive ethics and that is the most important thing. So it is, we would, we very
20 much discourage gratuitous regulation. It's got to be positive and supportive regulation for a robust and discursive government.

Does PRIA hold a concern that it would drive, any further regulation, that it would drive the lobbying activities underground, say?---A system that's easy to use and, and clear does support it. So if it's not easy to use, if it's cumbersome, if you have to fill in a form every time you make a phone call, it will drive, it will either drive it underground or people will stop using it and then you will minimise the number of people who are actually accessing government and that is, would be very troublesome indeed.

30 Commissioner, I don't have any further questions.

THE COMMISSIONER: That's it

MR CHEN: That's it, thank you.

THE COMMISSIONER: All right. Now, did you finish reading everything you wanted to read to the Commission?---I, I think, I then we are open to any further conversations and consultation. I'll provide some of those
40 papers and documents on diaries and, and other areas and I'm happy to have further discussions as required.

Yes. Thank you for that. As you're probably aware, we're conducting this public inquiry in two separate sections. The second will resume in October but in the meantime there will be some face to face consultation with stakeholders and the like so there may be a further opportunity for you if you wish to engage further.---Thank you. Thank you very much.

Thank you very much for coming.---It's very important, thank you.

Thank you. Thanks for coming today and for your contributions.---Thank you. Thank you very much.

THE WITNESS EXCUSED

[2.22pm]

10 MR CHEN: Commissioner, I call Professor Mark Evans.

THE COMMISSIONER: Professor, just take a seat. Do you take an oath or an affirmation?

MR EVANS: What was that, sorry?

THE COMMISSIONER: An oath or an affirmation? Do you want to be sworn on the Bible?

20 MR EVANS: That's fine.

THE COMMISSIONER: Yes. Thank you. If you just remain standing my associate will administer that.

THE COMMISSIONER: Thank you, Professor. Just take a seat there and – yes, thank you.

MR CHEN: Thank you, Commissioner. Would you tell the Commissioner your full name, please?---Mark Griffith Evans.

10 Professor Evans, you are the Director of Democracy 2025 at the Museum of Australian Democracy, are you not?---Yes.

And you've also held that role since about October of 2018?---Yes.

Democracy 2025 is an initiative of the Museum of Australian Democracy and the Institute for Governance and Policy Analysis at the University of Canberra, is it not?---Yes.

20 And you also are the Director of the Institute for Governance and Policy Analysis at the University of Canberra?---No. I left that role to be Director of Democracy 2025.

I see. Democracy 2025 is a collaborative project engaging in research, policy creation and education around the issues of democracy and governance, is it not?---Yes.

30 And the Museum of Australian Democracy is in fact a Commonwealth corporate entity, isn't it, Professor?---It's semi-independent, but it, but it is responsible now to the Department of Prime Minister and Cabinet, so we have a minister which is Ben Morton which is the Junior Minister to the Prime Minister.

Your research and work is in the field of democratic governance?---Yes.

And you hold a PhD in Government from the University of Strathclyde? ---Yes.

And that was conferred in 1994?---Yeah.

40 Professor, you were a co-author of a report called Trust and Democracy in Australia: Decline and Renewal, which was published in December of 2018.---Yes.

And that is one of a number of reports that have been prepared, another, or report number 2 is described as Bridging the Trust Divide: Lessons from International Experience. Is that right?---Yes.

Commissioner, I tender reports number 1 and number 2 from Democracy 2025 co-authored by Professor Evans.

THE COMMISSIONER: Yes, that will become Exhibit 4.

MR CHEN: Thank you.

THE COMMISSIONER: Sorry, you're tendering two separate reports, are you?

10

MR CHEN: I am, Commissioner.

THE COMMISSIONER: Yes. The first, Exhibit 4, is Trust and Democracy in Australia, report number 1.

**#EXH-04 – GERRY STOKER, MARK EVANS AND MAX HALUPKA
'TRUST AND DEMOCRACY IN AUSTRALIA, DEMOCRATIC
DECLINE AND RENEWAL', REPORT NO.1 DEMOCRACY 2025
2018**

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THE COMMISSIONER: And the second is report number 2, entitled Bridging the Trust Divide. That's exhibits 4 and 5 respectively in that order.

