INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION ECLIPSE

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

THE COMMISSIONER: This phase of the public inquiry in Operation Eclipse into the regulation of lobbying access, and influence in New South Wales, being phase 2 of the public inquiry, will focus on the role and the responsibilities of public officials in relation to lobbying. By way of introduction, I will make some observations on the importance of the principles that inform the role of public officials, and this will be followed by Senior Counsel Assisting's opening address.

It is a fundamental principle that accountability to the people is required of all who hold public office, or employment in, or who exercise public power in our governmental system. It has been acknowledged earlier in this public inquiry that lobbying, properly conducted, is a recognised activity that can assist in producing beneficial outcomes to the public interest as well as to the proponent. Whilst some aspects of lobbying may attract or involve confidentiality processes, there is always the need to ensure transparency and accountability in the public interest. In other words, provided proper procedures and safeguards are in place, there may exist justification for certain communications in private, but not for unaccountable secrecy.

Despite legislative innovation in the form of the Lobbying of Government Officials Act 2011 and the Lobbying of Government Officials (Lobbyists Code of Conduct) Regulation 2014, there is an issue which is to be explored in this public inquiry as to the need in the public interest for the common law principles that apply to public officials elected and appointed in the exercise of public power to be formulated for the regulation of lobbying practices. The common law principles as developed over the centuries are accessible to lawyers in the law reports, but not so accessible to others. As they constitute the rule of law governing the exercise of public power, their application in the field of lobbying must be known and they must be faithfully applied by public officials thereby ensuring both transparency and accountability of process.

Possible legal consequences of not complying with the relevant principle will be considered in phase 2 of this public inquiry in the matters to be dealt with by Counsel Assisting. A question arising will be whether the common law obligations of public officials should be legislatively codified, at least in certain classes of lobbying, and as a step towards displacing secrecy where it might otherwise exist, processes that enhance trust and confidence in government and public administration.

Dr Chen?

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR CHEN: Commissioner, before the first witness is called today, I wanted to venture some observations relevant to this tranche of the public

inquiry. When opening the public inquiry, I suggested that, although by comparison with other regimes within Australia, the New South Wales system that regulates lobbying might be said to be strong, the undeniable fact is that lobbying regulation in New South Wales remains well below international best practice. Indeed, on one view, it might reasonably be said to be substantially so.

This tranche of the public inquiry is directed to examining those best practices, domestically and internationally. In line with the inquiry's broader objects, the goal is to assess whether the system of lobbying regulation in New South Wales can be enhanced by conforming with that best practice, or at least key elements of it, in order to achieve appropriately high levels of transparency, accountability, integrity, and fairness than presently exist, and thereby promote adherence to fundamental legal principle. The witnesses to be called today, one of which includes the former Integrity Commissioner for Queensland, Dr David Solomon AM, will speak directly to these matters.

Commissioner, by way of restatement, the lobbying of public officials, elected and unelected, does not operate in a legal vacuum. Well-established principles and rules inform what can and, notice importantly, what cannot be done. These fundamental principles of government set the minimum standard of conduct of public officials generally, and necessarily that extends to lobbying activities. At a general level, they are the foundational principles mentioned earlier in the inquiry in both my opening and the evidence, namely transparency, accountability, integrity, and fairness. These overarching principles inform more specific ones, one of which is that there is an expectation fundamental to representative democracy that public power will be exercised in the public interest. These principles prescribe the way in which the public official is obliged, that is, duty-bound, to act.

The standards of conduct imposed upon public officials in New South Wales can be identified as springing from three distinct sources. The first is the common law, which imposes standards of conduct upon public officials through criminal offences as well as other civil remedies. The second source is the various codes of conduct that have been implemented by government bodies to regulate the conduct of public officials. The third source is the pool of ethical obligations that are imposed on public officials, and in accordance with which they are expected to behave, although no method of enforcement or ensuring compliance exists.

With respect to the common law, the most well-known standard of conduct has been identified as a member of parliament's duty to serve. That is, to act with fidelity and with a single-mindedness for the welfare of the community. The source of this duty to serve has been related to the matter of public trust. In this sense, the duty owed by public officials has been recognised as being analogous to that of a fiduciary, the idea that although

public officials are not fiduciaries in the strict private law sense, they are expected to adhere to fiduciary standards of behaviour. Again, this concept of public trust informs the standard of conduct imposed on public officials by the common law. Public officials entrusted with powers and responsibilities must exercise them for the public benefit. The concept of public trust has been recognised as operating as the principal constraint on the exercise of a public official's authority or powers. It imposes on the holder of public office a duty to exercise public power only by reference to the public interest. Further, if it is accepted that public officials hold and exercise their powers on trust on behalf of the public, then it must also be recognised that the exercise of public power is informed by certain fiduciary-like obligations akin to those that inform a trustee's conduct with respect to a trustee's beneficiaries.

As the former Chief Justice of Australia has observed, the application of the concept of trusteeship to the exercise of public power is longstanding and persistent. The trusteeship analogy is consistent with the characterisation of public power as fiduciary in nature. Principal among the fiduciary-like obligations imposed on public officials is the duty of loyalty. The duty of loyalty has been described as the very essence of the trust or fiduciary idea. Public officials, as fiduciaries of the public, owe a duty of loyalty to the public, on whose behalf they exercise their powers. Their duty of loyalty embraces the proposition that public officials must exercise their powers honestly, impartially and disinterestedly. More particularly, this requires the exercise of power to be in the public interest and unfettered by considerations of personal gain or profit. It also proscribes the public official from misusing his or her position for personal advantage.

To break this down further still, the fiduciary duty of loyalty imposes upon holders of public office a series of prescriptive duties or prohibitions. These are, in effect, negative stipulations or behaviour that public officials must avoid, including requirements that public officials avoid conflicts of interest; refrain from using official power for oppressive or collateral purposes, bribery or extortion; avoid the use of their office for their own benefit or to benefit third parties; not to use confidential information for insider trading or other purposes; and not misuse governmental property or resources for private advantage.

Putting to one side the fiduciary-like obligations I have just mentioned, the duty to serve can be seen to provide the minimum standard of public conduct applicable to public officials and, as mentioned in the opening, its breach amounts to a criminal offence. Sitting above these baseline standards of conduct are codes of conduct that prescribe how public officials must behave, the breach of which in some cases will amount to disciplinary offences. These codes include the codes of conduct for New South Wales ministers and parliamentarians, each of which bear upon the issue of lobbying.

Commissioner, it might be said that these broad concepts are sufficiently covered in regulatory materials such as codes of conduct or, possibly, by specific prescription in legislation, and that improvement or enhancement is therefore unnecessary. The point might be illustrated by reference to the Parliamentary Code of Conduct which applies to all members of parliament. In the preamble to the code of conduct, reference is made to the responsibility owed by members of parliament to maintain the public trust placed in them and, further, recognises the duty to serve as their principal responsibility. More particularly the code provides, amongst other things, with a disclosure of conflict of interest and the disclosure of gifts and benefits received in connection with their official duties and prohibits the acceptance of gifts that may pose a conflict of interest or give the appearance of an attempt to improperly influence the member in the exercise of his or her duties.

By clause 7, members are required to disclose secondary employment or engagement. That is as far as it goes. The Commission's understanding is that although there is a form of induction for newly elected members of parliament, that induction does not extend specifically to lobbying or the interactions had with lobbyists. Further, at least some of the principles that have been referred to are reflected in varying degrees in the regulatory regime in place in New South Wales, not only in the terms of those instruments but also within the objectives stated within them. Thus in the case of lobbying, the Lobbying of Government Officials Act 2011 provides that its objects are to "promote transparency, integrity and honesty through the implementation of a number of measures", but the self-evident limits on the reach of that Act relate to those to whom the Act seeks to principally regulate, the lobbyist, not the public official.

Similarly, the New South Wales Lobbyist Code of Conduct is also limited. It is a code directed to be observed by lobbyists and not public officials. This analysis poses a number of questions. First, having regard to those principles, particularly those of a fiduciary kind, do the statements that seek to set the standard of conduct for public officials contained in the various Acts, codes and regulations sufficiently recall the obligations imposed on public officials? Secondly, having regard to the centrality of these public trust principles, should they be clearly stated, perhaps codified, to both educate and reinforce the need for absolute adherence, as well as maintaining and promoting a culture of ethical behaviour to those in public life?

Commissioner, an integrity reform such as this, namely the possible codification of principles that detail the minimum standards expected of public officials from the lowest to the highest office, would follow overseas experience. As Professor Evans described in his evidence in the first tranche of the public inquiry, the United Kingdom has in place, and has had since 1995, a series of principles that apply to anyone who works as a public official holder. They are known as the seven principles of public life or,

more commonly, the Nolan Principles. Dr Longstaff, the Executive Director of the Ethics Centre, also gave evidence to the Commission about the need to rebuild ethical infrastructure and the utility in articulating and documenting the fundamental principles of a well-functioning democracy.

Commissioner, in October 2019 an interim paper was issued by the Commission. That interim paper summarised the issues examined by the Commission in phase 1 of the public inquiry and identified those to be examined in phase 2, including corruption risks. Commissioner, the interim paper also touched upon the concept of corrupt conduct as that phrase is defined in sections 8 and 9 of the Independent Commission Against Corruption Act 1988 in order to raise awareness in both the lobbyist and the public official of circumstances which could render conduct associated with lobbying activity as corrupt conduct within the statutory definitions. The Commission's jurisdiction in this area is, it is important to note, both preventative and educative, and not merely to investigate corruption.

An important point made, Commissioner, is that so far as the public official is concerned, corrupt conduct is not merely confined to the dishonest exercise of public or official functions, but extends to a partial exercise of those functions or a breach of public trust. The concepts of partiality and impartiality, as they appear in section 8 of the ICAC Act, refer to conduct where there is a duty to behave impartially. The partial exercise of official functions involves the advantaging of a person for unacceptable reason. It can readily be accepted that advantaging, in the sense just used, can arise in the making of a decision, but it could also arise in the process leading to the exercise of a power or the grant of a benefit or by a person being preferred by being put in a position of advantage in the process leading to the decision, or indeed by the mere fact of being brought into the contest as one of the contending parties. It is therefore not difficult to imagine circumstances in which, absent compliance with a public official's fiduciary-like obligations or the standards prescribed in the various applicable codes of conduct, a public official's interaction with a lobbyist could give rise to the advantaging of the lobbyist or the interests he or she represents in a manner that attracts the Commission's jurisdiction.

The phrase "public trust" is not defined by the ICAC Act. It has been said that the concept of breach of public trust within section 8(1)(c) of the ICAC Act involves an inquiry into whether the conduct was a use of the trust confided in the public official for a purpose for which it was not given. It has also been observed that, broadly speaking, the concept of breach of public trust within section 8(1)(c) of the ICAC Act is reflective of the concept of improper purpose in administrative law, a concept that extends beyond the concepts of honesty and impartiality. The phrase extends to bad faith.

