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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

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AT SYDNEY

ON WEDNESDAY 7 AUGUST, 2019

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

THE COMMISSIONER: Yes, Ms Curtin.

MS CURTIN: Commissioner, I call Dr Yee-Fui Ng.

THE COMMISSIONER: Yes, thank you. Thank you, Doctor, if you wouldn't mind coming forward. For the purpose of giving evidence, we'll ask you to either take an oath or an affirmation.

MS NG: I'll take an affirmation.

10

THE COMMISSIONER: Affirmation, thank you. If you wouldn't mind, stand and – stay standing and my associate will administer that.

THE COMMISSIONER: Thank you, Just take a seat there and if you need access to any of your papers just take your time. Yes.

MS CURTIN: Dr Ng, could you tell the Commission your full name?
---Yee-Fui Ng.

10 And you're currently a Senior Lecturer in Law at Monash University, is that right?---Yes, I am.

You've conducted some research into the areas of political integrity and the law and the interaction between public law and politics?---Yes, that's right.

You have a particular interest, Dr Ng, in the influences on the contemporary executive, such as ministerial advisers, the media and lobby groups, is that right?---Yep, that's right.

20 In addition to lecturing at Monash University, you've researched and taught at the Australian National University and RMIT university?---Yes, that's right.

And you've authored and co-authored several academic tests in this area?
---Yes.

You've also co-authored a discussion paper with Professor Tham, Enhancing the Democratic Role of Direct Lobbying in New South Wales, which was published by the Commission for this inquiry, is that right?
30 ---Yes, that's right. So that was in 2014 when the Electoral and Lobbying Legislation Amendment (Electoral Commissioner) Act was coming in. So we were commissioned by the NSW Electoral Commission, who were the new regulators of the lobbying scheme, to write a report.

Sorry, that was the report entitled Regulating Direct Lobbying in New South Wales for Integrity and Fairness, is that right?---Yes, that's right. Yeah, that's the one.

So that was the first paper that you co-authored with Professor Tham?
40 ---Yes, that's right.

And then the second one that you co-authored with Professor Tham is the one that was discussion paper for this inquiry?---Yes, that's right.

Commissioner, it might be appropriate to tender that discussion paper now.

THE COMMISSIONER: Yes, thank you. Yes, the discussion paper, Enhancing the Democratic Role of Direct Lobbying in New South Wales, April 2019, will be admitted and marked as Exhibit 7.

10 **#EXH-07 – DR YEE-FUI NG AND JOO-CHEONG THAM,
ENHANCING THE DEMOCRATIC ROLE OF DIRECT LOBBYING
IN NEW SOUTH WALES, A DISCUSSION PAPER PREPARED FOR
THE NEW SOUTH WALES INDEPENDENT COMMISSION
AGAINST CORRUPTION APRIL 2019**

MS CURTIN: Professor Pham is a professor at Melbourne Law School, is that right?---Yep, that's right.

Dr Ng, you were previously a policy adviser at the Department of Prime Minister and Cabinet?---Yes, I was.

20 And you were also a senior legal adviser at the Victorian Department of Premier and Cabinet?---Yes, that's right.

You practice as a solicitor?---Yes.

And you were awarded a PhD from Monash University in 2015?---Yes.

And you've got Bachelors of Commerce and Law from the University of Melbourne?---Yes, that's right.

30 Dr Ng, I understand you prepared a short written statement for today?
---Yes.

Would you like to give that now?---Yeah, sure.

40 THE WITNESS: First of all, I would like to acknowledge that lobbying is a vital part of our democracy and the ability to make representations to our elected representatives is essential to a healthy and well-functioning democracy. However, it is also clear that lobbying can lead to corrupt conduct by both lobbyists and government officials, as has been brought to light by various ICAC investigations.

And beyond this narrow notion of quid pro quo corruption, where a payment is made directly in exchange for an official act, the need to regulate lobbying stems from an issue of fairness and there's a concern about regulatory capture, where the government is granting preferential access and influence to certain groups who are better resourced and are able to hire all these well-connected lobbyists to advance their own narrow agendas. And this leads to the danger that government officials will decide issues not on their merits or the desires of their constituencies, but according to the wishes

of certain vested interests, what the High Court in McCloy called clientelism. And this may also skew government decision-making and policy making towards these narrow sectional interests, away from the broader public interest, and this skewing of government decision-making in turn corrodes the quality and integrity of our democracy. And therefore the regulation of lobbying has to balance between the freedom of individuals and corporations to lobby government officials against this undue influence and corruption risk of powerful and well-funded vested interests who are able to mobilise these resources and connections to further their own
10 personal agenda at the expense of public interest.

Lobbying regulation has to be based on certain core principles, transparency, integrity, fairness, freedom and enforcement. In our current system there is a secrecy and lack of transparency about who is lobbying government and what policies and positions they are seeking to influence.

THE COMMISSIONER: Just slow down the pace just a little.---Yeah, sure.

If that's all right. Yes, thank you.
20

THE WITNESS: There is also a broader concern about fairness that all groups in society should have a level playing field in terms of access and influence in government policy-making and decision-making rather than certain vested groups having a larger voice by hiring lobbyists with the right connections. This in turn affects the integrity of government decision-making and policy-making. Improving the regulation of lobbying through enhancing its transparency, fairness and integrity will help rebuild trust in our political and democratic institutions. The New South Wales system is more advanced than many other jurisdictions in Australia but there is still
30 room for improvement based on international best practice. Thank you for the opportunity to present in this inquiry and I'm happy to take any questions or discuss further.

Yes, thank you for that.

MS CURTIN: Dr Ng, you've talked about some key principles that you consider to be important when we're having this discussion.---Sure.

And those were transparency, integrity, fairness and freedom, and in your
40 opening statement you've said that it's when there's a departure from these principles that risks are posed to democracy by direct lobbying.---Yes.

One of the principles you mentioned was that of transparency and you touched on the question of secrecy, the departure from transparency if you like. The word secrecy implies or can imply something which is deliberately covert but this is not what we're always talking about, is it? There are different forms of secrecy when we're talking about lobbying and the risk of lobbying. Is that right?---Yeah, that's right. Yeah. It's also what

is not out in the public domain so it doesn't mean it's necessarily ill-intentioned, it's just that the public doesn't know. And I guess there's a few key purposes in regulating lobbying. The first is the narrower purpose of preventing quid pro quo corruption, and you can see the regulatory approaches for that which is the most, well, to prevent corruption the regulatory approach is to ban certain activities that are most likely to lead to corrupt behaviour, so such as banning success fees by lobbyists, banning paid advocacy by members of parliament, and this is because members of parliament have this scarce resource, they have the ability to ask
10 parliamentary questions, and if you allow people or lobbyists to pay for that kind of access that is monopolising this scarce resource. So certain things that are likely to lead to corruption, banning is an appropriate response. For, for issues of fairness I think transparency is the right regulatory approach that is requiring further disclosures. So, so you are quite right that transparency is a very important virtue in lobbying and that goes to the idea of fairness and levelling the playing field for all of the different groups that are involved, whether it's a well-funded business lobby or a community group.

20 So one of the other principles that you talked about was that of integrity.
---Yes.

And a concern that one has when we talk about a departure from that principle is that the corruption or misconduct risk is heightened, and you've indicated in your discussion paper a number of risks that can eventuate when the financial interests of government officials are implicated in the process of lobbying. Could you perhaps touch on what are the likely instances of this occurring that you've identified? You mentioned, for example, political donations.---Yes.

30 That would be one.---Yeah. So if lobbyists donate a lot of money to political parties that might sway them to decide issues not just on the merits of the case but because they have a benefactor, and this goes against that broader backdrop where membership of political parties is declining. There's also revenue is more and more becoming political donations, and when you have a political party or government that is captured, so to speak, by lobbyists that pay a lot of moneys to their coffers, I think that's a very big integrity issue.

40 Another risk factor that you've identified is around the question of post-separation employment.---Yeah.

Could you elaborate on that?---Sure. So research has increasingly found that there is a revolving door between politicians and ministerial advisors and senior public servants, between them and the lobby groups, so there's a lucrative career waiting for them at the end of their political or public service career, and this regulation of post-separation employment is meant to reduce that risk by imposing a certain cooling-off period or a post-

separation ban. And the reason why we have this ban is threefold. The first is to prevent that risk that lobby group might say to a minister, oh, I'll give you a comfortable job after you leave politics on a lot of money if you decide certain matters in my favour now while you are in power, so there is a corruption risk there, and that justifies banning for a certain period, and the other risk is also to the idea of fairness that, that these well-funded lobbyists who have the good connections that former government officials can sway the former underlings more easily, the idea of fairness and access, and finally there's also the risk of, of the possession and use of confidential information. So if the minister or public servant has possession of certain confidential information, like contracts will be awarded to a certain party, they might be able to use that in their favour if the separation period is too short. For instance, in Canada there is a five-year post-separation period, in New South Wales it's just limited to ministers and MPs, it doesn't go far enough, it doesn't include ministerial advisors and it doesn't include senior public servants. So it's a bit out of step with some parts of Australia such as the Commonwealth, and also out of step with Canada in terms of the period of time. It's 18 months in New South Wales compared to five years in Canada.