**#EXH-05 – GERRY STOKER, MARK EVANS AND MAX
HALUPKA, 'BRIDGING THE TRUST DIVIDE, LESSONS FROM
INTERNATIONAL EXPERIENCE' REPORT NO.2 DEMOCRACY
2025 2018**

30

MR CHEN: There was also a third report, report number 3 called Co-design and Deliberative Engagement: What Works? Is that right?
---Yes.

And that wasn't authored by you, it was authored by Nicole Moore, was it not?---Yeah. Nicole's doing a PhD with me within the Democracy 2025 initiative. She's also a senior practitioner working for the ACT Government on community engagement.

40

Did you have a role in the preparation of that report?---Yes.

I see. And what was your role in the preparation of that report?---Well, essentially one of the key issues that has emerged from the first report is the view that we need a new style of engagement with citizens in Australia, and I'm an expert basically on public participation, so I'm Nicole's supervisor, I

generated some of the research, some of the research that's reported in there is research that we did for the Council of Europe around the development of the CLEAR model which is now used by all city governments, so it's a model that allows you to evaluate the quality of public participation at a city level.

Thank you. Commissioner, I will tender report number 3 then if I can from Democracy 2025.

10 THE COMMISSIONER: Yes. Report number 3 will become Exhibit 6.

#EXH-06 – NICOLE MOORE, 'CO-DESIGN AND DELIBERATIVE ENGAGEMENT, WHAT WORKS?' REPORT NO.3 DEMOCRACY 2025 2018

20 MR CHEN: Professor, report number 1, which will be the focus I think of much of your evidence today, the basic object of that report was to present findings on the relationship between trust in the political system and attitudes towards democracy. Is that a fair summation of it?---Yes.

I wanted to ask you some questions around the topic of decline in public trust and confidence in government decision-making. When you talk about trust, what's embraced by that concept?---Well, our operational definition is taken from a seminal definition that's provided by the American political scientist, Marc Hetherington, and he defines political trust as keeping promises and agreements, but that's also in line with the OECD definition which is holding a positive perception about the action of an individual or an organisation. Now, we started with that definition and we used that to basically determine the nature of our survey design. But this wasn't just a national survey, we conduct focus groups, an ongoing process, so we also wanted to know what trust means to everyday Australians. And that was actually very much in line with the Hetherington definition, but it had three dimensions. So we asked them what do they view to be the key characteristics of a trustworthy politician, and we used that as a way in to gain a sense about what they understood as trust. And they identified integrity, linked to someone that's open and honest, empathy, somebody who cares about the issues that they care about, and delivery, which is somebody who follows up. So there's overlapping dimensions there, because obviously the argument basically is, is, is that if you're an, you, if you have integrity, you're not going to break promises, right, so you are going to follow up. Or if, or if you do need to change the course of action, right, you communicate with your community to explain why. And we find that one of the major problems in terms of the way the relationship between the government and citizen has developed in recent times is that trust is largely a failure of communication.

Is public trust closely tied to democratic satisfaction?---Yes. So the argument basically is that, from the secondary literature, is that more, the more satisfied you are with your democracy, right, the more likely you are to participate in your democracy, and behave in a way that is compatible with the dominant norms and values of that democracy.

Now, part of your research, which is referred to in report 1, sought to measure public trust. Is that right?---Mmm. Yes.

10 And you conducted a number of surveys, and particular, I think you called them survey or focus groups. But was the conclusion ultimately you reached that there was established a decline in public trust?---Yes. I mean, luckily in Australia we have time series data that we can draw upon, from the Australian election study. So we're, we're able to identify that over the last 10 years, we've had a decade of decline. So, satisfaction in democracy has basically, well, well, has halved over, over the last decade. So if I can refer to this to give you the exact figures - - -

20 THE COMMISSIONER: Yes, certainly.---So, yeah, so, basically it's, it's declined from 86 per cent in 2007 under John Howard to 41 per cent in July, 2018, under Malcolm Turnbull.

Now, sorry, what's the index? What's the measurement?---The measurement is how much - - -

What are we, sorry, what are we measuring, yes.---Yeah, we're measuring how much citizens are satisfied with their democratic arrangements. All right, so, so we ask citizens directly, how satisfied are you with your democratic arrangements?

30 And is this applying only federally or does it embrace state government or what?---This, this is a national survey that was delivered by Ipsos MORI using a representative sample of the Australian public, with all the bells and whistles in terms of a robust quantitative survey. And that's a, that's a question that's asked internationally as well as domestically, so you can compare how Australia sits in relation to similar democracies at a similar state of development.