The fiduciary-like obligations imposed on public officials, to which I referred earlier, are founded on this notion of public trust and the exercise of

public power by reference only to the public interest. If a public official were in his or her interactions with lobbyists to conduct himself or herself in a manner inconsistent with those obligations – for example, by exercising his or her discretion with respect to a particular lobbyist's proposal for the public official's own benefit or to benefit the lobbyist or the interests the lobbyist represents – then again that conduct may fall within the definition of corrupt conduct for the purposes of the ICAC Act. And from the perspective of the lobbyist, corrupt conduct includes any conduct that adversely affects or could adversely affect – directly or indirectly – the honest or impartial exercise of official functions by a public official or any conduct that adversely affects or could adversely affect – directly or indirectly – the exercise of official functions by a public official or public body, which could involve a prescribed criminal offence.

Commissioner, while my observations are made only at an abstract level, they underscore the importance of ensuring that both the lobbied and the lobbyist understand the obligations applicable to their conduct, as well as the necessity of a legislative framework that facilitates public decision-making in the public interest.

Looking ahead, Commissioner, aside from Dr Solomon, the Commission will hear evidence from the following witnesses: James Hebron, from the Department of Planning, Industry and Environment; Greg Woodhams, from the Greater Sydney Commission; and Dr George Rennie, who lectures in politics at the University of Melbourne, and whose research expertise includes lobbying.

Finally, Commissioner, as part of the examination of international lobbying practices, there will be an interactive examination of the lobbying registers operating in some of those jurisdictions. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Dr Chen. You propose calling Mr Hebron now?

MR CHEN: I do, Commissioner.

THE COMMISSIONER: Yes.

MR CHEN: He will take an oath, Commissioner, in the hearing room now.

THE COMMISSIONER: Thank you, Mr Hebron. Thank you.

MR CHEN: I've explained, Commissioner, in general terms, section 38 of the Act. He doesn't wish to avail himself, naturally enough, of the benefits of that section.

THE COMMISSIONER: Thank you, Mr Hebron. Mr Hebron, to give evidence, do you take an oath or an affirmation?

MR HEBRON: An oath.

THE COMMISSIONER: Thank you.

<JAMES HEBRON, sworn [10.33am]

THE COMMISSIONER: Thank you, Mr Hebron. Please take a seat. Yes.

MR CHEN: Mr Hebron, you are currently the Chief Legal Counsel for the Department of Planning, Industry and Environment, are you not?---I am.

And you've held that position, have you, since when?---End of 2015. About August.

And previously you were the Chief Legal Counsel for the Department of Planning and Environment, were you not?---I joined the Department of Planning and Environment in August 2015. The Department of Planning, Industry and Environment came into existence on the 1st of July last year. So before the 1st of July last year, my role was General Counsel for the Department of Planning and Environment, and it's now Planning, Industry and Environment. Sorry, for the lack of clarity.

THE COMMISSIONER: Mr Hebron, could I just ask you to move slightly closer to one of those microphones.---Sure.

It just magnifies it that much more. Thank you.

MR CHEN: Mr Hebron, does your role as the Chief Legal Counsel have responsibility to governance, legal, as well as compliance for the Department?---Since the 1st of July last year, yes, it does.

And broadly speaking do you have any other roles or responsibilities? ---Broadly speaking, no, the Legal function and the Governance, Risk, Compliance and Audit function.

Now, the Department of Planning, Industry and Environment, sometimes called DPIE I think, covers in effect land use or all land use and management, does it not?---That's a pretty good description, yes.

And some of the departments within it, I suppose, include the Office of Local Government; Housing and Property; Environment, Energy and Science; Planning and Assessment; as well as Water.---Correct.

The Department itself has six ministers with responsibility for its activities, does it not?---Correct.

And I'm just going to show you on the screen and in hard copy. This is a current organisational chart, is it not, of the Department?---Thanks. That looks correct to me, yes.

THE COMMISSIONER: Looks like a very large department.---It certainly is.

How many employees are we talking about? Any idea?---The best estimate is about 13 or 14,000.

MR CHEN: And what was the thinking behind creating such a large government department, Mr Hebron, to the extent you're aware of it?---It was very much a conscious decision, so I understand, to make sure that the perhaps cultural or policy differences between, for example, the green and the brown aspects of land use were required to work together and come to a consistent position in relation to most policy areas.

Harmonisation of policy, is that the essence?---And, oh, it sounds like a management buzzword, but de-siloing rather than having agencies who see their role as pursuing sort of one policy objective rather than another, that they're all required to be part of a single department.

In relation to – I'm sorry, Commissioner, I tender that organisational chart.

THE COMMISSIONER: Yes, very well. The Organisational Chart 25, DPIE Senior Executive Team, will be admitted. Sorry, that number again? Yes, become Exhibit 25.

#EXH-025 – DPIE CLUSTER ORGANISATION CHART FEBRUARY 2020

MR CHEN: Mr Hebron, I want to ask you just generally some questions about the planning responsibilities within DPIE in very general terms, and it's going to lead into some of the policies and procedures which I'll take you to in due course, but would you be able to tell again the Commissioner what generally is the role of the Department in terms of development applications and planning matters of that kind?---Okay, the Department's role is in relation to state significant development. So to put that into context, if we're talking about the 75 to 80,000 development and modification applications each year, most of those, the vast majority, 98-plus per cent are decided at the local level. So they're either local councils or IHAPs. Now, out of the balance, the 1.5 to 2 per cent, something like that, that's broken down into regional development and state significant development and infrastructure. So state significant development scheduled in a SEPP and involved things that are obviously of state significance, things like mines, agriculture, waste-to-energy, a number of other things. So the Department's role is responsible for assessment and determination of state significant development. There are two important aspects of that to bear in mind. One is that the more, the higher profile ones are determined by the IPC.

So for ones of high public significance?---Yeah, there's a, there's a test. If they have more than 50 public submissions, if the council disagrees or doesn't consent to the development, or if a political donation has been involved, then it goes to the IPC. And that's for decision, so the IPC's role is in relation to decision. The Department's role is in relation to assessment of all state significant development, and that's obviously a process that ranges from, you know, a couple of years to a decade, and it also decides the – not matters of lower significance, but the matters that don't reach those thresholds, so the matters of less sort of public interest.

Are you able to put a very approximate amount of numbers as to what on a yearly basis decisions are being made as opposed to assessments or if you need to group them, please do?---I have a rough idea, I'd be happy to send through the exact figures afterwards, but roughly if the Department's looking at 100, about 500 matters per year, it would be about 150 new applications and about 350 applications for modification. The IPC would - - -

Just pause there if I can.---Sorry.

When you talk about 500 applications we're talking raw numbers and general numbers subject to confirming them, is this dealing with assessment or decision-making or both?---Well, the Department makes decisions in all state significant development matters other than those that go to the IPC, so the IPC would decide, and again in rough terms, maybe 30 to 50 a year, that would be a combination of original applications and modifications. Does that make sense or am I not explaining it sufficiently clearly?

No, I understand. So leaving Planning for the moment and looking more generally within some of the other statutory functions within DPIE, say Water for example, there would be a need, would there not, for decisions to be made to deal with matters such as licensing and matters of water use and restriction more generally, would there not?---Not within the Department per se, licensing is Water NSW, so it's a separate organisation that is not, that the Department is not responsible for. The Department's role in relation to water is policy setting and strategic.

I see. Now, Mr Hebron, I want to take you to a couple of documents. The first is what is called the Engaging with Lobbyists and Business Contact from NSW Planning and Environment from November 37, a Policy, and also, 2017 I'm sorry, which is Exhibit 17, and also Engaging with Lobbyists and Business Contacts, November 2007, the Procedure from NSW Planning and Environment, which is Exhibit 18, and I'll have copies put in front of you, Mr Hebron.---I'm happy to proceed with the ones that are on screen if that's - - -

Are you? All right. Let's work off the screen. Mr Hebron, the policies and procedures from, if you look at the policy first, on the second page you'll see that they are approved and presumably operational as at November 2017.---Correct.

And they're companion documents, they sit together and are to be read together, are they not?---They in my opinion should be a single document, but that's a conversation for another time, but yes, they are to be read together.

And similarly the procedure itself was approved and was operational as at 2017.---Correct.

Now, both documents, the policy and the procedure, are said to require review as at November 2019. Is that your understanding?---Yes, it is.

And was a review of both of those documents undertaken in November of 2019?---A review started prior to that date with the creation of the Department and the combination of the various agencies. The review is ongoing but approaching its conclusion. Part of the review is the creation of a code of ethics and conduct which applies across the Department, so this is an overarching document that deals with not only lobbying but work health and safety, public interest disclosures, conflicts of interest, gifts and benefits, all different kinds of things about how to, the appropriate way of acting. So that document is being developed and is out for consultation at the moment with staff and the unions and this policy forms one of the second tier documents underneath that and it has been reviewed, it's been rebadged. The document that's on the website I think is a slightly updated version of this one with the badging changed.

I see.---But the review of this document is ongoing, it hasn't – I'd expect it will be finalised within the next month or two after the code of ethics and conduct has been finalised.

Are you a participant in that process of auditing and reviewing the policy and the procedure?---It's less an audit and pretty much solely a review, but yes.

And to the extent that – what are the issues if any that have been identified as being necessary for review and revision, either by way of augmentation or contraction within the policy or the procedure?---In relation to these two documents?

Yes.---There have been a number of pretty much semantic changes, changes to form rather than substance. One change of substance that doesn't actually have any impact on the ground in relation to operations, but it is important for the purpose of the policy, is that at the moment it refers to consultants, professional consultants, planning consultants, lawyers et cetera

as "other lobbyists," whereas that's not in line with the regulation, so that category of people will in all likelihood be moved to the business contact side of things, but the corollary of that also is that the business contacts, at the moment there's no requirement to advise of the topic of a meeting and I mean meetings just aren't set without a topic and it's entirely sensible for a topic to be identified, so that's going to be a requirement. And not pre-judging, but I'm expecting the outcome of the review process will be that that's a requirement of the business contact procedure as well.

Leaping a bit ahead, and I'm getting slightly ahead of myself in asking you this question, but now that you've raised it, the distinction that was evident in the policy that's on the screen now, Exhibit 17 and the procedures made it a requirement for a third-party lobbyists to use a meeting request form, whereas the distinction was made for other lobbyists and business contacts there was no such requirement. Is that proposed to be harmonised, that is to say everyone is to use a contact form or - - -?---That's up for discussion. Yes, I can't, it's certainly up for discussion. I don't know that there's a proposal one way or the other, certainly not one that I've generated.

Do you recognise a need for a distinction between a business contact, if that's to include now this other of the "other lobbyists" as opposed to third lobbyists, why there should be a distinction as to how the method of contact should be recorded?---I'm sure you'll correct me if I'm misunderstanding this, but I'd like to rephrase the question slightly. There's a distinction between the business contact form for a third-party lobbyists and for lobbyists, for a business contact, a business contact could be contact between an acoustic engineer or a planner or an architect or a lawyer and different requirements could apply to those things, so - - -

I think the rephrasing might have missed the import of my question. Let me try it again.---Sorry.