20

Yes. So what you're talking about is the relationships that develop between government officials and lobbyists.---Yeah.

I'd like you to perhaps to explain to the Commission if you can what you see are the risks about or developing in relation to those relationships that exist between government officials and lobbyists.---I guess there's the risk that things will be decided based on a pat on the back or a favour or because I know this person, I like this person, rather than the merits of the broader policies that are at play. So if a person is persuaded by someone they like they might go down the path of, of agreeing to certain proposals that might go against the public interest, so that's the risk here that policy is decided not on the basis of true merit but on the basis of vested interest that are using all these connections to try to persuade government officials to decide things a certain way that benefits them or their employer.

30

So there's a risk that government is run on the currency of relationships?
---Yeah, that's right.

And that has an impact on the question of integrity of the decision-making process.---Yeah, that's right.

40

And also an impact on fairness in government decision-making. Is that right?---Yeah, that's right.

So one of the things that you identify is the need to, if you like, create an equal or level playing field in government policy and decision-making.
---Yeah, that's right.

Dr Ng, I'd like to turn now to the question of the current system that we have in place in New South Wales. There's currently the Lobbying Act of course.---Yeah.

And then there's the regulation.---Yeah.

And then there are a number of other ways in which lobbying is regulated. Could you perhaps just run us through the system as it currently exists?
---Yeah, sure. Currently New South Wales there is a Register of Third-party Lobbyists, so that covers just third-party lobbyists, which is about 20
10 per cent of the lobbying population. So for instance that doesn't cover in-house lobbyists or peak groups or industry bodies or community groups, so the register as it stands is very narrowly formulated, and that, that is a lot narrower than countries such as Canada and the United States where both third-party and in-house lobbyists are covered. And in New South Wales all lobbyists are subject to a code of conduct, so this includes both third-party and in-house lobbyists. So what we have is a mismatch between who's covered in the code of conduct compared to the lobbyist register and there's
20 not a strong justification for that. In addition, ministers are obliged to disclose their diaries quarterly, and another jurisdiction in Australia that does that is Queensland as well, where the obligation to disclose ministerial diaries is monthly, so there's more regular disclosure in Queensland. And in New South Wales there's no requirement to disclose lobbying activity, so how many times has this lobbyist approached all these government officials, there's no data on that, as opposed to Queensland and Canada where that does happen, each lobbying contact is disclosed. So there's a bit less transparency in New South Wales compared to certain jurisdictions on that front. And as we discussed before, in New South Wales there's also an 18-
30 month post-separation ban that just covers ministers and parliamentary secretaries, but not ministerial advisors and senior public servants. So, and that falls short as well in terms of coverage because it doesn't cover ministerial advisors and public servants like Canada does for instance, and the Commonwealth also covers ministerial advisors and senior public servants. So those are the key features of the New South Wales system and briefly how that compares with other jurisdictions.

Thank you. So the Act creates the register of lobbyists.---Yeah.

And that's maintained by the NSW Electoral Commission?---Yep, that's
40 right. So the current regulators, the NSW Electoral Commission, and they do have some coercive powers. For instance, under the Electoral Funding Act they have the power to compel documents, so they do have certain powers under the Act, and under the LOBO Act, the Lobbying of Government Officials Act, they have the power to impose a fine if there's a breach of the post-separation employment prohibition there.

Yes. And what's the level of currency required for the register, how often are lobbyists required to update their details for example?---I believe it's one in three months, like three-monthly periods.

Right.---Three or four-monthly periods was it?

It's quarterly I think.---Quarterly, yeah. My maths is terrible, sorry, yeah.

10 And you touched also on the offence that's created in connection with post-separation employment.---Yeah.

And there's also the offence related to success?---Yeah, the ban on success fees as well.

20 And can you just elaborate on that?---Yeah, so success fees are where a lobbyist will only get payment if they are successful, so that's more likely to sway a lobbyist to engage in certain conduct that might amount to corrupt conduct to receive the payment. So I think there is a good justification of banning success fees because that is likely to lead to or possibly might lead to that notion of quid pro quo corruption. So in certain instances where quid pro quo corruption is a risk, I think banning is an appropriate response. Success fees is one of those areas.

And you also touched upon the post-separation employment ban.---Yeah.

30 Could you tell the Commission how that's enforced and what the level of oversight is for that particular offence?---Sure. The NSW Electoral Commission would enforce that. I guess across Australia the enforcement of post-separation bans has been dismal, minimal and part of the reason, so at the Commonwealth level the post-separation ban is just in the ministerial standards, and what the Prime Minister does is to refer the matter to the secretary of their Department, and the secretary says everything is fine and no worries, everyone goes up and takes their lucrative jobs. So what we see across Australia is that there are rules but they are not enforced, and this could stem from the fact that in some jurisdictions the body that enforces it is not sufficiently independent from government, so the Prime Minister's department for instance is not sufficiently independent from the core executive. What we see in Canada is a stronger regime because the regulator there is the Commissioner of Lobbying, a body specifically set up to regulate lobbying, and they take a more serious view to the regulatory scheme and they have their independence because they are an officer of parliament so they report to parliament not the executive. So what we see in 40 Australia is poor enforcement, and part of it might lie with where the regulation sits. So another approach that's taken in the United Kingdom is to have an independent body to advise on business appointments post-parliament. So this independent body is one mechanism where you can try to get a bit more independence in the system, and that independent body publishes their advice online so you can look online and see, okay, this is

what they said about this particular person, this particular MP and this particular appointment and that's the advice that we've given them verbatim. Another system that we see is in the US where the dates of the bans for each public official is published online. So they are banned until February 2025. So you can see if they've actually breached the ban. So there's a lot more disclosure, a lot more publicity in other jurisdictions and a lot more information that's put out there.

10 Yes. Is there any provision under the New South Wales legislation that enables investigation and enforcement?---It says that the NSW Electoral Commission has all of the powers in the Electoral Funding Act so they do have that, those coercive powers of compelling documents, and so far that is taken from the Electoral Funding Act and the LOBO Act reinforces that notion that the NSW Electoral Commission does have the enforcement power.

20 But the situation is, in your view, that that's not occurring?---I haven't looked specifically at New South Wales so I can't comment directly, but just the Grattan Institute has published a list of all these people who have breached the post-separation ban in their report Who's in the Room, so you can see that there is weak enforcement. I couldn't comment directly just on New South Wales, though.

30 And what about the offering of gifts by a lobbyist, is there provisions regulating that under the Act or elsewhere?---So there's no provision that this allows it and that, I think that is something that could be a corruption risk as well. If you give a generous gift worth hundreds of thousands of dollars – let's just have a fanciful example – that would certainly sway a government official. So I think that because of that risk of quid pro quo corruption gifts should be banned. So public officials should be banned from receiving gifts, lobbyists should be banned from giving gifts and that is consistent with the situation in the United States as well.

40 THE COMMISSIONER: But generally speaking, a practice of gift giving to public officials, whatever the value of the gift, can be seen, as it were, developing a relationship, I won't say greasing the wheels, but it just helps to establish a relationship and that sometimes people dealing with government come in with an expectation that if they don't give some sort of gift it might work against them.---Yeah. So you might argue that in certain countries gift giving is the norm and not taking the gifts is seen as an offence. In that circumstance, so at the Commonwealth level there's disclosure of gifts and the gifts will be given to the department to administer. So for instance in the Prime Minister's department there's a statue of a bear given by Arnold Schwarzenegger when he was governor. So there are ways of dealing with gifts, including disclosure and also handing it back to the public service for instance.

Apart from - - ?---So not personally benefitting from the gift.

Apart from perhaps making an exception for countries where it is a custom or practice as a matter of courtesy, it's been said in some of the literature that the safest and best policy is a no-gifts policy because then everyone understands that the official's not expecting any form of gift and therefore they don't need trouble themselves about do I or don't I make a gift.---Yeah, I agree, yeah.

It's a safer policy in one view of it anyway.---Yeah.

10

Just simply have a no-gifts policy, full stop.---Yeah, I agree with that. I support the ban on gifts, receiving gifts and by the government officials and lobbyists as well giving gifts, so I would support the prohibition say in the Lobbyists Code of Conduct that they should not give gifts to government officials and a reciprocal obligation on public officials in their own code of conduct or statement of standards that they do not receive gifts.

Thank you.

20

MS CURTIN: Dr Ng, you mentioned that the NSW Electoral Commission has the power to investigate alleged breaches and impose sanctions.---Yes.

With respect to the Register of Lobbyists, of Third-party Lobbyists - - -?
---Yeah.