40 MR CHEN: And part of what else is being drawn or some of the specific findings or narratives that you've drawn from the surveys - - -?---Mmm.

- - - and research that has been undertaken was that trust in political institutions and actors itself is low.---Yes.

And also that there's been a loss in the integrity of the system and the political institutions with it. Is that right?---Yes. So when we asked Australians about the standards of honesty and integrity of, of politicians, 90

per cent had a negative view of the standards, and more than 60 per cent believed that the honesty and integrity of politicians is very low.

So negative perceptions were dominating, is that fair to say?---Very, very low. Yeah.

10 And how have you been able to measure the decline, other than through the surveys from, I think you've described, 2007 to 2018?---Well, that's, the, the key instrument is the time series data on the fact that that question's been asked consistently across a long period of time. However, you're absolutely right to suggest that there's a need to drill down in more detail, and that's why we do the focus groups. So almost every single month we, so last week I was in Griffith, for example. We're also commissioned by the Department of Prime Minister and Cabinet to look at citizens' trust in services. So we had three focus groups in Griffith where we asked them questions about their ideal politician, about their experiences in receiving particular services, about whether their experiences impacted on their views of government more generally or whether they were able to disentangle their views of politicians from the views the public services that they received.

20 Because one of the key propositions that emerges in this literature is that citizens tend to see government, they can't really deconstruct, for example, perceptions of the Australian public service from different levels of government, from politicians, they just see government, right. So what was important for us was to try and actually attempt to deconstruct so we could identify whether, is this a real problem with politicians or is this a problem with the services people are receiving so that we could think about the applied questions in terms of how we improve the quality of our democratic practice.

30 THE COMMISSIONER: Can I ask you, what's the ultimate objective of doing studies like this? What use is it going to be put to and by whom and to what end?---So the reason why Democracy 2025 was established that our data demonstrated that if current trends continue, no more than 10 per cent of Australians with trust their government and politicians. So by 2025 there is potentially a doomsday scenario there for, for Australian democracy.

40 Seems like we're well under way from what you've said about your results. ---Well, absolutely. But at the same time, if you look at – this is first time we've been in this situation, as you know. So a lot of people sort of refer to the, sort of, leadership spill effects. We've had a lot of leadership spill effects right the way through the history of the Australian nation state. There are some qualitatively different elements to this period, because obviously we've had 20 years of economic growth. So as you're aware, this, this is a global problem, but tends to be more acute in those countries that have suffered the worst excesses of the global financial crisis. We've not had that. So there is something quote idiosyncratic happening in Australia but at the same time, what we would argue is that Australia is an incredibly successful democratic project. It has historically had adaptive

capacity. We just feel that this is, this is a period where we need to drive a national conversation on where we need to renew and strengthen our democratic practice to get back on course.

Well, I think that's what I was getting at when I said what's the purpose - - - ?---And that's the purpose.

10 - - - and ultimate value that comes from a study like this. So why are these studies being done? What's the end gain?---The end gain is to strengthen the nature of democratic practice in Australia.

And how do you do that?---So the next report - - -

20 Armed with the report, how do you do it?---So the, so the second report basically is on international evidence about best practice. We have a democracy lab, we design, for example, different forms of citizen engagement. A month ago, we conducted a jury for the Australian public service. So the Secretaries Board of the Australian public service nominated delegates from all the departments and agencies to go to a deliberative process and asked the question, "Well, what can the APS do to help bridge the trust divide," right, and we fed the outcomes of that jury into the APS review process. We also run a whole range of post-graduate programs on improving the quality of policy making for different government departments, for the APS senior executive service. So our work is, is about showcasing better practice. It's basically about facilitating conversations across the trust divide to create the space for more collaborative problem solving because actually, when it comes down to it, a lot of this is about moving away from a siloed approach to decision-making to more collaborative, inclusive decision-making and governance.

30 I might just stop there for the moment and we might just return to the line of questioning that was - - -

MR CHEN: Ultimately you proffer solutions to restore public confidence and integrity in government, is that right?---Yes.

40 You may have touched upon this but I'll quickly ask you to just expand upon it. You've identified in the research you've undertaken a deepening trust divide, is that right?---Yes.