As I understood what you've said is in the review that is to take place, the description as it currently exists where there's lobbyists which are third-party lobbyists, other lobbyists and business contact is to be change and it's to be changed that other lobbyists are now to fit within business contacts. Was that your evidence or that's what - - -?---No, I'm sorry, no. I must have been unclear. We're dealing with third-party lobbyists is the first category, the second category is "other lobbyists," and example of other lobbyists in the policy, and we're not on the page I'm sorry, but there are a number of examples of other lobbyists that include interest groups, industry bodies, peak bodies, professional bodies et cetera, and somewhere towards the end of that list there's a reference to planning consultants, accountants and lawyers. Now, those professional people who represent a party in the planning system or elsewhere are excluded under the regulation, and again, you know, this is part of the process of review, so this is the proposal, but the final form will be what it is. So it's not that "other lobbyists" are moved

to business contacts, it's that those categories do not appropriately or should not appropriately be under the heading of "other lobbyists."

So that class is to be removed, that defined class?---Moved to business contacts.

Business, I understand.---Yeah.

And in terms of other matters of substance that are changing or are in the process of discussion and possibly leading to change, are there any others? ---Only the one I mentioned before, which is the requirement to advise of the subject matter of a meeting.

THE COMMISSIONER: Because I understand that in relation to what is being proposed or may be proposed, you identified a number of bodies or groups – interest groups, peak bodies, professional bodies, accountants, lawyers, acting for parties –where is it likely that the, what might be called the lobbyist, who's an in-house lobbyist as distinct from a third-party lobbyist who's a professional lobbyist company, where would that in-house lobbyist fit, as you would understand it, onto this current revision that's going on?---That, there are two matters in particular that I personally am very much looking forward to the guidance from this Commission on, and that's one of them, because the, the term "in-house lobbyist" is used quite regularly in this context, and I, my understanding is that ordinarily it's somebody who's in charge of government relations, for instance, for an organisation. But the term, the, the terms could quite easily be applied also to the chief executive, who's going to be meeting and advocating the interests of a company. So, where the line between the business contact and other lobbyists is drawn, in that context, I don't have an answer to, but the Department's position is that, well, firstly, that full records need to be kept in both instances. The, the same obligations apply. So, well, while I have a professional interest in where that line would be drawn, in terms of the procedures and the documents and the records, there's no material difference. Does that answer your question, Commissioner?

I think it does. What's the point of having groups then, if they're all under, going to be under the same regime?---They're, to an extent, the groups are imposed by the legislation. The, the, certainly the registered third-party lobbyist regime is. The concept of an "other" lobbyist, under the Act, somebody who is a lobbyist but is not a third-party lobbyist, is bound by a code of conduct. The same with, you know, many professional other advisers. It's, the difference between the, under the Department's procedure, between third-party lobbyists and others is primarily that the records of the meeting are published. And that's – I mentioned before there were two matters that I was particularly keen on the Commission's guidance in relation to, that's the second, because if you look at the categories of organisations that fall under "other lobbyists" – interest groups, industry representative bodies, professional bodies – then in the, there's, there would

clearly be an increase in transparency if records of those meetings were published, and one of the questions that we need to look at is, well, what would be the cost impact of doing that, and versus, and does that, does the benefit of the additional transparency justify that cost?

I see. What, if I can use the expression, "unit" of government or department is supervising or undertaking this revision of the November 2017 engagement with lobbyist policy?---Well, this is a, a departmental document, so it's my unit, the Legal and Governance Unit, on behalf of the Department.

So which department's driving it? Is it Premier and Cabinet, or is it the DPIE itself, or - - -?---Okay, well, at the – need to be particularly clear, Commissioner, this document is a departmental, Department of Planning, Industry and Environment document. It applies to the Department of Planning, Industry and Environment. It's not government-wide. We are reviewing this for the application to the Department. Separately, and it's a, one matter that I had to note, in Dr Chen's opening – and I may have misheard this, I'm sorry – there was a reference to, or a comment that there was – I stress I may have misunderstood this – there was no obligation on public servants more broadly to comply with the Lobbyists Code of Conduct. And – I am getting to the answer to your question, Commissioner – the separate obligation is contained in a Premier's Memorandum. So that then is the responsibility of the Department of Premier and Cabinet, and that's the document that applies the obligations under the Lobbyists Code of Conduct to public servants.

All right. Thank you.

MR CHEN: I'm not sure I did say that in the opening, but you did make the point and that's fair enough. Mr Hebron, I want to just clarify an issue in an answer you gave the Commissioner a moment ago. Although certainly the version that the Commission has is described as NSW Government Planning and Environment, the policies and procedures in fact are DPIE policies and procedures, is that right?---Yes. Yes, the policy – I would need to caveat this and check again, but I am 99 per cent sure that the policy that's on the web when you click through the links is a branded Department of Primary, oh, Department of Planning, Industry and Environment-branded policy, rather than the 2017 DPE one.

I see. And to be clear, all of the work streams within the Department are bound by it at the present time, is that so?---Correct.

And to perhaps clarify a question or an answer you gave to the Commissioner, the drive for the review came from the document itself, in the sense that it sets a sunset clause as to what should occur in terms of review to determine its effectiveness. So within the policies and procedures themselves, you talk about, "We will review it," and the audit that you were

referring to earlier in your evidence follows from that obligation, is that right?---Yes, it is, oh, and there was, as I understand it, a, a version or two of this policy before the 2017 iteration, and it's a matter of good governance to review policies and have in, as part of the policy itself, a fixed time for that review. So, a longwinded answer, a way of saying yes.

Now, to simplify the distinction that is made within the policies and procedures, the principles of transparency, accountability, et cetera are principally directed towards, but not exclusively, towards third-party lobbyists. That is to say, the obligations and the strictures are primarily geared towards dealing with that group or class of lobbyists, are they not? ---From a legislative perspective?

No, within your policies and procedures, that is – let me approach it this way, Mr Hebron. A third-party lobbyist who wants to interact with the Department has to prepare a meeting request form and submit that. ---Correct.

And in terms of where the meeting can be held with a third-party lobbyist, there are provisions within the policies and procedures which stipulate where that meeting must be held or can only be held, is that right?---Correct.

Furthermore, in terms of the records that are created after or following the meeting, they have to be sent to more senior officers within the Department for sign-off, is that not right?---Correct.

And it has to go a certain level, I think a secretarial or some senior position within the Department when a third-party lobbyist is involved.---I can't recall the exact level either, but yes, there is an, the - - -

And there's also stipulations again dealing with third-party lobbyists within the policies and procedures that there must be at least two departmental officers attending, and indeed, approval must be given before a meeting can occur with that third-party lobbyist by a more senior member of staff. ---Correct.

As you've indicated before, once the meeting is held, a note has to be prepared and submitted for approval by a senior member within the Department, is that right?---Yes.

And that meeting, or the record of that meeting, is then uploaded onto the Department's website as a public record accessible to members of the public.---Correct.

Now, for those that are other lobbyists as defined, or business contacts, there are less strict obligations or different obligations, one of which is the material is not disclosed on the Department's website, is it?---No.

There are differences between where the meeting can take place. For example, it may take place at the organisation's offices rather than the departmental offices, is that right?---Yes.

And less senior members of staff can attend those meetings, is that right? ---Correct.

Although a record must be kept of the contact, the approval of the contact can be dealt with at a lower level than the position when a third-party lobbyist is involved.---I think that's the case, yes.

What I'd like you to assist the Commission with is what is the reasoning behind the distinction, if you accept that there are this other body of lobbyists – you've described them as in-house lobbyists, interest groups, potentially not-for-profit organisations – what's the distinction in the Department's mind that puts these obligations at a certain level for a third-party lobbyist but provides different ones for others who are seeking to achieve the same purposes potentially?---It's a very good question. The procedures, to my understanding, came into effect shortly after the Act and the Premier's Memorandum, so it appears from a historical perspective that they were put into place in the context of the focus on third-party lobbyists. So with a degree of legislative focus on that area, it seems the Department focused on the procedures in relation to third-party lobbyists in particular, and it's a, to my understanding, it's a driver for – I'll start again. From my perspective and from what I've seen, the integrity of the process is enormously sound. So the driver, I'd expect, for putting these procedures in place is really to put that integrity on display for the public. So that's in relation to third-party lobbyists. The very good question that you've asked is what's the difference between them and interest groups and industry groups. I am not sure that there is a clear distinction there. I mean, clearly third-party lobbyists are professionals who are employed to act on behalf of an individual, and predominantly the second group we're talking about are organisations acting on behalf of groups of individuals and expressing a view. Does that mean they should be treated any differently? Not sure that that's the case.

Is that something that's been the subject of or consideration as part of the review by the Department for these policies and procedures?---In a sense, yes. Certainly the question of whether or not to publish records of those meetings, that's something that is under consideration.

But also even more fundamentally, distinguishing between the obligations when – I'm using in-house to describe an industry group, as an example, but they can be powerful, they can be influential, they can be funded. Can you justify a separation between a third-party lobbyist and these sophisticated in-house lobbyists for the purpose of your policies and procedures?---It's a good question. Other than in terms of publication of the records, in terms of

the procedures around the meetings, quite possibly not. I'll ensue that that's part of the review because it's a good point.

And just to deal with the third category of persons or groups dealt with by the policy and procedures, the business contacts. Is part of the thinking behind that separation for that other group, and they have the least amount of obligations thrown upon them by the policies and procedures, and certainly the way the public official deals with them, they have the lowest amount of obligations. But what's the distinction, as you understand it, that supports business contacts, as it's defined, being a third group? Is it historical? Is there some method behind it? Or is the thinking – well, I won't prompt you. I'll see what you have to say.---Well, business contacts are really a function of the record-keeping obligations that exist under the State Records, State Records Act, and in general the keeping of business records, business contact records, applies to any meeting with virtually any, well, with any other agency. So rather than meetings which are held for the purpose of trying to influence legislation or in relation to a planning application, we're talking about I'd say tens but I think I can say hundreds of thousands of records, perhaps annually but certainly over a period of years, that record the Department's ordinary operations. So whether it's planning, whether it's national parks, whether it's energy, whatever it is, business contact records are just kept as a matter of course. So I think they are necessarily in a different category to meetings which are held for the purpose of influencing the future development of policy or legislation.

So I'm going to give an example just to see how the policy might apply, but if a substantial food retailer wants to move into a particular area, are they dealt with as another lobbyist or are they dealt with as a business contact? ---If, well, they'd need to operate within the planning system, so they, they, they need to submit a development application.

I'm just talking about contact with the Department. So I'm dealing with the policies and procedures of the Department and how the staff would deal with a substantial enterprise that wants a particular or has a particular interest for an outcome. Are they dealt with as a business contact under the Department's policies? Or are they dealt with as another lobbyist?---If, using the hypothetical example, there was a significant food enterprise that came to the Department with a proposal, well, there's two aspects to that. One is if it required a rezoning, then it wouldn't be to the Department, it'd be to local government along with the 98/99 per cent of other applications. If there were to be an approach to the Department separately, then that would – I'm not sure where, and that comes back to that line. If the chief executive of that food company came to meet with the planning officials, that may be a business contact, it may be another lobbyist. It would depend whether, what the purpose of the meeting was.