30

- - - what are the possible sanctions that can be applied by the NSW Electoral Commission?---Sure. The NSW Electoral Commissioner has a few different possibilities in terms of breach of registration requirements. They can de-register, they can warn the lobbyist, and they can put the lobbyist on the watch list as well, and when the lobbyist is put on the watch list they can be subject to additional meeting protocols, so for instance requiring additional government officials to be in the room for meetings. So there are a range of different sanction as you like under the register, and that is a broader range than other jurisdictions in Australia, so that is, the particular leader watch list is quite a unique innovation, because it's that naming and shaming kind of idea. In Canada and the US there's stiffer penalties in terms of monetary fines and gaol terms as well. Not that I'm saying we should throw all the lobbyists in gaol, but that's a possibility in Canada and the US, but I doubt that will be enforced. There was one

40 instance in the US when it was enforced, the case of Abramoff, where the lobbyist had misled all these native Indian tribes, overcharged them and counter-lobbied against them secretly, so he was thrown in gaol, but that's a very extreme example.

So you've – sorry, Commissioner.

THE COMMISSIONER: Sorry. Could you reminds me, under the regulation what forms of conduct or breach can see a third-party lobbyist

put on the watch list, do you recall?---So for instance failing, failing to register doesn't really, yeah, failing to update their details, they might be put on the watch list for a brief period, but if they are, it is just a compliance issue they'll come back into line so they'll be taken off again. So we haven't seen many terrible actions by lobbyists that have led them to be on the watch list permanently, what we've seen is just that failing to update their details quarterly, that sort of low-level enforcement issues.

10 Do you know, you may not know, but do you know whether it's ever been used in a case where dishonesty has been established for example in a lobbyist and they're either deregistered or put on the watch list?---Not that I'm aware of, but that being said, the scheme is still very new, it was only put in place in 2014, so we've only had it operating for five years. So not that I know of that there's been a dishonest lobbyist that has been deregistered.

MS CURTIN: Thank you, Commissioner. Dr Ng, you've mentioned that one possible consequence of being placed on the watch list is that stricter meeting protocols apply to the third-party lobbyist in question. Are there
20 any other consequences that can apply?---Well, that's the main one in terms of lobbying activity. Obviously having your name on the watch list that is public and on the NSW Electoral Commission website is a deterrent. So you wouldn't want to be named and shamed in public so that's I guess the secondary function of having a watch list.

Dr Ng, a little earlier you mentioned that another measure of regulation is the internal regulation that is the Premier's Memoranda.---Yeah.

30 Could you explain what details are required to be published on the ministers' diaries?---Sure. So in terms of the ministers' diaries they have to disclose every quarter just who they've met with and very briefly the subject matter. So what we've seen in New South Wales is sometimes very short sentences or a couple of words about what they are meeting for and that might not provide the quality of information that we might like. So having diary disclosures is a very good thing, proactive diary disclosures. It enables the public to seek who the ministers are meeting with. That doesn't cover meetings with ministerial advisers and senior public servants who all wield a lot of power in, in terms of policy-making and decision-making. So we are getting information about who the ministers are meeting with but not
40 ministerial advisers and chiefs of staff. In terms of diaries of chiefs of staff, there is a case called the Office of the Premier v Herald and Weekly Times which state that diaries of chiefs of staff are accessible via freedom of information but, but that took a couple of appeals until the Court of Appeal said yes, this is an official document of the minister and therefore it should be released on FOI. So there's a possibility of getting diaries of senior ministerial staff, such as chief of staff's, by FOI but that involves fighting with the Department. They'll fight you tooth and nail. They'll, you know, they will try to exclude certain things. So having a proactive disclosure

scheme rather than relying on FOI processes where the Department would like to hide everything, I think it's a very strong advance on what we have had before.

So in your view there's utility and in fact it would be desirable to have the publication of diaries by ministerial staff?---Yes, I think so, especially the senior ones such as chiefs of staff and senior public servants as well.

10 And what about the current frequency of publication of the diaries? You've mentioned that it's quarterly.---Yeah.

In your view should it be more frequent than that?---I think so. In Queensland the disclosure is monthly and I think that provides a better window by which we can see okay, there's been lobbying on this topic, say mining, in the last month and then the other groups can mobilise and go okay, we have to approach government officials with our own views as well. Quarterly might not be the right window by which you can try to affect policy change so, yeah, I advocate for monthly. So the Department of Premier and Cabinet in New South Wales has looked into that quarterly
20 diary disclosure and they conclude that quarterly is fine. Everything is great. We are administering it so that's okay for us and we don't want to go to monthly. So they have deliberately made that decision.

And what about members of parliament? They're not currently required to disclose their diaries.---Yeah, quite right.

Would you see that as being an area of reform?---Yeah, quite possibly because when you look at the Canadian literature, members of parliament are actually one of the biggest groups that are approached by lobbyists. So
30 that is one thing that's not covered as well by our lobbying scheme in New South Wales. It covers public officials such as ministers, ministerial advisers and public servants but it doesn't cover members of parliament. And in Canada and the US they do cover MPs and it's, in the Canadian literature we can see that MPs, particularly if they're on certain parliamentary committees or they hold the balance of powers, they are the targets of lobbyists as well. So there is merit I think in extending the lobbying regulation to them as well.

The ministers' diaries are currently administered by the Department of
40 Premier and Cabinet in terms of their publication. Is that right?---Yep, yep, that's right.

Are you able to comment on the functionality of the data that is disclosed on that website?---If it is not extremely functional, it's not functional. Okay. So it's disclosed in PDF format which means that it's hard for a civil society, organisation or journalist to dig up the information because it's not in a searchable accessible format, so, and each minister's diary is disclosed in a quarterly chunk, so if you want to look through for certain issues you

have to go to each diary entry individually and try to work out whether the minister's met with a certain lobby group on a certain topic, say diabetes, and it's difficult to work it out, unless you've got a lot of time and a lot of money, which not everyone does.

Yes.---I wish I did.

10 Well, we might come back to that when we have a look at the regimes that apply in other jurisdictions.---Yeah, sure. Yeah, happy to.

Just before we leave the topic of regulation generally, there's also the codes of conduct that apply.---Yeah.

There's a Ministerial Code of Conduct?---Yep.

And a Parliamentary Code of Conduct?---Yep, that's right.

20 Are you able to comment briefly on the content of those codes?---Yes. So ministers and MPs are obliged to comply with the Lobbying Act based, yeah, so that's quite a brief, so the ministers' and MPs' code of conduct are standards of ethical behaviour that they have to, well, should abide by, but they are not really enforceable documents, so you couldn't go to court and say this minister has breached clause 8 for instance.

THE COMMISSIONER: That may be the case in a court, but no so here. ---Oh, yes. So serious breaches of the ministerial code can be investigated by ICAC, which I think is a very positive development, so thank you for that.

30 So, yes, you're referring to the provision, I think it's clause 4 in the New South Wales Ministerial Code of Conduct, provides that a minister must not knowingly breach the schedules of the New South Wales Ministerial Code of Conduct. Accordingly a substantial breach of the schedule is, if done knowingly, a substantial breach of the New South Wales Ministerial Code of Conduct, and the New South Wales Ministerial Code of Conduct is adopted by the code for the purpose of section 9 of the Independent Commission Against Corruption Act.---Yes.

40 And that the code also applies to parliamentary secretaries.---Yeah.

So we might explore a little later the circumstances in which lobbying conduct involving a minister of the Crown could fall within the jurisdiction of this Commission.---Yeah, that's an interesting question.

We'll come back to that.---Yeah.

MS CURTIN: Well, I was planning, Commissioner, to look at other regulatory systems now. So at this point, Dr Ng, I thought it might be

useful to consider the question of lobbyist registers in other jurisdictions and also what data is published in a similar form or in terms of the content of data to the ministerial diaries.---Yep, sure.

10 I understand that Queensland has a disclosure regime that applies. In your view, the lobbyist register that's in place in Queensland, would you say that it's more comprehensive than New South Wales?---Yes, it is, and that's because in Queensland they, the lobbyists disclose details of each lobbying contact that they make. So let's say lobbyist A met with five different ministers seven times, each of those contacts are logged and disclosed publicly. So that is a more comprehensive disclosure regime that we, than the New South Wales one, where once you register and update your details, that's it, you don't disclose how many times you've met with certain government officials and what the subject matter of that is. So, yeah, once the lobbyist is on the register, and only a certain subsection of lobbyists register, we don't know anything else beyond that. So the Queensland system is certainly more comprehensive. In New South Wales we get that through the disclosure of ministerial diaries, but as I said, it doesn't disclose interactions with people who are not ministers who are MPs or public
20 servants or ministerial advisors.

THE COMMISSIONER: In practice the diaries don't tell us much about what a meeting with a minister was about.---Quite right. So - - -

30 In terms of the Queensland regulation, as you've said, requires disclosure of detail as to each contact made and each is logged and disclosed, while the ministerial diaries, as I understand it, don't perform that function.---I guess they perform it to a limited extent and it depends on the will of the minister to be forthcoming as to the purpose of the lobbying and from practice of what we see in the diaries that's not always informative. So they might write one or two words and we don't quite know what the purpose of the lobbying activity is, whether it relates to certain pieces of legislation, what those legislation might be, whether it related to awarding of a contract or a grant. So we don't quite know what is going on based on what the ministers have disclosed to date, so that's quite right.