And are you able to provide a simple explanation of what's caused or undermined political trust?---Yes. Sorry, I'll just refer to my notes. So if you look at the international evidence and the domestic evidence that addresses the question "Well, why does this matter?" because we have to remember that actually distrust is also a fundamental element of a liberal democratic system. So it's about the balance between distrust and trust. The reason why we have organisations like this, for example, is it plays a fundamental role in terms of effects and checks and balances within our

system, and it is based upon an element of distrust. But the issue basically is that there needs to be a good equilibrium between trust and distrust for a democratic system to function effectively, and the argument is that in recent times the evidence seems to be suggesting that our democratic culture has changed quite significantly and we're starting to reach a tipping point in which it's impacting on the quality of democratic practice in the following ways. So first of all, distrust is leading to more risk-averse, short-termist government. So, for example, if we look at the last four out of five prime ministers of Australia, we can't obviously factor Morrison into this because it's too early, none of them have got their big-ticket items up when in government, right? They failed to win the war of ideas with Australian communities about their vision for the future. In many, so just in policy terms, we've been in policy limbo on some of the big public policy questions of our time, and whether we're talking about combating social exclusion, whether we're talking about climate, whether we're talking about foreign policy and the problem of looking east and west, some of the big, fundamental public policy problems of our time are not being focused on. Why? Because politicians are risk-averse. They're risk-averse because they're worried about carrying the Australian people with them, all right, because they don't - - -

THE COMMISSIONER: Sorry, they're worried about what?---They're worried about carrying the Australian people with them. So we're not seeing courageous leadership, right? We're basically seeing what J.K. Galbraith called the culture of contentment. So they're purely worried about staying in power rather than actually addressing the big, fundamental problems that we need to address for Australia to retain its place in the world. So a lot, so we ask a lot of questions about what are you confident in government doing for you, right. And essentially Australians don't trust Federal Government to fix any of their big problems apart from national security. So on national security issues the government comes out strongly. Even on the economy, despite the fact that we've had 20 years of economic growth, the majority of people think even in economic management terms governments aren't, aren't fixing the big economic problems. So there's definitely a relationship between declining trust and confidence in governments, and this leads to more short-termist, reactionary approach to public policy. Another dimension of this that is important is that we live in a time where social cohesion is more important than ever before, not least because of the War on Terror but also because of the way in which increasingly immigrants are scapegoated by certain sections of our population for all the ills of globalisation, right?

I'm sorry to interrupt your train of thought. I hope I don't throw you off your train of thought, but I think you identified in effect the lack of performance or failure to deliver by prime ministers or politicians. Are there any other major factors that account for this decline in the trust in the political system? And if you could just perhaps dot point them or list them and then we can come back and discuss (not transcribable).---Well, trust is

even more important in a federated political system, right? So the federated nature of decision-making requires greater levels of trust between the parties involved. Also at the same time as we've seen declining trust, political trust, we are also seeing declining social trust, okay. So for the first time, the biggest survey of social trust in Australia is called the HILDA Survey, came out, the latest tranche came out a couple of weeks back. Social trust is now at the lowest levels since that survey's been carried out.

10 And how do you define social trust?---So social trust in HILDA is defined by how integrated an individual is in terms of their community, how comfortable they are with their neighbours and their degree of participation in their community. So however, I also have to say there that when you ask who are the most social distrusting people in Australia, they tend to be the richest people in Australia, according to the survey results, which are interesting.

Just pause there for a moment. Back to you.

20 MR CHEN: Can I move on to, Professor, now, just a separate topic, a follow-on topic, which is what are the consequences of a decline in public trust.---Yeah.

30 Are you able just to point out what some of the consequences are when there's an absence of trust?---Well, as I said, short-termism in terms of policy-making, inability of governments to grapple the big problems. There's a view within the institutions of global governance that Australia's reputation and role within those institutions has declined in recent times. So at a time when liberal democracy is under attack within our region, the argument is that Australia should be the key champion of liberal democracy in our region, but it's unable to play that role because of problems that are occurring in our political system. Obviously there's also the view that there's a relationship between declining political trust and civic engagement, so people are less likely to participate, less likely to engage as a consequence, tend to be more apathetic, however that does depend on the engagement strategies that are used by governmental organisations.

40 So, Professor, what then do you promote as being a way to address the decline?---Well, our fundamental observation is that there is no one single way of addressing this problem. It's a multi-dimensional problem. So again if you look at the evidence in this area, you can see that there are both supply and demand side theories of the trust decline. The demand side theories focus on why it is that individual citizens are more or less trusting, and those theories tend to focus on various social, economic and political barriers to participation, right. So a lot of the prescriptions therefore focus on the way in which you can remove those barriers to social, economic and political participation. So social inclusion, programs of various kinds, public participation initiatives, labour market strategies to integrate people better into the, into the, into the workplace, the introduction of bespoke

services to support vulnerable groups out of poverty, so there's a whole raft of sort of social, economic and political interventions. There's also interventions in the political realm that are about greater representation for marginalised groups through our political system.