But if the purpose is to communicate with the Department because it has assessment or decision-making responsibility, then potentially that

enterprise can come and they may be a business contact, might they not? ---Okay, not in the context of a planning application. So a planning, it might be worth just speaking briefly about this because for a state significant development there's 10 or 12 steps, each step, and each step is public. So initially a company would approach the Department and ask for what's called the secretary's environmental assessment requirements, and that, that request is made public. And then the secretary's requirements, what is the nature of the project, what is the impact on the environment, there's a pro forma document on the website that sets out in detail what's required. That's then made public. And then in response to that, an applicant would spend the next two, three, four, five, six years developing the EIS and the application for approval, and when that's received, that's published. And there's a mandatory opportunity for public submissions. All of those submissions are published. The proponent's response to the submissions are published. Then the Department's report, the assessment report, which goes into detail of everything that's happened over the past five or six years, including detailing the contacts with the proponent, is published. And then if it's a matter, again, that's received more than 50 submissions, it's off to the IPC, and if not, it's determined by the Department.

But if it's more general, that is to say if the approach is more general – I might just show you the definition, Mr Hebron, and just show you understand what I'm driving at, it's really to see whether there is truly a clear distinction between all of these categories and whether or not really that is something that potentially might be usefully looked at, and whatever follows from streamlining that process, so that's really the point I'm seeking to explore with you. But I'll just show you how it's defined, business contacts, and that should come up on the screen.---It's not on the screen, but I think - - -

It should be here in a second, I'm sorry.---Okay. The short answer to your question, though, is that certainly there is no, or there's a bright line between registered third-party lobbyists and other lobbyists, but in terms of other lobbyists and particularly what you were referring to or a proportion of what you were referring to as the in-house lobbyists, there is no bright line under the current definitions.

Is that something that you think can usefully be looked at by the Department as part of its review?---Most definitely. Also appreciate any guidance the Commission may provide after this process, because there's – I mentioned earlier in my evidence – a meeting with an employed government relations employee for a large corporation, that can be seen as a meeting with an in-house lobbyist, but a meeting with the chief executive of a large corporation would, I'd expect, be a business contact form, a business contact rather than an in-house lobbyist, but are you then saying for some reason that a meeting with a government, somebody in charge of government relations is subject

to a higher degree of record-keeping than a meeting with the chief executive? Which seems a strange outcome.

Now, I'm going to move to a different topic, actually. I'll have that brought down from the screen. Part of the policies and procedures provides that once contact is made with a third-party lobbyist, the Department puts up on its website the contact that is made and a record of the contact that is made? ---The contact would be from the third-party lobbyist, but, yes.

And I'll just show you on the screen what it looks like. Are you familiar with it, Mr Hebron?---Familiar with what, sorry?

With the website which shows the business or the contacts?---I haven't myself clicked through it. I'm familiar with the website named, I'm familiar with the register.

I'll show you the form first, and you can see that this is a person who wishes to make contact with the Department can do so. And you'll see that there's a number of fields to fill in. And you can see that the purpose of the meeting is to be included in there, Mr Hebron, do you see that?---Correct, yep.

And what you were saying to the Commission earlier is that this is potentially something that's going to be extended across to all people who seek to meet with the Department, is that right? That is to say business contacts didn't have to identify the purpose of a meeting?---Business contacts would, sorry, I'm not - - -

The policy itself provides, or the procedures provide, that a business contact – as defined by your policy – does not have to provide the details of the meetings. That is to say, sorry, the detail of what is to be discussed at the meeting. Is that your understanding of it or not?---At the moment and, yes, as I said before, that should be improved.

And is one of the ways that it's going to be improved is to make it a requirement that all contact be using this form that's on your website? Or is it proposed that some other lesser form of disclosure of the purpose of a meeting would be sufficient?---Well, there would need to be the disclosure of the subject matter of the meeting. Whether every single contact with the Department should be through this website, I'm, I do not know the status of the review in relation to that point, I'm sorry.

It was more directed to the first part of your answer.---Okay.

That is to say if somebody wants to meet, and at the moment the policies and procedures, if you are a business contact, does not require you to disclose why you want to see the Department. My question is, is it

proposed that business contacts are to use this form or something similar to it?---Correct, yes.

Now, I just want to show you the business contact or the lobbyist contact register. Do you see that on the screen now in front of you, Mr Hebron? ---Yep.

Have you had occasion to go into this before?---I looked at it month or two ago when it was mentioned that I'd be appearing here.

So at the moment the lobbyist contact register is on the Department's website and it's to include the contact made by a third-party lobbyist with the Department, is that right?---Correct.

And you can see the various fields that are required to be completed, do you see that?---I do. Sorry, Dr Chen, just to clarify the previous answer, I think you were asking whether it's a, the initial contact. This records the meeting. It might be semantic. I'm just particularly - - -

Sorry, this is the contact register and it's recording when a third-party lobbyist has actually met with the Department.---Correct.

And this is recording the outcome.---Correct. Thank you.

Now, who within the Department prepares this information. Do you know, Mr Hebron?---I do. The initial information comes through to the Governance Branch, who then disseminate it to the Business line.

I see. So is the Governance Branch your responsibility or somebody else's?---Yes, it's mine.

So when a third-party lobbyist has met with or made contact with the Department, do they then submit the details to your department? Is that what happens?---Could you repeat that question? I'm sorry, I didn't understand it.

We're talking about the lobbyist contact register. You understand that? ---Yes.

And I understood you to say that it's dealt with initially – or at least in part – by the Governance section or area, which is your responsibility.---Correct.

And so the information, when a contact is made, must come from the individual business unit – I think that might be the words or phrase you used – to your department. Is that right?---It comes from the third-party lobbyist, through the form, to the Governance Team, who then contact the business unit.

And so who then determines what information is to be put into this form, particularly, for example, primary outcome? Is that your group on its own, in consultation with a particular area?---I'd need to take it on notice to be absolutely sure, but my understanding is that the record is completed by the business unit and then it's either submitted back to the Governance Team or it's signed off and then submitted back to the Governance Team and then uploaded.

In the course of your work, are you aware of any issues such as commercial-in-confidence arising in relation to this lobbyist contact register or not?---No, I'm not.

It appears, and I'm going to put some figures to you, it appears in the period from about August '17 to October 2019 there were only 23 entries on the lobbying contact register. Does that accord with your understanding of the numbers?---Correct. I should say I haven't counted them one by one, but it's roughly, I had a look for the purposes of giving evidence, and I think it's three this financial year, five the one before, and 15 maybe the year before. So that tally seems correct.

And do you have any idea about overall what percentage of lobbying contacts – and I'm not seeking to distinguish between other lobbyists and third-party lobbyists – do you have any understanding about what percentage of lobbying contacts therefore are made by third-party lobbyists as opposed to other lobbyists?---Clearly a lot less, I'd expect. But, no, I'm not able to put any kind of metrics around that, I'm sorry.

The impression – and it might be wrong, but you tell me if it is – is that the capture of this policy, although a good one, is really targeting a very, very small numbers, number of lobbying contacts with the Department. Is that fair?---I think it's immediately apparent, yes.

And is that something that's going to be looked at by you and your Department in terms of whether or not it should be extended to include other lobbyists or however you settle on that final definition in your review? That is to say whether it should be extended to cover other lobbyists and the public disclosure of the contacts made?---Well, it's certainly something that's under consideration and, as I said, I'm looking forward to the Commission's thoughts on that because while from my perspective I think not only because of the code of conduct but because of common sense and practicality, lobbyists who contact the Department I personally don't see those contacts, I see them as a mechanism for the development of good policy and good legislation for instance. In terms of being a high-risk area, certainly that's not my impression. However, the most important aspect of this I think is the transparency, so the third-party lobbyists we can publish the records and then people can see for example that there are only a few meetings with third-party lobbyists. Now, in relation to other lobbyists, interest groups, industry groups, professional bodies, again from my

position I can see the system operating with integrity. The question really is would the added transparency of those records being published outweigh the cost of doing so. That's something we're looking at. But from a first principles point of view personally I think it would be a very good thing to publish those records as well.

I mean the cost is really only costs in relating information that is otherwise captured by the policy and then making steps to have that put onto the website. That's the only cost involved, the additional costs. Isn't that right?---That's one way of saying it and it's entirely correct, but the only cost when we're looking at say 20 or 30 interest groups, maybe the same number of industry and peak bodies and regular meetings, that, my gut feeling – and again this is the subject of the review, not something that I've reached any final conclusion on – but my gut feeling would be that the cost of doing that is probably achievable in some way, so we'd need to refine the procedures and the definitions to pick that up. In relation to the hundreds of thousands of business contact forms, which again, each one of those very much could have commercially in confidence information or legally privileged information, that's a task that's beyond the scope of the review and the enormity of the resources required for that is, you know, it's quite apparent to me that that's too much. But in relation to the other lobbyists, those people, then yes, it's the gathering of the material. In response to your earlier question I mentioned the commercial in confidence hadn't been raised in those matters, it's probably unlikely in the sense of lobbying for changes to policy and legislation to be raised as well, because those issues are more of a broad application, so, and again I don't want to prejudge the outcome of our review, but it's certainly something we're looking at and I can see the transparency benefits of doing it and I agree that ideally the costs should be manageable.

Commissioner, those are the questions for Mr Hebron.

THE COMMISSIONER: Yes, thank you. Just one matter. The state significant developments, you spoke of the 10 to 12 steps, one of which includes the departmental report. In terms of the decision-making, based on an assessment of the merits if you like of a particular application and the countervailing factors, how does the 10 to 12 step process provide transparency in terms of how the decision-making process went forward in terms of milestones and ultimately who is responsible for the decision having taken at the end of the day?---Ah hmm. There are really, other than the overarching obligations arising out of the code of conduct, the Lobbying Government Officials Act, the ICAC Act, et cetera, public interest disclosures, those things are of general application, but in relation to the process, the paying process itself, there are really two ways which, or two tools that safeguard against any impropriety. The first is that each one of those steps is published and open to public scrutiny, so when I say, you know, the assessment report, that is an extraordinarily large document that details a whole number of steps. So it's a process where there are many

meetings and many interactions with many stakeholders and the results of those are published, there's a submissions process and then an assessment report. So the first is the transparency of the system itself. The second is in relation to the more controversial matters, the separation of the decision-making process from the assessment. So at the local level it's between the councils and the IHAPs and at the state significant level it's between the Department and the Commission, so a separate body that hasn't been involved in the assessment is called in to look at things in an environment where the significant areas of difference have really been identified. It's similar to process of pleadings where it narrows down the issues that are in contention. And the IPC is faced with the most controversial projects with often the most divergent views about the most controversial subject matter and they are separate to the assessment process. So that step of removal really ensures the integrity of the decision-maker in relation to the more contentious projects is completely unassailable.

Your reference to the Commission, in that process you were referring there to the – which Commission?---Sorry, the Independent Planning Commission.

I see. Yes, thank you.

MR CHEN: Commissioner, I should tender and I will tender the DPIE meeting request form that I showed Mr Hebron.

THE COMMISSIONER: Yes. The DPIE request form will become Exhibit 26.

MR CHEN: And also the DPIE lobbying, lobbyist contact register.

THE COMMISSIONER: Yes, the contact register DPIE will be Exhibit 27.

MR CHEN: Commissioner, could that be one exhibit, could they be combined so the - - -

THE COMMISSIONER: Certainly. Both documents will become Exhibit 26.