40 MS CURTIN: So just stepping back a bit if I may, the register that applies in Queensland still only applies to third-party lobbyists. Is that right?---Yes, that's right.

But instead of just detailing the identity and the clients of those third-party lobbyists, it sets out the lobbying activity.---Yes.

Is there also a broader application in terms of the government officials that are covered?---Yes. So they also cover MPs, which New South Wales doesn't.

And what about local government officials, does it - - -?---Yes, that's covered as well.

I believe we have a slide that I'll just show you which displays a screenshot of the New South Wales register and what's disclosed in that register and then we can compare that to the Queensland register. So that's a screenshot of the New South Wales Lobbyists Register, Dr Ng.---Yep.

10 Can you just walk us through what's on the screen?---Sure. So that's a screenshot of the New South Wales Lobbyists Register and in the, in this register, only the business name or information and current client names are required, so that's all we get from the register, just the lobbyist and the business name of their client. So that's a minimal form of disclosure that's required.

20 So that's the, yes. So I'll just read it. It's the New South Wales Lobbyists Register displaying the business and client details only. It's been accessed from the New South Wales Electoral Commission website on 5 August, 2019, just displaying the details of one client.

THE COMMISSIONER: Have we given that an exhibit number?

MS CURTIN: Not yet. The client is Alkar Pty Ltd. Commissioner, I'll get a hard copy of this slide so that I can tender it shortly.

THE COMMISSIONER: Yes.

30 MS CURTIN: The second page, Dr Ng, shows the Queensland Lobbyists Register, business and client details as well as lobbying activity information, and that's accessed from the website of the Integrity Commissioner in Queensland, the government website, on 5 August, 2019, and it shows the client, sorry, the lobbyist, Allan King Consultancy and the lobbyist's client being Converga Pty Ltd.

THE COMMISSIONER: Well, it might be said that the contact purpose on the Queensland document we're looking at now doesn't tell us much, it just has the word "Introduction" underneath it.

40 MS CURTIN: Quite. And I was going to ask Dr Ng to comment on that. So you can see that there is, on the fifth column, the Contact Purpose. ---Yeah, which there's "Introduction."

Fairly sparse detail.---Yeah, that just says "Introduction" which doesn't really tell us very much.

Yes.---Yeah, so we don't know what the topic of the lobbying is and what the purpose of that contact really is and whether that relates to any funding and so forth.

Right.---There is a button that is circled in red, "View Contact Logs," that, where you can click on that and that will give you the details of each lobbying, each lobbying activity that has happened for that particular client. So now it's moved onto the next page where it talks about there's lobbyist BBS Communications Group and you can see that they've approached a councillor, the Minister for Health and the member of Brisbane as well so it's - - -

10 Yes, Dr Ng. Just pausing now.---Yeah, sure.

Just for the record I'll just say the second page being displayed on the screen now is the Contact Log Queensland Lobbyist Register, also accessed from the Queensland's Integrity Commission website, and it displays I understand the first page of that register, namely the page relating to the lobbyist BBS Communications Group Pty Ltd, and then shows a number of their clients. Yes, sorry, go on.---Yeah, sure. So, so you can see from that that the BBS Communications Group has approached several government representatives on certain dates from councillors to the Minister for Health.

20 So that is a lot more information that we get compared to New South Wales, and in terms of contact purpose you notice that all of it just says "other" which doesn't really tell us anything. So in terms of the Queensland Lobbyist Register there's an option from a drop-down menu where you can choose the contact purpose and that includes the making or amendment of legislation, awarding of government contract, allocation of funding and the last option is other, so it looks like this lobbyist has ticked other for the purpose of the contact which actually doesn't tell us anything at all. So a better approach would be to require more disclosure if the purpose is stated as other, like, so why did we actually, can we type down why we actually

30 approached all these government officials.

Is it searchable?---Yeah. So it is searchable and a lot, there's a lot more functionality than the New South Wales. There's a lot more information than the New South Wales register. So, so in the New South Wales register we just get the lobbyist and the client and that's it. In the Queensland register we have this detail of who the lobbyist approach and limited information about the purpose but what dates did they approach them and who was the actual person approached, so the Minister for Health for instance.

40 In effect there is an integration of the data that we see in New South Wales from the third-party register and the ministerial diaries except that it goes beyond the data that's available in those two sources in New South Wales because it extends to government officials beyond ministers.---Quite right. So it extends to councillors and MPs as well and also senior public servants.

Commissioner, I tender a copy of those lines for the New South Wales Lobbyist Register and a page from the Queensland Lobbyist Register.

THE COMMISSIONER: Yes, very well. Thank you.

MS CURTIN: Sorry, it's one page of the New South Wales Lobbyist Register and two pages from the Queensland Lobbyist Register.

THE COMMISSIONER: Thank you. I'll just have that marked. The extract from the New South Wales Lobbyist Register, Business and Client Details, will be admitted and marked as Exhibit 8.

10

#EXH-08 – EXTRACT FROM THE NSW LOBBYISTS REGISTER BUSINESS AND CLIENT DETAILS

THE COMMISSIONER: The second document, extract from the Queensland Lobbyist Register, Business and Client Details, as well as Lobbying Activity Information will also be admitted and marked and that will become Exhibit 9, two pages.

20

#EXH-09 – EXTRACT FROM THE QUEENSLAND LOBBYISTS REGISTER BUSINESS AND CLIENT DETAILS AS WELL AS LOBBYING ACTIVITY INFORMATION

THE COMMISSIONER: Yes, thank you.

MS CURTIN: Thank you, Commissioner. Dr Ng, before we leave the Queensland comparison, if you look at the screen now you'll see the Queensland Lobbyist Register up again.---Yeah.

30

Exhibit 82 – sorry, I withdraw that. Exhibit 8. You will see the fifth column along is Contact Purpose.---Yeah.

40

And that says "Introduction". Are you aware, Dr Ng, whether that's a drop-down menu that enables you to see more than just the word "Introduction" or is it simply that?---I think that's all you get so that doesn't really help us very much. So although the Queensland register is an advance from what we have in New South Wales that's, the level of disclosure could be enhanced as well.

THE COMMISSIONER: The column Contact Purpose has arrows indicating scrolling up and down. Would that suggest that there might be more information if you do scroll up or down or not?---So they're different options. So you can say this is about the amendment of legislation, this is about the awarding of a contract, but because it doesn't require you to then specify what piece of legislation, that is less disclosure than is ideal. So

there are the drop-down menus that are available through the Queensland register, but then there's no disclosure beyond what you've selected, and if you've selected Other, that's not telling us anything.

It seems to be a simple requirement to specify what category if you like the contact falls within.---Yeah, yeah, exactly. So if you choose Other, you have to type what it is. I think that's a good approach, yeah.

It wouldn't require much effort.---Yes, exactly.

10

All right.

MS CURTIN: In the course of your research, Dr Ng, you've also looked at regulation in jurisdictions overseas, such as Canada, United States, Scotland and Ireland. Is that right?---Yeah, that's right.

20

Broadly speaking, what do we see in those jurisdictions in terms of coverage?---So we tend to see a broader coverage than what is available in New South Wales. So in New South Wales, as I said before, the register is confined to third-party lobbyists, not so in Canada and the US and Ireland and Scotland, they cover both third-party and in-house lobbyists as well. The way that they've dealt with the smaller players, so to speak, is certainly for the US and Canada is to include a threshold of significance, and that's normally done by looking at the level of lobbying activity, so only lobbyists who spend 20 per cent or more of their time lobbying are required to register.

Is that in Canada?---In Canada and the US.

30

Right.---In the US there is an additional threshold based on financial expenditure or income. So if you expect to earn a certain amount of money lobbying or if you spent a certain amount of money lobbying, then you are obliged to register. So I think that strikes a very good balance between capturing the major significant players that we want to cover but also not capturing those who one-off would like to talk to their member of parliament about their personal issue. So I think that is actually a very good approach.

40

And there's more extensive disclosure requirement in terms of the lobbying activity or contact, is that right, in those jurisdictions?---Yeah, quite right. So they are required, so in Canada they are required to disclose every lobbying contact as well, so the lobbyists have to disclose every lobbying contract, and same in Scotland as well. In the United States there's even more disclosure. So lobbyists have to disclose how much political donations they have made to a political party or candidate, they also must, in some states they have to disclose their level of expenditure on lobbying, so how much money they have spent on lobbying activities. So yeah, you're quite right, there's a higher level of disclosure that's required.

Well, if we just turn to the individual example of Scotland.---Yeah.

Lobbying in that country is under the Lobbying Scotland Act 2016. Is that right?---Yep, that's right.

Scotland, as you say, has a lobbying register.---Yeah.