10 And what about enhancing integrity of a government?---So that's on the supply side. So supply side theories basically say that this is basically about the performance of government and perceptions of performance of government, right, and the performance of government is understood a number of ways, of which integrity is, is a key dimension. So in other words, how politicians go about performing their roles and their duties. So the integrity, transparency, accountability, and I would add to that public value dimensions, because there's, so the public value is basically the view that anybody in receipt of public money or officiating in a public role has a duty to deliver social or economic dividends for the Australian citizenry. Every, the *raison d'être* of a, of a public service is to deliver public value for Australian citizens, right? So it's not just about creating transparent, open systems. It's not just about ensuring that public officials behave with integrity. It's also about ensuring that people are motivated by public
20 service and live and breathe the values of public service. So, so, so a lot of the supply-side stuff, prescriptions focus on, on those sorts of things, and then they also focus on improving three, the three roles of politicians, three fundamental roles of politicians. The community linkage role, which is their ability to represent the interests of our communities. The governance role, which is basically about more inclusivity in policy making and public service delivery. And then the integrity role, which is basically the value system that informs the behaviour of a politician. So, yeah, so there's a, there's a whole raft of prescriptions that emerge from those observations about supply and demand side problems.

30 I want to ask you some questions, just moving to a slightly different topic now, Professor Evans, which is really, as part of your academic studies, you were supervised by Anthony King, were you not?---Yes.

And Anthony King was a member of the Nolan Committee in the 1990s in the United Kingdom, is that right?---Yes.

40 And he had a role, did he, in preparing the Nolan Principles?---Yes, absolutely. I mean, the folklore goes that he wrote the Nolan Principles on the back of an envelope on the way to the first committee session, and they have now become the most endorsed standards for public life around the world.

And behaviour in public life, and regulating behaviour in public life, is that right?---Yeah, what, what they do is they articulate a vision about the types of behaviours that we should expect from, from public officials, whether they're in the highest or the lowest offices.

Where do these principles sit with other mechanisms for regulating behaviour, such as codes of conduct and matters of that kind?---Well, basically they need to be operationalised, so the OECD integrity frameworks emerged as a, as a way of actually implementing those principles in, in practice. But of course, as you know, you know, you can have the most wonderfully succinct and inspiring set of principles. You can have a list of the type of operational policy instruments that you need to realise those principles, but fundamentally this is a behavioural challenge, it's about changing people's behaviour. So unfortunately, despite the fact that we had – I should say that I worked on the implementation of the constitutional reform program under New Labour, under, under Tony Blair. I've written several books on constitutional change. And again, you know, you can have wonderful codes of conducts, wonderful monitoring and implementation systems, but that didn't stop the expenses scandal in, in the Commons and the Lords, right? So the Fitzgerald Inquiry, which was really important, of course, in terms of anti-corruption in Queensland, didn't stop Nuttall, you know? The wonderful inquiries you've done, right, I mean, that's because anti-corruption is an ongoing struggle. We all know that. Because this is a behavioural challenge. So the key question, really, in terms of the implementation of any change in this area is what are the behaviours you're trying to model, right, and how can you win hearts and minds to ensure that these become default norms and practices. And that's always been the big challenge in terms of integrity reform. You know, the world over it's been the, the big challenge.

There's obviously a regulatory dimension to it, but there's an educational dimension as well, is that the position?---Yeah, there's an educational dimension, but also there's a behavioural insights dimension. In New South Wales, you have a, a wonderful new organisation with the behavioural economics team that use behavioural insights. And the role of, oh, the, this is kind of the new way of doing policymaking, which is, if you're trying to change the behaviour of your target group, you need to work directly with that target group. So I'll give you an example of that. So in 1999, I worked on the design of an anti-benefit fraud program in the UK, and we brought fraudsters into the co-design process. They co-designed the – who are the best people to ask about corruption? Those people who have committed corruption. Right? So a lot of, behavioural insights isn't just about that. It's about basically ensuring that you have the right expertise, right, to, to make policy that bites, that has traction, that it's sustainable in the long term. And what the evidence does, and so a book that I, I produced two years ago called Evidence-based Policymaking with Social Sciences makes this argument very strongly, that the most sustainable public policy systems are those that have been developed inclusively with target groups.