#EXH-026 – SCREENSHOTS FROM DPIE WEBSITE

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Thank you, Mr Hebron, very much for your attendance and for your assistance.---Thank you, thanks for the opportunity, I appreciate it.

MR CHEN: Thank you very much.

THE COMMISSIONER: Thank you. You're excused.

THE WITNESS EXCUSED [11.27am]

THE COMMISSIONER: Dr Chen, do you want to proceed with the next witness?

MR CHEN: Yes, we will, if that's convenient to you, Commissioner.

THE COMMISSIONER: Yes.

MR CHEN: I call Dr David Solomon.

THE COMMISSIONER: Yes, thank you. Yes, Dr Solomon

MR CHEN: And, Commissioner, Dr Solomon will take an affirmation and I have explained section 38 of the Act to him and he does not wish to avail himself of that protection.

THE COMMISSIONER: Yes, thank you. Thank you, Dr Solomon. We'll just have the oath – yes.

<DAVID SOLOMON, affirmed [11.28am]

THE COMMISSIONER: Thank you, Dr Solomon. Just take a seat there. Yes.

MR CHEN: Thank you, Commissioner. Dr Solomon, between the period 2009 and 2014 you were the Queensland Integrity Commissioner, were you not?---I was.

And that was a statutory office responsible for administering the Queensland Integrity Act which included administering the lobbying regime in that state?---It did.

I'd like to just ask you some questions about just some of your background if I might. Dr Solomon, you were formally a journalist, a lawyer, and have been the author of 10 books about Australian politics and law?---I have.

You hold degrees in arts and law and a doctorate of letters, do you not?---I do.

And in 2006 you were appointed a Member of the Order of Australia in recognition of your service to journalism as a commentator on legal, political and constitutional law issues?---Yes.

You are currently, are you not, an adjunct professor in the School of Political Science and International Studies at the University of Queensland? ---I think that's probably lapsed.

I see, you were. And between 1992 and 1993 you were the Chairman of the Queensland Electoral and Administrative Review Commission?---That's correct.

You've also been the chair, in 2007 and 2008, of the Independent Freedom of Information Review Panel, having been appointed by the Queensland State Government to review Queensland's freedom of information laws. ---Yes.

Dr Solomon, you have prepared – and the Commission is grateful for you having done so – some submissions, the first of which was in response to the discussion paper issued by the Commission in April of 2019.---Yes.

And, Commissioner, I tender Dr Solomon's submission, which is noted as submission 32.

THE COMMISSIONER: Yes, submission 32 by Dr Solomon, become Exhibit 27.

#EXH-027 – SUBMISSIONS WRITTEN BY DR DAVID SOLOMON DATED 31/05/19

MR CHEN: And Dr Solomon, you also prepared – again, the Commission is grateful for it – a further submission in response to the discussion paper issued by the Commission in November, 2019, did you not?---I did.

Commissioner, I tender that further submission by Dr Solomon.

THE COMMISSIONER: Yes, the submission of November, 2019, by Dr Solomon becomes Exhibit 28.

#EXH-028 – SUBMISSIONS WRITTEN BY DR DAVID SOLOMON DATED 06/11/19

MR CHEN: I'll come back to the detail of this, Dr Solomon, in due course, but your later submission addresses in some detail, in relation to lobbying in Queensland, what worked and what did not work, isn't - - -?---It does.

And obviously you drew upon your considerable experience as a Queensland Integrity Commissioner.---Yes.

Dr Solomon, I'm going to ask you some questions just to set the scene, which is going to be an overview of the regulatory scheme in Queensland as it relates to lobbying and your role as the Integrity Commissioner under the Integrity Act, if I can. Commissioner, I might just pause, I might just have five minutes. Commissioner, could I just have five minutes, and I just want to assemble some material, if I can?

THE COMMISSIONER: Yes, yes. Just so that we get the timetable right, Dr Solomon, you're back on the plane, I understand, this afternoon?---I am, yes.

So you'd have to leave the city comfortably by what time?---I should leave here by 2.30.

Right. We'll get you away before then. Very well. I'll take a short break.

MR CHEN: Thank you, Commissioner.

THE COMMISSIONER: Just step out for a moment, Dr Solomon, thanks. ---Thank you.

SHORT ADJOURNMENT **[11.33am]**

THE COMMISSIONER: Thank you, Dr Solomon. Yes.

MR CHEN: Thank you, Commissioner. Dr Solomon, in front of you is a copy of the relevant regulatory scheme in Queensland, which includes the Integrity Act, the Lobbying Code of Conduct, the Ministerial Code of Conduct and the Ministerial Handbook. Commissioner, could I hand you a copy of that material as well.

THE COMMISSIONER: Thank you.

MR CHEN: Thank you. Now, Dr Solomon, I just want to set the scene, if I can, of the integrity regime as it was when you were the Integrity Commissioner. The starting point of course is a preamble to the Act, and it seemed to identify importantly and relevantly the creation of an Integrity Commissioner, and in fact there had been an Integrity Commissioner in fact too prior to your appointment, is that not right?---That's correct.

But you were the first Lobbying Commissioner to deal with lobbying, is that so?---I was, yes.

And part of the preamble to the Act provides that one of the objects or purpose of the Act is to facilitate the giving of advice by the Integrity Commissioner to public officials, expressed generally, is that right?---Yes.

And also to establish a register and maintain a register and related functions in relation to lobbyists, is that so?---That's so.

And importantly, and we'll come to it shortly, the lobbyists that were really, as it was defined, were third-party lobbyists only, is that so?---That's correct.

The other important statutory provision was the prohibition on the payment of success fees in connection with lobbying.---That's correct. Could I say when I took over in July 2009, when this Act came into force, the lobbying provisions did not come in for another six months after that.

I see.---Prior to that they were handled by the Department of Premier and Cabinet.

And was it pursuant to the Public Sector Ethics Act that dealt with lobbying?---No, that, that created the position of Integrity Commissioner. That was about 10 years earlier.

And part of the role of the Integrity Commissioner and part of the purpose of the Act was to provide confidence in the administration or to provide, encourage confidence in public institutions, is that right?---Yes.

And part of the specific role that you had is to provide education and related services.---Yes.

And to foster the dissemination of public knowledge and awareness of the regime and lobbying practices.---Yes, it was.

Now, the functions of the Integrity Commissioner were set out, and the functions were prescribable specifically in section 7, and they were essentially the same as identified in the object, that is to provide advice, to establish the lobbying register, and to have responsibility for it.---Yes.

But also you were to have an educative role more generally and to raise public awareness of ethics and integrity issues relative to your functions. ---That's true.

And if you turn, please, to sections 9 to 11, you can see that chapter 3 was – this is on page 10 of the Act. Chapter 3 was dealing with advice on ethics or integrity issues. Do you see that?---Yep.

And part of the statutory functions of the Integrity Commissioner was to provide advice when it was sought by a public official? I'm expressing it generally.---It was, yes, senior public officials and members of parliament.

And also you had a role – which we'll come to shortly – under section 20A of the Act to provide, if necessary, advice in relation to ministers in the post-separation employment period.---yes.

Now, the regulation of lobbying was dealt with in chapter 4 of the Act, which is on page 26, Dr Solomon. And the core concept of lobbyist and third-party client and related concepts was dealt with in section 41. But the essence is that only those lobbyists who were third-party lobbyists were caught, is that so?---That is true.

And that's a fundamental limitation which you have much to say about, is that right?---Oh, at every opportunity.

Well, you'll have a good opportunity shortly. Importantly, could I draw your attention to section 41(3), Dr Solomon, because there were a number of exclusions provided by that provision, one of which was a not or a non-profit entity, and another was, I might call them just an industry group. ---Yep.

And again, coming to or telegraphing where your evidence may go later, you have much to say about whether those groups as defined should be excluded at all.---I did.

And still do.---Often.

Dr Solomon, just to put a handle around the kind of figures that this Act was attempting to or was regulating, your best estimate is that it was regulating a very small class of lobbyists and only capturing a very small amount of the lobbying activity that was being conducted in the state of Queensland whilst you were Queensland Integrity Commissioner.---Yes, and I, I based my calculations on the situation in Canada, which had a, has a similar legal political institutional arrangement to, to, to Queensland, and on my – because they regulated all types of lobbyists, and on my calculations, the third-party lobbyists that we were regulating were about one-fifth or one-sixth of the total number of people who were involved in lobbying.

And your own experience and opinion is that the Act itself was seeking to regulate perhaps the least influential group of lobbyists, is that right? ---That's correct. I think the, the power of the other lobbyists is demonstrated by the fact that they managed to evade being regulated.

I see. Now, although this was at a period when you were no longer the Integrity Commissioner, Dr Solomon, but the annual report of the Queensland Integrity Commissioner in 2016-17 in fact showed a slowdown in registration of lobbyists. Were you aware of that?---Yes, I've read that.

And one of the explanations was that it may be that lobbyists were potentially changing the way their business model that they were operating perhaps to circumvent the provisions.---Yes.

Was that your best understanding as to why the numbers were declining? ---Yes, it is, and I had had, I'd had discussions with the, some of the lobbyists during my time, and they were indicating that that was what they were intending to do.

What were some of the illustrations that were given to you in your interactions about how that they were changing the way they were doing business in order to perhaps move around the provisions in the Act?---Well, essentially they would describe themselves as advisors, and while they would attend lobbying meetings, their client would do most of the talking and they would simply be there as a backstop.

I see. Dr Solomon, can I draw your attention to section 42, which is on page 27 of the Act, and that deals with lobbying activity and contact, do you see that?---Yes.

And lobbying activity is given some further description in the Lobbying Code of Conduct which we'll come to shortly, but as I understand it, there's no problem with these definitions generally speaking, in the sense that they are fair descriptions of what lobbying activity involve, they are a fair definition of lobbying contact. But the issue is who it captures, not what it involves, is that a fair way of putting it?---Yes. Yes.

All right. Now, Dr Solomon, I just want to draw your attention to, on page 29 of the Act, so that's section 42(3), and the definition of contact.---Yes.

And it includes obviously all forms of contact?---It does.

But what's not considered to be contact is the steps that a party might make to set up or establish a meeting. That is to say, that's not a lobbying contact, is it?---That's correct.

But the Commission did hear some evidence which was slightly surprising, that in other jurisdictions, not New South Wales or Queensland, there was a complaint that lobbying contact was so widely defined that any form of contact, such as trying to arrange a meeting, would generate this paperwork and administrative burden. Are you aware of any system within Australia that would require disclosure of even the attempt, at this level, of setting up a meeting as requiring disclosure?---No. No, I'm not. But I, I'm aware that that extended definition was in fact the cause of some problems with a minister who was disclosing or not disclosing facts like that, and there was an argument about whether trying to arrange a meeting did in fact amount to a lobbying contact.

I see. And could I move to the register itself, Dr Solomon, so that's on page 32 of the Act, and it's dealt with in part 2, and in particular section 49. And part of the functions of the Integrity Commissioner was to establish and then keep a register of registered lobbyists?---Yep.

And that was to include fairly general information, such as the name of the lobbyist, the name of those engaged to carry out the activity, et cetera. ---Yep.