10 And that's managed and maintained by the Scottish Parliament. Is that right?---I believe so.

Now, are you able to say broadly what the register requires in terms of the information that needs to be recorded on it?---So it's, what we've seen is that they've disclosed a lot more information as to, it seems to be a general practice in Scotland to disclose a lot more information about the lobbying contact. So they tend to talk about who they met with precisely, who was in the meeting, the topic that they're trying to advocate on and what they're trying to achieve from that. So for whatever reason, the disclosures in the Scottish lobbying register are a lot more detailed than we've seen in
20 Australian jurisdictions.

Thank you. So what we're looking at is that it needs to include information about the registrant's identity. Is that right?---Yeah.

And then information related to the activity of lobbying itself, as in the particular instance of lobbying conduct that occurred.---Yeah.

I understand also that the register requires the lobbyist indicate the compliance that they've had with codes of conduct that apply.---Yeah.
30

Is that right?---Yeah.

We have a further screenshot that we can put up that compares the disclosure required by the New South Wales ministerial diary memoranda and comparing that to the lobbying register in Scotland. Can you see that on the screen now?---Yes.

40 Sorry, this is taken from the, the top part of the screen is taken from the DP&C website and, yes, and I'll just tender a copy of the screenshot which is two pages taken first from the New South Wales ministerial diary and then from the lobbying register in Scotland, Commissioner.

THE COMMISSIONER: Yes, thank you. Yes, the document New South Wales Ministerial Diary Disclosure (Premier) for the period 1 April, 2019 to 30 June, 2019, two pages, will be admitted and become Exhibit 9, is it? Exhibit 10. Not 9, 10.

**#EXH-10 – COMPARATIVE NSW MINISTERIAL DIARY
DISCLOSURE OF THE PREMIER TO LOBBYING REGISTER
SCOTLAND FROM PERIOD 1 APRIL 2019 - 30 JUNE 2019**

THE COMMISSIONER: Yes.

10 MS CURTIN: So as with the screenshot that we saw earlier from the Queensland register, if you look at the second half of the page, Dr Ng, you will see that it does seem to represent in the Scottish Lobbying Register integration of data in terms of disclosing the identity of the lobbyist but also the act or activity of the lobbying contact. Is that right?---Yeah, quite right. And if you compare the level of disclosure there's a world of difference as well. So for instance in the New South Wales ministerial diary it just says the purpose of the meeting was type I diabetes whereas when you look at a similar topic in the lobbyist register of Scotland you will see that they discuss who was involved in the discussion which had a number of members of Scottish Parliament that are explicitly named and they talk about the topic that they are trying to advocate for. So the purpose of the
20 lobbying contact is explained in a lot more detail, and the information provided to ministers is discussed and the specific support sought by the lobbyist is discussed as well. So they are looking for a continued policy interest in type II diabetes prevention and they are informing the members about that linkage between that and obesity ahead of a debate in the chamber. So you can see that there's a lot more information that's been disclosed in Scotland and that seems to be a common practice in that jurisdiction.

30 THE COMMISSIONER: Well, that comparison is quite interesting because it deals with the same topic in two different forums.---Exactly.

And the Scottish register records a number of, discloses a number of aspects such as current practice, the roles various people play including partners and future aspirations and the like.---Yeah, quite right.

That last document, Exhibit 10, I'll just retitle it. Added to New South Wales ministerial diary disclosed it'll be comparative analysis of New South Wales ministerial diary disclosure and lobbying register Scotland. Yes.

40 MS CURTIN: Dr Ng, is it your understanding that it's the lobbyist who is required to input this data or send this data into the organisation maintaining it?---That's right. So the lobbyist is the one that provides that level of detail in Scotland.

And so are you aware of how it is that the entity or individual being lobbied is able to confirm or buy into the disclosure that's taken place in terms of whether it's accurate or not?---I'm not aware of that personally I'm afraid.

THE COMMISSIONER: Just before we move on, are you able to inform me what is the position, do we have that?

MS CURTIN: I understand, Commissioner, that there is a provision under the Act that does provide for that checking process, yes.

THE COMMISSIONER: Come back to that.

10 MS CURTIN: We might then move on, Dr Ng, to what takes place in Canada, and you've obviously briefly touched at various points in your evidence this morning about the disclosure regime that applies there. There's a Lobbying Act is my understanding in Canada. Is that right? ---Yes. In Canada there's a Lobbying Act that is enforced by the Commissioner of Lobbying, which is an office of parliament.

And there's a register provided for under that Act. Is that right?---Yes, that's right.

20 And it provides for the registration of professional lobbyists, so what we could call third-party lobbyists.---Yeah.

And then also any individual who in the course of his or her work for a client communicates with or arranges a meeting with a public official. ---Yep, that's right.

30 So the register then captures what the Canadian legislation refers to as consultant lobbyists, third-party lobbyists, in-house lobbyists for corporations and in-house lobbyists for not-for-profit organisations. Is that right?---Yep, that's right.

And you also briefly mentioned before that there's an activity threshold that applies in Canada for in-house lobbyists. Is that right?---Yes, that's right.

And so that's a way of addressing the issue of materiality in terms of coverage and who should or should not be part of the register.---Yeah, that's right.

40 In your view is the way that that's managed a desirable one in terms of activity of lobbying or would there be a better way of addressing materiality?---I think that's a really good way. In terms of lobbyists lobbying regulation, it's good to achieve that Goldilocks level of regulation where you don't want too much but you don't want too little, and I think the New South Wales scheme is going towards that too little because we are capturing such a small slice of the lobbying population, just third-party lobbyists, which was estimated to be 20 per cent of the lobbying population, so we're not capturing a whole range of material lobbyists or significant lobbyists in the system. And having this threshold of significance will allow us to capture the major players that are lobbying regularly as part of their

jobs, say 20 per cent or more of their time is spent lobbying, or another way is the financial threshold, they are spending a lot of money lobbying, or they are receiving a lot of income from lobbying and that will capture the significant players, but not capture those one-off mum and dads trying to approach their member of parliament. So I think that's a really good way of achieving that balance between not over-regulating every single person and forcing every single person to register but also not under-regulating and missing out on a great number of lobbyists that should, that are influencing policy-making and decision-making in major ways but are not captured by our current system. So quite right, I think the Canadian approach and the United States approach are good ones.

THE COMMISSIONER: I suppose at the end of the day disclosure requires providing sufficient information for an interested and bona fide inquirer to be able to understand the subject matter of any proposal and relevant, some relevant details around the proposal.---Quite right.

I mean otherwise, otherwise some of the disclosures we've seen in ministerial diaries don't really provide much information, so hence query whether it is "true" disclosure at all.---Yeah, quite right. I think the quality of the information is very important and if you have ministers that don't provide that quality of information then it's impossible for third-party groups, journalists, other advocates to try to work out what's going on in terms of access and influence in government.

MS CURTIN: Canada also has a scheme whereby there's broader coverage of government officials. Is that your understanding?---Yes, that's right. So they do cover ministerial advisors, they do cover public servants and MPs as well, so both executive and legislative branches, and the same for the US as well, both executive and legislative branches are covered.

And similarly, the disclosure of the lobbying activities themselves is more extensive in Canada.---Quite right. So they have to disclose each, lobbyists have to disclose each lobbying contact as well.

THE COMMISSIONER: Could I just seek a point of detail about the Canadian legislation. Am I right in proceeding on the basis that until recently the regulation of lobbying in Canada was done at a national level? More recently it had been individual perhaps provinces or other local government areas have started to proclaim their own individual codes. Is that right or not?---I'm afraid I haven't looked at the subnational level in Canada.

What are you talking about when we're talking about the Canadian system central?---The federal system is what I'm discussing in general.

Yes, I understood you were but I just want to have that clarified, that's all. ---Yeah. Yes, I was looking at the federal system not the subnational system which I have not researched.

Thank you.

MS CURTIN: Dr Ng, my understanding is that the lobbyists are obliged to file monthly returns to the commissioner setting out a number of different details. Is that right?---Yeah, that's right.

10

So the details of the lobbying clients, the names of the public office holder who was lobbied and the subject matter and date of the communication. Is that a fair summary?---Yeah, that's right.

We have another slide which provides a screenshot of the Canadian Registry of Lobbyists. I'll tender a copy of that now, Commissioner. It's the Canadian Registry of Lobbyists, Recent Lobbying Activity, and it's a screenshot that displays search by keyword, the keyword being diabetes.

20

THE COMMISSIONER: Yes, thank you. Yes, all right. We'll admit that as the Canadian Registry of Lobbyists, Recent Lobbying Activity, keyword diabetes. That single page will be admitted and become Exhibit 11.

#EXH-11 – CANADIAN REGISTRY OF LOBBYISTS RECENT LOBBYING ACTIVITY KEYWORD 'DIABETES'

30

THE COMMISSIONER: Thank you.