THE COMMISSIONER: Sorry, with?---With target groups. So for example, if you're designing – so I'll, I'll give you an example that I was involved in two years ago. The Federal Government produced a national framework on getting home safely from work, which was a response to the

increasing number of fatalities on construction sites. So I facilitated, so, and every certain territory had to develop their own implementation framework. So in the ACT, I was commissioned to bring together all the key stakeholders, from trade unions to the key construction companies in, in the ACT, to design an implementation process. All right. Why? Because they, they had the expertise about what goes on, on construction sites, not, not me, or even the ACT Government. Right? So, so the notion basically is that you have to harness the best expertise to get the solutions to these problems and to ensure that the, the changes are sustainable in the long term, because they're the key agents of change. Another classic example, the Murray-Darling Basin plan. Beautiful in terms of evidence-based policymaking. Now, most scientists from different epistemological positions would agree with the key propositions within the plan. Some would go a little bit further. Why hasn't it, why hasn't it been successful? Failure to win the hearts and minds of basin communities, who are the key agents of change. They're the ones who are implementing the changes. Yeah? And until there's a co-design approach to the implementation of that plan, we won't get the outcomes that we need to achieve in terms of sustainable development in, in Australia. Just pardon me for a moment.

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From what you say, there are a number of drivers which can affect trust. You have spoken about the supply and demand issues, performance issues. But included in regaining trust, if you like, must also be the integrity principle, and that these are not mere words by government about integrity, but action. So if you're talking about behavioural change, as I would understand it, behavioural change has got to come from the top, so that, for example, in terms of enhancing integrity, you've got to demonstrate that, and then inculcate and encourage at other levels, you know, the values or standards that count. Isn't that right?---Actually it's, it's, I absolutely accept everything that you say, but it's almost more simple than that. It's about having the same expectation in terms of the modernisation of workplaces in parliament that we have in our own workplaces. So I'll give, one little example of that, we all have to do performance review, don't we? Right?

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Yes.---In almost every single organisation, you have to do some sort of performance appraisal or review. Politicians don't. You know, they would say, "Well, we have elections," right, but actually that doesn't allow us to judge the individual performance of, of politicians. Politicians are allowed to get away with all sorts of forms of unacceptable behaviour that you would not get away with in any contemporary workplace, in terms of bullying, in terms of harassment. I mean, I don't need to go through the empirical evidence on this because I'm sure everybody's aware, aware of it. But one of, a lot of this is really about strengthening existing democratic practices. A lot of the, the, the so-called reforms that I've talked about, right, aren't particularly inhibitive, are they, or new. Right, a lot of it is about just strengthening existing practices and ensuring that our public sector, our parliaments are informed by the same contemporary working practices that actually inform the work, the work of most Australians.

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I understand the point you make but we've heard evidence here today on this question of loss of trust in government and government institutions, that amongst the principal causes is said to be perception developed in the community that, for example, politicians "look after themselves," that's the perception, and it's said that this has driven a loss of faith or a loss of trust in the system, that the perception, rightly or wrongly, that's taken hold in the community is that politicians are more interested in looking after that group of society, namely themselves, than the rest. Now, that's of course the perception.---That's the perception.

And that keeps coming up in certain of the surveys, whether it's truthful or not of course is an entirely different – and of course there would be politicians who are exemplary politicians and who don't fall into that category. But if it's all, if it's largely about perception, then don't you have to look at ways and means of changing that perception and then the question is, "Well how do you do that?" So of, for example, you had a government that proclaimed from the outset that it is concerned, essentially, with developing systems that benefit in society, not so much those who can look after themselves but those at the bottom of the pile and perhaps those in the middle who struggle to do everything they have to do to raise a family and so on, and it's tough these days economically. So isn't it a question for government to determine (A) things can't stay as they are and (B) leadership from the government level of a new order reflecting appropriate standards is now to begin? Now, firstly would you agree un general terms with that sentiment?---Yes.

The next question is, how would a government turn things around and do that?---So we do a lot of work with politicians in which we ask them these, these questions.

I'm sure they're very eager to get the answers out of you but what, the question is how would you start contemplating a new order where values are put up the top of the list of issues with which a government is concerned? ---So, you're asking me what is the strategy for change?