We'll just show you on the screen if we can, Dr Solomon, of what the lobbying register in Queensland currently looks like. So on the screen now, Dr Solomon, is, you can see, the current register, sourced from the Integrity Commissioner's website. Do you see that?---Yes.

And that form was more or less the form it was when you first created the register, was it?---Yes, it is.

And the information that is prescribed is fairly minimal, is it not?---Yes, that, that's the register of the companies.

I see. And you can also access, can you not, the clients of those - - -?---Yep, and the individual lobbyists.

And the individual lobbyists. And you can see that above in the highlighted sections on that document.---Yep.

Commissioner, I tender that screenshot of the Queensland Integrity Commission register.

THE COMMISSIONER: Yes, that'll be marked as Exhibit 29.

#EXH-029 – QLD INTEGRITY COMMISSION LOBBYING REGISTER

MR CHEN: And to become a registered lobbyist under the Act, they had to make application to you, did they not?---Yes.

And you had to approve them, obviously, before they could become a registered lobbyist.---Yes.

You also had regulatory powers in relation to lobbyists, such as you could cancel the registration of a lobbyist if there was issues with compliance or noncompliance as the case may be?---Yes.

Now, also within your statutory remit as the Queensland Integrity Commissioner is that you could, and in fact did, approve the Lobbyists Code of Conduct, is that right?---Yes.

And that was provided by section 68 of the Integrity Act, and that provision also made provision in subsection 4, Dr Solomon, did it not, that the commissioner could impose obligations on lobbyists to give information about their lobbying activities?---Yes.

And to the extent that that power was used, was the way in which the Integrity Commissioner used, it was to seek and require the third-party lobbyists to provide information to you, the commissioner, about the lobbying contacts?---That's correct.

And that formed the basis of the lobbying contact register that was created? ---Indeed. And that was done through changing the code of conduct.

And Dr Solomon, I'm just going to show you a hard copy, and there's a copy for the Commissioner, of the register if I can. Dr Solomon, that is the, or two pages from the lobbying contact log on the Commission's website, relevantly for the period of January 2020. Do you see that?---Yes.

Commissioner, I tender those two pages.

THE COMMISSIONER: Yes. That document will become Exhibit 30.

#EXH-030 – QLD INTEGRITY COMMISSION CONTACT LOG

MR CHEN: And just to go through a little bit of the detail of that contact log, if I can, Dr Solomon. The obligation – I withdraw that, I'll start at an earlier point. The Lobbying Code of Conduct was directed to regulating principally the conduct of the lobbyists, not the public official, isn't that right?---That's correct.

To the extent that there were some obligations conferred, they were indirect in the sense that to deal with a third-party lobbyist, they needed to be registered and the public official needed to be aware of that, for example? ---Yes.

But besides, or putting those matters to one side, the primary obligations covered by the Lobbyists Code of Conduct were cast upon the lobbyist and not the public official?---Yes.

And when the Commissioner looks at the contact log, you'll see that a number of fields need to be populated or filled in, do they not?---Yes, they do.

And that's filled in, or the entire form is filled in by the lobbyist, not the public official?---That's, that's true.

And does the public official have, in a given case, or is it given notice of what goes onto the contact log or - - -?---No.

One of the – I'll withdraw that. One of the requirements of the lobbying contact log was the contact purpose. Do you see that?---Yes.

Was that filled in or completed by typing information in or were there drop down fields to enable completion?---I, I'm pretty sure there was a, a pull down menu, drop down menu.

And there was defined number of options that were available, were there, under the drop down menu?---Yes, yes, there were.

And there was also, within the drop down menu, a reference to a purpose being commercial in confidence. Were you familiar with that?---Yes.

And that was present as an option when you were the Integrity Commissioner, was it?---It was.

Are you able to say, as best you can, Dr Solomon, to what extent or what numbers involved a claim that there was commercial in confidence?---I, I can't, I'm afraid. It wasn't a large number.

Do you know, was there any definition given to, or assistance within the Act, the code or any other way to determine what was commercial in confidence?---No, there's wasn't.

Was there any verification by your office to work out whether it truly was commercial in confidence or was it simply accepted that that was so?---It was, it was generally accepted. There was contact sometime between the lobbyist and the officer in my office who looked after the register as to what was the appropriate heading to put it under. But that's about as far as it went.

Was there any, by your office or the person you referred to, any checking or random checking of entries of that kind as part of the functions?---No, there wasn't. But, but we did, certainly early on, check the entries against ministerial diary entries where the contact was with a minister to see whether they coincided.

Section 68(4) of the Integrity Act, which was approved by you, created this obligation on the lobbyist. Were any other, or consideration given to imposing any further or more rigorous obligations by you?---I, I did have some, I did try to make it a bit more stringent. I was required under, under the Act, in making changes to the code of conduct to, I forget the exact word, consult with the relevant parliamentary committee and the relevant parliamentary committee was not in favour of many of the changes that I was making and I felt it politic to go so far and no further. I, in fact, several of the items that were included in, in the code went further than the committee wanted but if I had pushed it too far, I think the Act might have been changed.

THE COMMISSIONER: Were all the members of the committee against you or was it a split decision sometimes?---I think it was pretty unanimous and, and this was under the Newman Government.

MR CHEN: Dr Solomon, just to draw this together. So the regulation, to the extent it covered lobbyists were dealing only with third-party lobbyists? ---Yes.

The requirements were the registration requirement as well as the contact log that we've just seen?---Yes.

As well as whatever is contained within the Lobbying Code of Conduct? ---Yep.

I think your office had discussions about whether or not compliance was found to be easy with the third-party lobbyists at least. Is that right?---Yes.

And what was the experience as reported to you?---When, when I have notice of the changes that were going to require notification of meetings, there was considerable lobbying of the Parliamentary Committee by lobbyists who complained that it would take up a huge amount of time and be very difficult and, in fact, the compliance was quick and turned out to be fairly easy and there were no complaints once the system came in to be.

I mean, much of, just by reference to Exhibit 30, which is the contact log, much of the information that would be contained within there would be, actually of it, would be kept by the lobbyists and created as part of any contact in any event.---Oh, indeed.

And that's irrespective of whether they're a lobbyist more generally or a third-party lobbyist?---That's correct.

May I turn now just to draw your attention to some parts of the Lobbying Code of Conduct, Dr Solomon, if I can, and that should be in the second tab or behind the second tab in your folder. You can see by its heading that it's the Lobbyist Code of Conduct under the Act and particularly under section 68 and I just wanted to draw your attention to clause 4, which is on page 4. ---Yep.

And that plays in or ties in with this lobbying contact register about what needed to be disclosed in relation to the activities carried out by them. Do you see that?---Yes.

And in particular, if you turn to page 5, the subparagraphs then identify the detail that is to go into the lobbying contact register.---Yep.

Dr Solomon, I want to draw your attention to another integrity measure, which is post-separation employment of ministers as it stands in Queensland, and behind the third tab of the folder of material there should be a document called the Ministerial Code of Conduct.---Yep.

And there should be a provision which is headed Post-Ministerial Employment.---Yes.

And you'll see there in essentially the third paragraph ministers have to undertake, for a period of two years they will exercise care in considering offers of employment or providing services, et cetera, in relation to their official dealings as a minister in their last two years of office. Do you see that?---Yes.

Was that the form in which it was in place, so far as you recall, while you were Integrity Commissioner?---Yes, I'm fairly sure it was.

I do apologise, I want to take you back to section 20A of the Act if necessary, but that was the provision under the Integrity Act which enables ministers, or former ministers, to take or seek advice from you, if necessary, about a post-separation employment issue?---I think that's new.

That's new, is it?---Yeah.

Were you ever, whilst you were holding the office of Integrity Commissioner, ever consulted about giving advice in relation to post-separation employment issues for ministers or assistant ministers?---I don't recall having done so.

Within the Integrity Act, the Premier was empowered to seek out you for advice in relation to any ethical issue that seemed to arise in government. Is that so?---Yes. That's correct.

And your best recollection is that at no stage were you ever sought out to give that independent advice.---I can't tell you.

I see.---That is, I'm not allowed to tell you.

I understand, okay.---Under the secrecy provisions of the Integrity Act.

I want to go back now to the post-separation employment, and I'm sorry to jump around, Dr Solomon. But there were some carve-outs, were there not, for ministers and assistant ministers, and that related to excluding those described for working for "not-for-profit entities".---Yes.

As well as others, which obviously includes charity organisations and churches because that's set out in the handbook, but conceivably could include any industry group that is not-for-profit.---Yep.

Is that the way you understood the provision to operate whilst you were the Integrity Commissioner?---No. I, I thought it applied more generally because not-for-profits includes some of those industry organisations.

They do. It raises the same issue that I think we'll come to, and some of the concerns you've got about excluding lobbyists that are not-for-profit, because many of the not-for-profits are substantial concerns undertaking vigorous lobbying.---They certainly are.

Now, could I just deal with some of the theory, Dr Solomon, about post-separation employment. Are the two broad issues that are sought to be covered by or prevented by a provision such as this the unfair giving of

access by the former public official to an area that he or she may have worked in? Is that one of the concerns that it's seeking to cover?---Yes, it is.

And is another broad concern the use of sensitive or confidential information? Is that another broad concern that it's seeking to cover? ---That's thought to be covered simply by common law and, and the Criminal Code in terms of the use of confidential information.

Do you recall, who oversaw the enforcement of this provision in Queensland at the time?---It would have been the Premier.

The New South Wales provision, I'm not going to take you to the detail of it, but it has a couple of concepts which seek to – I'm sorry, I withdraw that. It's contained within the Lobbying of Government Officials Act and it has a preclusion for ministers and parliamentary secretaries for two years, and I'm going to put it very generally in relation to areas or material that, or areas that they had worked in previously. It's in section 18. It might be 18 months, Dr Solomon. I may have said two years. It is, I'm sorry, it is 18 months. But if the idea is to prevent unfair access or the use of a position to unfairly gain access to public officials by former public officials, then the start must be to stop the former public official directly or indirectly gaining the access for themselves or for others for whom they represent, must it not?---Yes.

And any statutory formula that is in place has to deal with that, doesn't it? ---It does.

What are the other fundamental reasons why there should be post-separation employment if it's indirectly to prevent the use of confidential information or to provide an unfair advantage? Is there another broad area that it's seeking to prevent abuse?---I think it's the, apart from anything else, it's, it's the appearance of insider dealing, in effect. The use of contacts as well as information.

If one of the legislative objectives for having a cooling-off period is to prevent the use of or even inadvertent use of confidential information, any statutory provision to prevent that must stop the individual from being put in a position where they can disclose it, but also assisting others in doing so, would it not?---Yes.

And it's to prevent the providing of information about the way in which government departments or others – that is, of a non-public or a sensitive kind – can be used not only by the public official but by others for whom he or she may be asked to act.---Yes.

So would you support any reform that makes it clear that precludes lobbying from assisting others engaged in lobbying so as to cut off the potential

misuse of information of the kind that I referred to?---Yes. I think that's why the Canadians, for example, go for a much longer period, for a five-year period, because one would assume that after five years the information of the departing minister or official has has become stale, useless, less, less useful.