40

MS CURTIN: So as with the previous screenshots we've taken the example of subject matter being diabetes. Can you just take us through, Dr Ng, the level of detail that's provided by this register.---Sure. So there's greater functionality in the Canadian register so you can search using a keyword such as diabetes and then all the contacts that relate to that keyword come up. So you can see that there are a whole range of organisations that have lobbied government on the topic of diabetes and you can see who they have approached. So senators, members of parliament and the exact identity of those people that have been approached and also the date that they have been approached as well. So, so it has a very strong functionality that you can just search by topic and then all the people who have lobbied government officials on the topic of diabetes has come up. And when you compare that to New South Wales, if you wanted to find out who has approached government on the topic of diabetes you have to go to each and every minister's entry for the diary for, and you might not know which quarter in which the communication took place so you have to go through PDFs, over PDFs to try to figure that out and even, if the minister doesn't list the purpose of the meeting as diabetes and puts down health instead that

would not show up as well. So the functionality of the Canadian register is far superior to the current accessibility of the ministerial diaries in New South Wales and of course, ministerial diaries in New South Wales just shows who the minister is meeting with. That doesn't cover ministerial advisers, doesn't cover public servants, doesn't cover MPs and that is a big limitation of the New South Wales system compared to the Canadian system as well which shows all these different officeholders, a wider range of them.

10 And again, as with the Scottish register, this information that you see on the screen is provided by the lobbyists themselves.---Yes, that's right, the lobbyists file those registrations.

Well, just perhaps leaving the question of the register, one of the other aspects of the regime in Canada that you mentioned previously, Dr Ng, is the post-separation ban that applies in Canada.---Yeah.

And your evidence was that it's a five-year ban?---It is a five-year ban.

20 And to whom does it apply?---To, I think that broad range of officeholders, so ministers, senior advisors, the ministerial advisors it applies to as well.

And members of parliament?---And members of parliament, that's right.

And this whole regime is overseen by the Commissioner of Lobbying in Canada. Is that right?---That's right.

30 And are you able to just elaborate on the powers that the Commissioner has? ---Yeah. They have the power to impose fines that are quite significant on individuals and corporations. They also have the power to imprisonment as well. So they've got quite significant powers.

And that stems from broad investigative powers. Is that right?---Yeah. So they have broad investigative powers and also the, a lot more powers to sanction.

THE COMMISSIONER: Sanction such as imprisonment would have to be dealt with by a court on application presumably?---Yeah, so that would be referred to the, could be the Attorney-General or someone, yeah.

40 MS CURTIN: Dr Ng, in your view, I think you may have mentioned this previously, and excuse me if you already have, but that five-year ban that operates in Canada, in your view is that edging towards what would be a better formulation that the 18 months that currently apply in New South Wales?---I'm quite agnostic about the periods. So I guess the principle is how long do you think it will take for the risk of possible corruption or the risk that they might unduly be influenced by this former public officeholders and the risk of confidential information would persist. So whether it's two years or five years, it's hard to know. Obviously a longer period would be a

stronger deterrent and also would leave the relationships to cool off a lot longer. The flipside of that argument is that, that all these people, that it's not the end of their career, so they do have a lot to contribute to different aspects of society, so it's a balance between enabling these people to continue to contribute to society after public life and to stop that risk of, the actual and perceived risk of corruption and undue influence. So it's getting that balance right and it could be two years or five years, I'm quite agnostic about that.

- 10 So the post-separation ban that's implemented in Canada stops ministers, members of parliament, ministerial advisors and even senior public servants from being third-party or in-house lobbyists.---Yeah.

Are you aware of how the Canadian scheme that I've just described stops access? So just by way of comparison, the problem in New South Wales is that the post-separation ban stops face-to-face lobbying, but wouldn't for example deal with access itself, namely if a former minister sets up a meeting, that would be permitted. Are you able to comment on how that access problem is solved, if it is, in Canada?---I don't have any information on that unfortunately. I think in Canada they are permitted to be in-house lobbyists, if lobbying doesn't form a significant part of their activity, and the Commissioner of Lobbying is able to grant exemptions in certain circumstances as well. So there's some ability to waive the requirements in certain circumstances, so there's some flexibility in that scheme as well.

20

I wanted then just to turn finally to the question of the priorities for reform in New South Wales, given the discussion we've just had about how other jurisdictions do it. One of the things I understand you've addressed in your discussion paper and which you would advocate is extending the coverage of the register that currently exists in New South Wales. Is that right? ---Yep, that's right.

30

Now, there are a number of ways to do that. You can cover all lobbyists. You can cover only repeat players or target certain industries, and you've addressed those in the discussion paper. In your view, should it simply just cover all lobbyists whether they be third-party or in-house?---Yeah, that's right. I think that the coverage of lobbyists should be broadened beyond third-party lobbyists to in-house lobbyists as well and to avoid over regulating the minor players, a threshold of significance should be included before a person is, or organisation is required to register similar to the US or Canadian schemes. So I think that strikes the best balance between capturing the very important lobbying players in the political system but also not overly burdening those who are looking to lobby one-off on their own behalf or a minor issue as well.

40

And in terms of what the register, were it to be reformed or the subject of reform, in terms of what it would cover is it your view that it should disclose every lobbying contact that takes place?---Yes, I believe that is a

good reform because that enhances the transparency of who is lobbying government and when they are doing so and that enables what you might call counter-lobbying. So if it's disclosed that say the mining council is meeting with a minister 20 times a week, then the environmental groups might counter-lobby and put forward their own proposals. So without that level of disclosure of the lobbying contact that would be impossible under the current system.

10 So if that reform were to be introduced it would presumably cover social functions, for example, which are not currently required to be disclosed, at least in ministerial diaries.---Yeah. So, so in Queensland the level of disclosure is higher in terms of ministerial diaries. Town Hall and such events are covered as well within the scope. In New South Wales it's more limited to the official premises or offices.

And is there a reason why you would include those kind of functions or social functions as part of the lobbying contact that would be included?
---Many lobbying interactions might take place in more social or boozy environments or place, or it might be a deliberate thing that the lobbyist
20 might choose to meet a government official in a café rather than the office in order to avoid scrutiny. So this would close a loophole in the system.

So just stepping back a bit then, Dr Ng. How would you define lobbying contact if we were going to introduce further reform in this area?---Any attempt to influence government legislation or decision-making or policy-making. So there are a range of definitions of lobbying activity and that's, you can see that in different pieces of legislation. They tend to be defined quite broadly.

30 Do you have a model or system in mind that would embrace the recording of every lobbying contact?---The Canadian system does that. The Scottish system does that as well. So, so, and in Queensland they do that as well so there's even an Australian jurisdiction that does that.

So then in your discussion paper you talk about the disclosure of lobbying activity, and we've just briefly discussed that, so in your view it should extend to cover official events and functions where lobbying happens?
---Yeah.

40 And then also the subject matter that's disclosed, are you able to give the Commission a view about what would need to be disclosed?---So I would think that the, there needs to be some detail as to whether a certain piece of legislation or a bill was being discussed and what the bill was. So say the Clean Energy Act, I'm just making it up. So the actual bill that was being discussed is specified. If there's an awarding of a contract, that should be specified as well, the awarding of a grant, so we can – well, there might be some grants that are given without sufficient probity but if you get the lobbyists to disclose such things, that might enhance transparency,

disclosure or planning application as well. So disclosure of the specifics of what is trying to be achieved by the lobbyist here. And it's particularly significant where there is a financial outcome or a legislative outcome.

10 And in terms of the coverage of those who are being lobbied, in your view that should be extended beyond what's currently in place?---Yeah. So currently just ministers have to disclose their diaries, so I would extend that to senior ministerial advisors and senior public servants as well, proactive diary disclosure scheme I think is preferable to fighting out the departments in FOI.

20 And in short compass why would you say that it needs to be extended in that way so that it's accessible?---Because ministers are not just the target of lobbyists, there's a finite amount of ministers and my research has shown that ministerial advisors have become a very significant player in government decision-making and policy-making and they are very logical targets of lobbyists and currently none of those interactions are recorded at all, and so I think that it should be recorded. Similarly senior public servants, so public servants do exercise delegated powers by ministers under statute, so they make very important decision that have huge social, economic, financial consequences for individuals and groups, so they are logical targets for lobbyists as well.

Just taking you up on that, Dr Ng, we mentioned very much earlier in your evidence that you in fact have worked as an advisor.---Yes, I have.

So you would know then I presume how the ministerial advisor role works. ---Yep.

30 And so is your - - -?---I've worked as a public servant, so, so I was not a ministerial advisor, I was a public servant in the Department of Prime Minister Cabinet and Department of Premier and Cabinet.

40 Right. But the answers that you just gave previously, does that inform why you think coverage should be extended to ministerial advisors or - - -? ---Yeah. So I've written to books on the lack of accountability of ministerial advisors and I've done research in terms of interviewing ministers and members of parliament about the level of influence that ministerial advisors have, and some of them say that they have a lot more power than most ministers, most MPs and certainly their power has eclipsed that of the public service. So my research has shown that they exercise considerable influence and none of this is really captured by our legal system because when, when the Constitution was drafted it was just ministers and public servants. So we have a small group of people running around mostly unaccountable, so that is why I would extend that kind of regulation to them as well, because the law is lagging behind and the political practice has moved forward.