Yes. To change the perception that they all are there "to look after themselves"?---Yes. Okay, so there's, in terms of the, the reform work that we focussed on, so when we asked Australian citizens what reform, reform do they want to see and we asked politicians about what reforms they want see, there are some common observations, right, and these for me are the starting point for a national conversation, right. So one common observation is that politicians are not performing their community linkage role, right, as well as they may have done in the past. I mean, that's difficult to measure but certainly - - -

Could I interrupt you there?---Yes.

I appreciate that, and that's part of the problem.---Yes.

What I'm looking at is the solution.---Yes, so - - -

What I'm saying is, just in general terms, not so much what conversations you have to do your research work and so on, but what is it that would be required to be necessary to stop this slide in trust, public trust, to turn it around.---This is what I mean, it - - -

- 10 In other words, what I'm saying is, just if you're able to, if you can't just say so, what is the factor, what's the silver bullet if you like, that would enable a government to take a completely different approach to that which has gone up till now, and say, we're going to do something different, we are going to shine a light which will indicate we are going to be different from any other previous state government, for example, talking about New South Wales now, what would be the approach in your view in terms of the behavioural pathway that such a government would set out on?---All I can do is draw, draw upon my experience of changed processes historically, and we do have a very good example in the United Kingdom, although it's
- 20 experiencing a lot of problems now. In 1991 Charter 88 established a constitutional convention where it brought together all parties, business groups, community sector organisations, basically to debate whether Britain's unwritten constitution was still sustainable as a way of understanding British government. And from that process, Charter 88 developed 10 demands for the reform of the British constitution and these reforms were ultimately up by New Labour and they led under Tony Blair and they led to the creation of the Scottish Parliament, the Wales Assembly, a bill of rights, Freedom of Information Act, a Supreme Court, but not a
- 30 written constitution. The only key reforms that didn't get up that emerged within that process of deliberation was a written constitution and the introduction of proportional representation for the House of Commons. From the standpoint of history, that will be viewed to be a very radical period of constitutional change. It emerged as a consequence of a critique of centralisation under the Thatcher Government that we'd seen increasing centralisation occurring, the erosion of civil liberties, the British Government had been taken to the ICCPR on more, more times than Iraq, right, because of the war in Northern Ireland. There was deep, deep distrust of the political class, right. And it started basically as, well, I mean Charter 88 was a movement that brought together politicians from across the
- 40 different political spectrums, people like Ian McEwan, the novelist, Ben Okri won the Booker Prize actually in the middle of the launch of Charter 88, trade union leaders, it was a cross-societal proclamation that the British constitution was broken and that we needed a more devolved decentralised political settlement, right. Now, I have to say this. So when I went to do my PhD with Tony King, literally three years before this, I was introduced to him for the first time and he said, "Oh, you're doing the," so I did my PhD on constitutional change in Britain, constitutional crisis and change, and he said, "Oh, I'd love it to happen, but it will never happen, Mark. It

will never happen, so this is just going to be a pressure group study.” Right. Within five years we had parliaments, assemblies, Human Rights Act, Freedom of Information Act, et cetera. Now, the very fact that the UK is going through what it’s going through at the moment tells us another thing, that democratic renewal is an ongoing process. So what I’m saying is that we need to have that type of movement for change, cross-sectoral, based upon the observation that we want to leave the best possible democracy behind for our children to inherit. This isn’t about politics. This is about having, living in the best possible democracy that we can live in, because at the moment we’re falling behind. The evidence demonstrates that we’re falling behind. So, for me, that’s, that’s the clarion call. It’s not a political clarion call because I would say this as well, political parties are fundamental to our democracy, the health of political parties are fundamental to our democracy, but we’ve got to effect the behavioural change and we have to have more collaborative problem solving.

All right. Thank you very much indeed for that, Professor.

MR CHEN: Commissioner, they were the questions for Professor Evans.

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THE COMMISSIONER: That’s it? Professor, thank you very much for your attendance here today.---Thanks. It’s a pleasure.

We greatly value your contribution.---Thank you very much for asking me.

Thank you. You’re excused.

30 **THE WITNESS EXCUSED** **[3.10pm]**

THE COMMISSIONER: Yes.

MR CHEN: That’s it for today, Commissioner.

THE COMMISSIONER: Right. Very well, then I’ll adjourn.

MR CHEN: Thank you.

40 **AT 3.11PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[3.11pm]