One of the things that I think in your submission, and certainly in the literature you've prepared, is that the post-separation employment cannot be confined merely to the minister – or the assistant minister as they're described perhaps in Queensland, or the parliamentary secretary – but it must filter down to other levels of public officials.---Yes.

At what level do you pitch the post-separation employment period? And before you answer that, you'd be familiar with the federal code that provides that certain public officials as well are precluded for a period.---I am, but I don't know the level down to which that goes.

It's certainly within a ministerial office I think it's defined.---Oh, oh, yes, certainly. Within ministerial offices, certainly, that level goes down, should go down to policy officers.

And what about independently of ministerial offices to government departments? Do you support that for senior public officials as well? ---Certainly.

One of the competing contentions is that, well, a minister may only hold office for a short period of time, and similarly those within the office of the minister may also only be in that position for a short period of time, and perhaps there needs to be exceptions. Do you draw on overseas models that assist in that respect as well? That is to say, for exceptions.---I don't think it's necessary. I mean, the, unless the person is in a job for only a week or so, that, the amount of time that he's been in, he or she has been in the office isn't all that relevant.

The Canadian model, Dr Solomon, makes provision for the Lobbying Commissioner in Canada to deal with applications for exemptions.---Indeed.

So long as the purpose of the Act would be achieved in conferring that exemption.---Yes.

Is that something that you think is a useful issue to explore further and perhaps would you give qualified support for something like that?---Yeah, it would, it would meet the problem of a short-term appointment or an appointment, say, in ministerial office that sounded impressive but did not in fact involve the sort of policy work that might be considered to be beyond the bounds.

Is one of the reasons why you support a greater period for a post-separation cooling-off period particularly for ministers because ministers cannot separate themselves from what information they receive in Cabinet from other departments or from other ministers?---Indeed.

And is that the particular (not transcribable) of why you think longer periods are justifiable and necessary?---Yes, because it's not just the minister's portfolio. It is the contact with other, with other ministers, the reading of brief, Cabinet briefs and so on, Cabinet discussions.

Once a minister leaves office – say at the end of an election – he or she may take up employment wherever, and that may include assuming a position within an organisation that has contact with government. In Victoria there's a register for former public officials to identify that they've held such a role. Are you generally familiar with that?---Yes.

Is that something that you would – I think as well, I withdraw that. That's also something that in Canada when somebody applies to become a lobbyist they are also required to disclose that.---Yes.

Are those sort of additional transparency obligations you think worthwhile? ---Yes, I think any information that adds to transparency is important for, in the public interest.

Is one of the reasons why you support that because when, in the example that I gave you a moment ago, a public official assumes a role in a lobbying firm or within another organisation, that this register will pick up or should pick up that they have assumed that role?---Yes.

And so it adds another check to work out whether the post-separation employment periods are being adhered to.---Indeed.

One of the suggestions might be that those that leave public office are required to attest compliance for the post-separation employment period, even at the beginning, that they're aware of their obligations under whatever Act or whatever code prescribes what they should or should not do, but also at the end. Is that something that you think would be useful to aid in not only reinforcing with the public official what they shouldn't be doing, but also to provide a means at the end of the period to confirm that they have complied?---Sorry, could you repeat the beginning?

Of course. I'll do it by way of example if you like, Dr Solomon. That at the moment when a public official with sufficient seniority leaves, say, government and parliament, they can assume a role in private enterprise as they see fit, and in one way to check that post-separation employment obligations are understood and being complied with, that perhaps one way of dealing with it as a measure would be to have the public official attest to

their knowledge of the obligations when they leave.---I see what you mean. Yes, certainly.

And also at the end of the post-separation employment period to attest that they have complied with it.---Yes.

And do you think that's a useful measure to - - -?---It would be.

- - - keep track of where they're going but also - - -?---And so that they know when they do the first of those that they're going to have to do the second.

Correct. I mean, education is no less important that regulation, and that perhaps may serve to emphasise to those that are not aware of what their obligations truly are.---I agree.

And particularly if, as you advocate, that if post-separation employment should be dropping down from very, very senior members of government – say a minister or parliamentary secretary – to those within a ministerial office, it perhaps shouldn't be assumed that they have any working knowledge about what their obligations are or any knowledge of the content. Do you have anything to say about that?---Yes, I agree.

I want to move to ministerial diaries now if I can, Dr Solomon, again just to complete the sweep through Queensland and the regulation there. Would you have a look, please, which should be in the fourth tab of the volume, which is the Queensland Ministerial Handbook, and in particular clause 3.12.

THE COMMISSIONER: This is behind (not transcribable) 4, is it?

MR CHEN: Should be, Commissioner, yes. And it's at page 40 of that document.---Between 3 and 4.

THE COMMISSIONER: Between 3 and 4.

THE WITNESS: Yes, I have that.

THE COMMISSIONER: Is that the conflicts of interest?

MR CHEN: It should be on its own page, clause 3.12. Sorry, pardon me, Commissioner.

THE COMMISSIONER: Sorry, what's the document called?

MR CHEN: It's on the screen now, Commissioner, if that helps.

THE COMMISSIONER: Well, we'll work from that.

MR CHEN: It's the ministerial handbook, the Queensland Ministerial Handbook.

THE COMMISSIONER: The handbook, all right, okay.

MR CHEN: Yes. So part of the transparency measures that are brought in by this handbook is the obligation for ministers to proactively disclose on a monthly basis portfolio-related meetings and events. Do you see that?
---Yes.

Was there a similar obligation in place when you were the Queensland Integrity Commissioner?---Yes, there was, in general terms. I'm not sure it was as specific as this.

We're just going to show you on the screen now an extract which is from the Queensland Government website that records the ministerial diary for the Honourable Dr Anthony Lynham MP for the period 1 December, 2019, to 31 December. Do you see that?---I see that, yes.

And you'll see down the bottom, I just want to draw your attention to one, about this, and I'll ask for some comments about the usefulness of this measure. You'll see on the 6th of December there was a meeting between that Minister for Natural Resources, Mines and Energy and the Australian Banking Association, Anna Bligh.---Yes.

The former Premier.---Indeed.

And you'll see on the right-hand column the purpose of the meeting is described as "telephone meeting". Do you see that?---Yes, as opposed to all of the above, which would mean just meetings.

Commissioner, I'll tender if I can the ministerial diary.

THE COMMISSIONER: Yes. The ministerial diary becomes Exhibit 31. The period of 1 December, 2019 to the 31st of December, 2019, taken from the Queensland Government ministerial diary.

#EXH-031 – QUEENSLAND MINISTERIAL DIARY FOR MINISTER FOR NATURAL RESOURCES, MINES AND ENERGY 1/12/19-31/12/19

MR CHEN: It wasn't part of your statutory functions at the time to oversee?---Oh, no.

And at the time you were Integrity Commissioner, who was the body that oversaw compliance by ministers with the obligation to comply with clause 3.12 of the handbook?---It would have only been the Premier.

I'll let you comment upon it. What does that do in terms of transparency and usefulness, Dr Solomon?---Not very much.

One of the problems that the Commission has heard evidence about, and I gather – I withdraw that. This document to access it appears to be limited to going onto the website and clicking on it and securing what is a PDF file. ---Yes.

Now, there's a similar regime in New South Wales, where there should be disclosure by ministers, and there is disclosure by ministers, but it's in the same format. That is to say, a PDF format. And one of the complaints that has been made is that transparency, which is one of the objectives of this, is not enhanced, because they're not searchable. That is to say, it's through a form that precludes you from, unless you download every single one of them, you can't search them. Is that something that should be a given, that in any transparency measure such as this, it should be in a format that is searchable by those who are interested in looking at who is doing what? ---Yeah, it would certainly make it more accountable.

The other thing – I'll withdraw that. The ministerial handbook requires the monthly disclosure. Are you familiar, Dr Solomon, with the time period following the monthly, sorry, following each month, at which they're required to be submitted?---No, I'm not.

It seems to be – I'll withdraw that. In relation to the lobbying contact log that was created under the Integrity Act, and overseen by your office - - -? ---Yep.

- - - when a third-party lobbyist consulted with a, let's say a minister, within what time period were they required to provide the information in the contact log?---They, they were required to report on each month's activities by the, I think it's the 15th of the next month.

In New South Wales – I'll withdraw that. Are you aware of any feedback or complaint about that providing monthly diaries is in some way oppressive or difficult?---No. As I said, it was predicted that there would be, but in fact there wasn't.

And certainly on the level of detail you see, it doesn't appear to be onerous or a burden.---No, and it, it takes very little time to prepare, and it's the sort of material that's available instantly within the office of the lobbyists.

In New South Wales, each minister is obliged to prepare a PDF document disclosing their ministerial diaries each quarter, and within 30 days from the

end of each quarter. Can you think of any reason why the, at least the benchmark of timing as used in Queensland shouldn't be implemented in New South Wales?---No, it's not as though the minister himself or herself is actually doing the work.

It's done by somebody within the office.---Exactly.

It's not uncommon – and perhaps some of your evidence touched upon this today – that, well, it's not necessarily correct to think that all power and influence is necessarily within ministers or indeed government. Is that a fair generalisation?---Yep.

And much of the – and the Commission's heard some evidence about this, that committee members, crossbenchers in particular, can yield themselves considerable, I'll use the word "power", I'm not using it in any sinister way, but that they have an important role in decision-making in any given government. Is that your experience as well?---Yep, influence.

Influence.---Yes. And sometimes power.

Yes. You support broader disclosure though, do you not, than simply to ministers, but more generally, is that so?---I would support disclosure by all members of parliament.

And what is the thinking behind your support for a greater level of disclosure?---Because on the government side, all, all backbenchers are members of policy committees, which have to, which ministers have to deal with in terms of producing legislation or, and sometimes policies. And they can be influenced by, by lobbyists, whoever. And oppositions form policies which may or may not impact on, on how governments react. So, every, every, even, you know, all backbenchers can exert influence in, in one way or another.

I want to move to another topic now and seek your evidence on a couple of more specific topics as they apply to lobbying and influence in New South Wales, Dr Solomon. Now, the system of, or the current system of registration of lobbyists, as I suggested to you earlier, Dr Solomon, in New South Wales is more or less the same as it is and was in Queensland. That is to say, it's limited only to third-party lobbyist.---Yep.

Your view is that a register of that kind, seeking to capture the very small numbers of third-party lobbyists yielding what you think is not considerable influence, has limited utility. Is that right?---That's correct.

Could you just explain a little bit your thinking behind that to the Commissioner?---Well, I don't think it adds very much to transparency. And worse, it, it really suggests that lobbying is regulated, whereas most of it is not.

In some of the material that you've prepared, you describe it I think as "window-dressing," is that right?---Indeed. Yes.

And it's, has doubtful benefits.---I mean, it, it, it's worse in a sense than – because it misleads people into thinking that there's regulation when there's not.

And to go through some of the matters that inform that, one is, well, the numbers that have been caught are statistically, in your experience, very small. Is that right?---Yes. Yes.

Secondly, the influence that third-party lobbyists yield shouldn't be overstated.---Indeed.

And thirdly, the exceptions, those who are not covered, is really a concern, particularly as, in your experience I think, they yield considerable influence. Is that right?---Yes.