Are you able to say how that's come about, what is their role or function in your view?---They've got a range of functions from providing policy advice to the minister, providing media advice, providing administrative support, so there are a whole range of different functions within the ministerial office. And what we've seen in the last 30 or 40 years is some ministers distrust the public service so they bring in all these people who are loyal to them, who are often political apparatchiks, who may not necessarily have the skills in the policy area but are skilled in the political process, so they provide political advice to the minister as well. So, so they do undertake a wide range of functions that match a minister's function and the growth of the private office has just happened in the last 30 or 40 years.

THE COMMISSIONER: I think the matters you've just referred to were dealt with quite effectively with respect in the Royal Commission into WA Inc. and under the government led by Mr Brian Burke. Is that right?
---Yeah. So there's issues of ministerial advisers misbehaving so certainly scandals have erupted over the years and - - -

In other words it's nothing new?---No. So welcome to more scandals.

MS CURTIN: Moving on then, Dr Ng, one of the things that you've touched upon over the course of your evidence this morning is the question of functionality in terms of the data that is disclosed, how it's accessed, how it's searched. In your view, whatever level of disclosure is settled upon that level of functionality needs to be increased. Is that right?---Yeah. So I think that it's important to enable civil society organisations and interested members of the public to properly search that information. Currently our system in New South Wales doesn't allow that greater accessibility or searchability compared to other jurisdictions. That certainly could be enhanced. And certain other information could potentially be integrated as well such as the level of political donations by lobbyists because I think that is quite a material factor. So all of these currently sit on different websites. It would take a very dedicated person with a lot of time to try to work through what exactly is going on. We talked about that example of diabetes and who is approaching government. Another question is who is paying the money, who is shelling out the money.

Other matters that you've identified should be included in this triangulation of data is the ministerial diaries.---Yeah, that's right.

Detailed investigations by the Independent Commission Against Corruption.---Ah hmm.

A list of holders of parliamentary access passes.---Yeah, that's right.

And gifts given by lobbyists to government officials.---Yeah. So I think having that full picture of who is, who is lobbying government, when they are doing it and who has privileged access through parliamentary passes,

how much money are the lobbyists giving government and also are they subject to a public inquiry already, those are very material issues that will give us a full picture of what is going on in terms of that lobbying contact.

You've said that we need to be able to connect the dots.---Yeah, exactly.

Now, I think we've talked about the regulation of post-separation employment and I just wanted to touch on the question of enforcement. You said earlier that historically it has not been well enforced.---Yeah.

10

What kind of reform would you envisage then in terms of ensuring that it is better enforced and complied with?---One option is to put enforcement in the hands of an independent body or requiring independent, an independent advisory committee to advise on appointments and for that to be published online like in the UK. They publish that advice online, the full advice. Another possibility is to publish the dates that the bans are effective till like in the United States. So that will put more public disclosure out there. And I guess that's the will of the regulator to enforce those bans and, and to actually, because we do have the rules, we do have the post-separation ban and we do have a period of time at which ministers are not supposed to go to lobby groups but it's, it's breached all the time without repercussion. So enforcement I think is crucial in this area.

20

So in terms of enforcement of a lobbying regime more generally then, I take it that you're in favour of independent supervision?---Yeah, that's right. So an independent commissioner. So in the, in Canada there's an independent commissioner of lobbying. I'm quite agnostic as to who should be the actual regulator. It could be the NSW Electoral Commission as it is now. It could be ICAC. It could be the Information Commissioner. So it could be a range of bodies that could regulate lobbying. It could be a new commissioner of lobbying. I think the important thing is to protect that officer's independence and the protection of independence is hinged on a few factors such as protection from removal, so they have a fixed tenure, and protections from removal from that, protections of funding, so their funding can't just be removed. So we've seen in some jurisdictions where say the Integrity Commission in Queensland has a number of different functions under the legislation of which lobbying is one, that funding for lobbying can be squashed. So if you have protected funding, that will enable the regulator to do their job more effectively. They have to have sufficient powers as well in terms of coercive powers to compel documents and so forth. So I think that the location of the regulator's not the important thing, it's how we protect their independence and protect their funding to carry out the enforcement of that scheme.

30

40

And as part of that you would advocate I take it more systematic monitoring of the regime that is in place?---Yep, that's right. So in the US and Canada they have systematic monitoring of the scheme, so a periodic and systematic monitoring of the scheme and compliance with the scheme across the board,

and in Canada there's a five-year periodic review of the Lobbying Act to see how it's functioning and whether – so they have a parliamentary committee in Canada and the lobbyist makes submissions, the regulators make submissions and then they decide whether or not to amend the Act. So I note that the Lobbying of Government Officials Act in New South Wales does have review in five years, so I think that is a good way to ensure that the system as it is, is working well, and from the indications from the five-year lobbying report in Canada we can see that their system seems to be working well and there's not that many complaints about it, so I think that's
10 a good model that we can look to.

THE COMMISSIONER: I see the time. Will we take a morning tea adjournment?

MS CURTIN: I've actually just only got one further question, Commissioner.

THE COMMISSIONER: Have you? Yes. All right. Well, you continue.

20 MS CURTIN: And that was just to touch on the criticism that we might expect perhaps from third-party lobbyists or other lobbyists about increasing the level of administration that they would be required to undertake if the reforms that we've discussed were introduced. One potential criticism would be the risk of over-burdening lobbyists and the lobbied and that excessive disclosure and reporting requirements might encourage non-compliance or drive lobbying underground, perhaps even decrease the level of consultation. Did you have anything that you might want to say in
30 response to that?---Sure. There is a legitimate concern as in we don't want to wrap everyone in red tape, but what I'm proposing is a level of significance in terms of lobbying. So lobbyists who say engage in lobbying for 20 per cent or more of their time, only those people are required to register. So that takes away all the smaller players or the players that are less significant in the system and the significant players are likely to have the resources, they're likely to have spent all this money on lobbying and therefore are more able to meet that administrative burden. And you'd think that they would have records anyway of who they're meeting and what date, it's not a big ask to just write that down and submit that. So, so I think that administrative burden argument can be overstated a bit in a sense, but we, at the same time we don't want to over-burden the small players who are just
40 lobbying government once for a very small issue, and I think that having this level of significance will be the best way forward.

So just in relation to that criticism and the response you've given, Dr Ng, you've talked about a significance threshold.---Yeah.

Are you able to elaborate on how that would actually work in practice and what that would mean? So there's the financial threshold that you mentioned or just the level of activity, say 20 per cent, so how would that be

monitored and implemented?---Yeah, that's a good question. So financial thresholds are easier to implement in a way because you've known, you know that you have spent a certain amount of money lobbying or you've received a certain, X amount of income, say \$3,000 per quarter lobbying so that's easier to implement than say someone has to calculate whether they've spent 20 per cent of their time lobbying and certainly that has been raised in Canada as an issue that it's difficult to monitor and difficult to enforce that 20 per cent requirement so that's a, that is something that has been raised in Canada in terms of the 20 per cent. So financial thresholds you can quite easily implement but the 20 per cent one I think is a bit trickier. It will require the lobbyist to sit down and work out okay, so in this week I've spent, or in this quarter rather I've spent this amount of time lobbying. Does that reach that threshold? And that could potentially be abused as well so that's a very valid concern.

Thank you, Commissioner. That's all the questions that I have for Dr Ng.

THE COMMISSIONER: Yes, thank you. Talking generally about the process of lobbying of government officials, as I understand your analysis which is in part critical of the existing system, the elements that you consider unsatisfactory include the fact that it can be conducted secretly. ---Yes.

That that may mean that there's an absence of proper merit assessment of a proposal.---Yeah, that's right.

And in the absence of proper disclosure it's not readily possible after the event, after the proposal has been approved, if it has, to know what lobbying contacts leading up to that result consisted of.---Yeah, that's right.

And an absence of disclosure would prevent a determination as to the basis upon which the favourable outcome was achieved.---Yeah, that's right.

Are they the core problems with the conduct of lobbying if it's done secretly?---Yeah, that's right, and I guess the two main concerns that there might be corrupt behaviour so there's a risk that corruption is being hidden if lobbying is done in secret. So, and beyond that narrow notion of quid pro quo corruption is that notion of clientelism that the High Court talked about in McCloy where certain groups might be captured and following the interest of certain vested interests away from public interest and the merits of government policy-making and decision-making and part of that goes to that notion of fairness, that levelling of the playing field, and the other part goes to just government policy, policy-making and decision-making might go a certain way that might not be beneficial for say the environment or human rights or so forth. So the narrow interests are protected instead of the broader public interest. So I think those are the main issues.

And leaving aside specific cases of quid pro quo corruption whereby, for example, there's a financial benefit to a public official being offered, leaving aside those situations in the circumstances of lobbying conducted as we've discussed in a secretive environment, is one of the corruption risks you identify concerned with what might be called, rather than using the term unfairness, the giving of preferential treatment to the lobbyist?---Yeah, that's right. So preferential treatment or regulatory capture or rent-seeking groups getting precedence in the democracy.

10 Or if not preferencing, favouritism of some form?---Yeah, that's right.

Under the ICAC Act, as you are aware, corrupt conduct is widely defined.
---Yeah.

And is not limited to dishonest conduct. You appreciate that?---Yes.

It's not limited to criminal conduct.---Yeah.

20 But it states under our Act, section 8, that it includes any conduct of a public official that constitutes or involve the dishonest or partial exercise of any of his or her official functions.---Yeah.

There's no definition of partial in the Act but if you take it as having been analysed in the case law as in effect referring to partial conduct being either preferential conduct or favouritism exercised where in effect the rules expect that there not be favouritism or preferencing but that a matter is dealt with on its objective merits basis.---Yeah.

30 So that impartial conduct is, the opposite of partial, is being dealt with without any inclination to favouritism or preferencing or conduct involving those aspects.---Sure.

40 Well, then, if you have a particular situation where a lobbyist puts a proposal forward for favourable consideration unless it's demonstrated that there was an objective appraisal or assessment made, it would at least support an inference in some circumstances, I'm not saying all, that there has indeed been preferencing or favouritism to get to the outcome which the lobbyist sought. In other words, what is corrupt is not limited in this jurisdiction to what's deliberately dishonest but could be involving conduct in conducting governmental decision-making in a way that is not open, transparent and merit based. Have you given consideration to circumstances in which that sort of conduct could fall within the coverage of the ICAC Act or is that beyond your research and analysis?---I haven't looked specifically at the ICAC Act. I think you could certainly make that argument and you, if you look at the High Court decision in McCloy for instance they talked about clientele corruption which is a much broader notion than criminal corruption. So I think that the court is moving to its broader conception of what corruption could be and they talk about war chest corruption as well so

they do use the term corruption in terms of clientelism and preferencing those people who donate a lot of money and they felt that, they've upheld these New South Wales laws that regulate campaign financing. So if you take those broad principles and apply them to the ICAC Act and apply a broader notion of corruption that's possibly a way of arguing that certain lobbying activities could be covered in the Act. So I haven't looked specifically at the Act but, yeah, I think that might be an argument.

10 As you say, the High Court just in terms of the general law not statutory environment did categorise corruption into the categories you've referred to.---Yeah, exactly.

20 So we've heard evidence here from, I think it was Dr Longstaff for one, about the desirability of educating public officials, and lobbyists for that matter, with a view to producing a cultural change whereby there is a cultural integrity promoted. It would seem that if there is a risk that inappropriate practice in relation to lobbying could fall within the corruption jurisdiction of this Commission there would be good reason for those people to be made aware of that fact by way of education, professional
30 development and so on.---Yes. Certainly I think education and training is a good thing because certain lobbyists might not be aware of their obligations under the Act, so certainly I would support more education and training and public officials, yeah, they certainly should know what their responsibilities are under the various pieces of legislation codes of conduct and so forth. So certainly training for ministers, MP, ministerial advisors and public servants is a very good thing and can only lead to more positive outcomes. I think that there is a trend towards more training of public officeholders but as to whether it reaches the details of lobbying, I'm not that sure. But yeah,
40 certainly the moral fibre or personal integrity of a public official is something to be promoted and upheld. How you achieve that is a different matter. So yeah, it's certainly what we would desire in people who hold public office.

Would you agree that the issue of lobbying involving public officials is but a subset of the general public law concept of public responsibility of officials generally, government officials generally?---Yes. So I know AJ Brown talked about public trust, so that's the duty of public officials, and I guess they, they also exercise certain functions under legislation and should do so responsibly, and lobbying is a subset of that, as you say, it feed into
40 that decision-making and policy-making process.

Well, Professor Brown and no doubt yourself have spent many years of your professional lives examining what public trust means and its implications. It would seem desirable that public officials get at least a summary view of what those principles are in practice.---Yeah.

All right. Well, thank you very much indeed for your attendance here today.---Thank you, it's my pleasure.

We greatly appreciate your contribution, as we have with all other persons who have made submissions.---Thank you very much.

Yes?

MS CURTIN: Commissioner, I have some housekeeping to attend to.

10 MR CHEN: Commissioner, I just wish to tender some additional documents if I can.

THE COMMISSIONER: Yes.

MR CHEN: Particularly could I start, Commissioner, with, there are three recordings that were shown during the course of my opening, Commissioner, and could I tender them, albeit in electronic form. The first is recording of the New South Wales Lobbying Register.

20 THE COMMISSIONER: Yes. That will be admitted. That will become Exhibit 12.

#EXH-12 – RECORDING OF THE LOBBYING REGISTER

MR CHEN: The next, Commissioner, is recording of the New South Wales, Queensland and Canadian diaries and lobbying register.

30 THE COMMISSIONER: Yes, that document as described will become Exhibit 13.

#EXH-13 – RECORDING OF THE NSW QUEENSLAND AND CANADIAN DIARIES AND LOBBYING REGISTER

MR CHEN: The third recording is a recording of the Scotland and Ireland lobbying registers.

40 THE COMMISSIONER: Yes, Exhibit 14.

#EXH-14 – RECORDING OF THE SCOTLAND AND IRELAND LOBBYING REGISTERS

MR CHEN: Commissioner, I now want to tender four screenshots. The first is a screenshot of the New South Wales Register of Third-party

Lobbyists from the Lobbyists Elections New South Wales Government website, accessed 29 May, 2019.

THE COMMISSIONER: Yes. Those four screenshots will be marked as one Exhibit, Exhibit 5.

MR CHEN: Sorry.

THE COMMISSIONER: Sorry, Exhibit 15 I should say.

10

MR CHEN: Sorry, I'm sorry, Commissioner, just so it's clear, I'm tendering separately. I can have them as one, I'll just put them on the record.

THE COMMISSIONER: It doesn't matter, whatever you prefer.

20

MR CHEN: I'll just read them on the record. There's no reason why they can't form part of the same exhibit. The second screenshot is a Minister's Diary Disclosure Sheet for April to June, 2019. The third is the Disclosure Summary for the Premier for the period 1 April, 2019 to 30 June, 2019. And the fourth document within that exhibit, Commissioner, is the screenshot of the Scottish Lobbyists Register.

THE COMMISSIONER: Thank you. They will all become Exhibit 15.

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#EXH-15 – SCREENSHOT OF THE NSW REGISTER OF THIRD-PARTY LOBBYISTS FROM THE LOBBYISTS ELECTIONS NSW GOVERNMENT WEBSITE ACCESSED 29 MAY 2019, MINISTERS DIARY DISCLOSURE SHEET APRIL – JUNE 2019, DISCLOSURE SUMMARY OF THE PREMIER FOR THE PERIOD OF 1 APRIL 2019 – 30 JUNE 2019, SCREENSHOT OF SCOTTISH LOBBYIST REGISTER FROM THE LOBBYING GOVERNMENT SCOTTISH WEBSITE ACCESSED 2 AUGUST 2019

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MR CHEN: Commissioner, I also tender an article by Justice Stephen Gageler described as the Equitable Duty of Loyalty in Public Office, which was referred to by Professor AJ Brown on Monday, at page 33 of the transcript.

THE COMMISSIONER: Yes. The article by Stephen Gageler, present Justice of the High Court, will be admitted, Exhibit 16.

#EXH-16 – JUSTICE STEPHEN GAGELER, THE EQUITABLE DUTY OF LOYALTY IN PUBLIC OFFICE IN FINN'S LAW: AN AUSTRALIAN JUSTICE (2016)

MR CHEN: And, Commissioner, on Monday I tendered the - - -

THE COMMISSIONER: Just pardon me a moment. You may step down if you like. Thank you.

THE WITNESS EXCUSED

[12.01pm]

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MR CHEN: Commissioner, just so it's clear for the record, on Monday on page 29 of the transcript I tendered a folder of material from Professor AJ Brown. So it is clear, Commissioner, could I just put on the record, it's been marked as Exhibit 1, could I just put on the record what was contained within Exhibit 1?

THE COMMISSIONER: Yes.

20 MR CHEN: There are four documents. The first is Governing for Integrity: A Blueprint for Reform, a draft report dated April, 2019. The second is Chapter 4 from the draft report, Priorities for Reform. The third is Chapter 6 from the draft report, Priorities for Reform. And the fourth document is described as Corruption in 2030, International Society for the Reform of the Criminal Law, and there are a series of slides.

THE COMMISSIONER: Thank you. Does that complete today's - - -

MR CHEN: It does, Commissioner.

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THE COMMISSIONER: Very well. Well, as discussed on the first day of this public inquiry, the proceedings will now be adjourned. In the interim there will be arrangements made for discussions with those who wish to be further heard, including consultations with stakeholders. The public inquiry will resume in October. Have we got a date for that?

MR CHEN: 21 October, Commissioner.

40 THE COMMISSIONER: 21 October. Will resume on 21 October next. Yes, very well. I'll adjourn.

MR CHEN: Thank you.

AT 12.03PM THE MATTER WAS ADJOURNED ACCORDINGLY

[12.03pm]