And could you just develop your thinking to the Commissioner, please, about what it is that lies behind that third group? Why should they be regulated but are not? And why does it make the system "window-dressing", when it shouldn't be?---Well, A, I can't think of any reason why they should not be regulated.

Well, what is said, Dr Solomon – just to put the competing position – what is said by, if we just term them "in-house lobbyists" at the moment, or "peak bodies", what is said is, well, it's obvious who the public official is meeting, because for example, if it's a large grocery retailer, that's who it is. But does that carry any currency?---No, because the other material that third-party lobbyists should be disclosing isn't disclosed, such as the fact that they're having a meeting, what the meeting was about, who they're meeting. These are important matters that, that should be made public.

Your view is based on your considerable experience in the area, is that the exemptions and that influence line in other areas, the regulatory focus should be on who is lobbying - - -?---Yes.

- - - rather than defining different classes of lobbyists. Is that a fair way of putting it?---It is.

And you advocate, do you, I think strongly, that reform needs to happen so that transparency and other important mechanisms, accountability, fairness, integrity, are all achieved by seeing who is meeting who, no matter how they're described?---I, that, that is my position, yes.

And you draw comfort from the overseas models, particularly Canada, is that right?---It, it is, yes.

And absent the kind of detail and the reach of a proper system of disclosure of lobbying activities, it really is creating an appearance of somebody doing something when all they're doing is capturing information of little practical value.---That is the situation.

In fact, I think your suggestion is that it's a waste of resources and should be abolished.---Yes.

So, could I ask you just to explain a little bit about what you think it would take to make a register meaningful, and perhaps by reference to overseas models – it must cover and define the public official to whom the lobbying contact will be made, of course?---Yes, it should.

And it would require disclosure, would it not, of the contact, including key details? When the meeting took place, where it took place, what it involved, what the purpose of that meeting was et cetera, and what was resoled or discussed?---Yes.

There are some differences in the overseas models. For example, Canada, as you would know, and Ireland, cover all forms of lobbying contact, that is to say whether it's oral, being face to face, I suppose by telephone but others, or at least one other, makes a distinction that excludes written form of lobbying. Do you see any support for distinguishing between the type of contact?---No. If we're going to regulate lobbying, we regulate all of lobbying.

And simplification is perhaps one of the ultimate objectives, of course, to make the system simple and easy to comply with? That would be one objective of any modification of a regime?---Well, yes. But if you want, if you're going to, if you are after disclosure, you've got to have full disclosure and if you, and if you allow exemptions, then you'd, the, the lobbying will head in that direction to be hidden.

What are some, I mean you gave some examples earlier in your evidence about how lobbyists then become consultants, but can you illustrate, perhaps by example or whether it's by fact or by conceiving one, how lobbying would evolve or lobbyists would evolve to get around it?---Well, you mentioned written submissions being exempt, so there would be more put in writing. But of course, one would hope that that might be captured by freedom of information but, but if, if you're dealing with lobbying, surely you should try and capture it all within the same framework.

THE COMMISSIONER: Dr Solomon, can I just step back and look at the type of regulatory system that's in place in New South Wales and Queensland on the one hand, and what the systems seem to be built upon, and then just examine with you briefly if we were to start again in this state, to devise a regulatory system, what would its design and construct be?

Let's start with the first. New South Wales and the Queensland system seem to have something in common. Firstly, they seem to focus on the lobbyist rather than the lobbied public official, but what they don't seem to focus upon, arguably, is the most important thing of all, and that is process and principles, and the principles that inform proper process, and you've touched on that. So we go to the, just quickly looking through your chapter 4 of the, and when I say yours, the Queensland Integrity Act, and look at the way it approaches it, slightly different from New South Wales in some respects, but it's essentially zeroing in, straight into the lobbyists, who's a lobbyist for the purpose of the Act and who is not, for a start so that it narrows its application right down. Aside from one part, and I could be wrong because I've only looked at this quickly, the only section that the word "transparency" appears is in section 68(3) but you will look in vain I think to find any provisions in chapter 4 that focus upon process, principles or including transparency.---I agree.

So, if you're looking at formulating a regulatory system by legislation, firstly it may be that a one size fits all approach doesn't work, that is to say, for example, you might have to take one group, a mining company on the one hand, and then you get the charitable institution on the other and it may be seen to be inappropriate to have the same system for both, because there's perhaps a commercial factor operating on the one which is not on the other and that sort of thing. Would you agree with that in general, that there should be some discernment between lobbyists of different classes?---I, I'd agree in general. I'd agree in general.

In general. So you've also got to bear in mind, if you are setting back to start the redesign of a new system, that the public officials are in two classes, one is elected and the other is the appointed official. So in the elected class, you have the members of parliament and you have the ministers, and when you go to the ministers, you have their staffers who also can play a part in lobbying. Is that right, sir?---Yes.

So you've got to then, in designing this, say well, firstly, what class or classes should we design a regulatory system around. Secondly, we should look in terms of, well, yes true, we've got to regulate the lobbyists, but we should also prescribe for an integrated scheme, we should prescribe for the public officials as well.---Yes.

Particular in terms of process as well.---Yes.

Well then, if that be right you're looking at the various stages of lobbying activities, which I suppose include, to think of this in terms of what processes and principles we should be looking at, one is contact, communications, second if the deliberation process, once a process has been put in, once a proposal I should say, by a lobbyist has been put in, the system if you like, how is it going to dealt with and who's going to deal with it and how are they going to deal with it. And then you get the third

level of the decision-making process. Okay, well, how is the decision going to be made so that later, if an issue arises somebody might be able to turn back to look at the transparency system to say, "Well, we can see what stages it we through. We know who was involved and we know what the basis for the decision was, right or wrong and we might not agree with it, but it's all there." So, a system that is designed for processing regulating lobbying is looking at processes for contacts, communications, deliberations and decision-making levels, would be a process that would exclude secrecy.---Yes.

Because it's all transparent at all levels, is that right?---Yeah.

You might need to make provision for confidentiality in certain instances but secrecy is out in such a system. Well, with ministerial diaries, they can play their part but again, as you pointed out, provided they contain useful information and somebody oversights and makes sure that they are not treated as a joke.---Yes.

So I'm just struggling to look then, if I'm right, that the emphasis of the New South Wales and the Queensland legislation is not on the lobbying activity and the processes for the lobbying activity, how it's to be dealt with in communications, deliberations and decision-making, and it's about putting a code of conduct around the lobbyist but not around the lobbied. If it doesn't talk about processes at all, then it seems that it might be said that there's some justification for what's being said, is that the systems in New South Wales and Queensland are well below what would be required. So what would your approach be if you were asked to tear this up and rewrite another one, what sort of approach would you take, would you suggest, would be one which provides true accountability?---Well, there is, there is some mention of process in the Lobbying Code of Conduct in that it requires honesty and so on in the producing arguments and not misleading officials and material to that extent, but I agree that's about as far as it goes. So do you look at, at from the other end, from the people who are being lobbied and again if you're going to have accountability you need more disclosure at that end of all lobbying that takes place, rather than of who is lobbying them.

Yes. So there's a focus on what might be said to be - - -?---Who is being lobbied.

Who's being lobbied.---Rather than - - -

And the process as it were that - - -?---Yes.

- - - will provide the requisite transparency and accountability.---Yes.

And do you hold the view that the system under the Integrity Act of 2009 Queensland does not serve those purposes?---No.

All right. All right.---I must say my arguments at the time were, numerous submissions were, were about extending the number of people who were lobbying, but, but, and that was, even that was regarded as - - -

Heresy?---Yes.

You were going too far.---Yes.

All right.---As I said, the, the, the people who were, who were excluded from the list were far better lobbyists than those who were included.

Yes. Just one further question. You've written widely I understand in relation to lobbying. Is there anything amongst your written works that might assist us in relation to what we're dealing with here or Dr Chen might already have in mind some - - -?---It probably doesn't extend far enough, but there is more, yes.

All right. Well, we might at some stage make sure that we have got the benefit of your research if we haven't already got it.

MR CHEN: We certainly have a number of Dr Solomon's articles and - - -

THE COMMISSIONER: Right. I have seen one in fact, yes.

MR CHEN: Yes. And one is attached to his submission, submission number 32 and there's at least two others that we propose to tender shortly.

THE COMMISSIONER: Exactly. All right. Yes, thank you.

MR CHEN: Thank you. Just coming back to ministerial diaries, ultimately if there is – I withdraw that. In terms of a register, if it's to pick up the activities more generally, as you've described in your evidence, you think that should be to an independent body, do you?---Yes. There's a problem with responsible government.

Yes.---And with minsters and their officers being essentially answerable to the Premier, but yes, I think there can and should be. I mean there are other independent authorities which look at other aspects of government such as auditors general and so on, so - - -

I'm going to be a bit more specific shortly about whether there should be a body that looks after lobbying in due course, Dr Solomon, and one of the propositions I'm going to invite you to comment upon is whether if there was such a recommendation that there be a Lobbying Commissioner that has these functions, it would have, it would extend to receiving the information of lobbying activities and disclosures made consistent with the

regimes in Scotland, Ireland and Canada, but is that something you would support?---Yes.

In terms of the obligation on those three regimes as an example, the obligation is put principally upon the lobbyist, not the public official.---Yes.

But there are for example in Canada, just to illustrate as you know, there is a process whereby the Commissioner undertakes verification of the returns and the activities, and again that's something that would be essential to the proper functioning of a register.----Yes.

And in relation to Scotland, there are a couple of interesting features as you may know, Dr Solomon, in terms of its register, that is there is, the information is uploaded onto a website and can be accessed by the public electronically, but there is a button that is enabled to be activated if the information is thought to be inaccurate. Are you familiar broadly with that? ---No, I'm not.

Do you think that's a useful - - -?---I think that's terrific.

In addition, to pick up on what the Commissioner was asking you some questions about, it needs to be seen in context that obligations are cast not only on the lobbyist which seems to be the focus of the regimes at the moment, but to let the public official know as well that he or she has obligations which are very important, particularly in relation to what is disclosed.---Yes.

And what is in Scotland is when information is put on the register a link to that information is sent to the public official in question. Is that, were you broadly familiar with that process?---I'm not, I'm not familiar with that, but that - - -

Again to ensure that those involved in the activity understand the importance of what is disclosed and of their obligations to disclose, is that something that you would support?---Certainly.

Education appears, from the evidence that will be before the Commission shortly, to have played an important role in the success of these overseas models, that is a period whereby those that will become obliged to disclose, be it a public official or a lobbyist, are told about what the changes are and they're assisted to ensure compliance. Do you see education as being important in any proposed changes to the regime, not only reinforce obligations but to understand what they are and in practical terms what is required?---Certainly. I mean that, that was the essence of the Integrity Act in relation to my primary activities.

Did that constitute, in terms of allocation of your time, a considerable part of what you were doing, that is to say to meet public officials and to meet,

to the extent you would, third-party lobbyists to explain matters of ethics and integrity and accountability?---Yes, it did. For example, I was, it was an initiative of the then Premier, Premier Bligh, as it turned out, that I should meet with every member of parliament or every member of the government as it was but the opposition took the same view, at least once year to discuss their obligations and under a disclosure of conflicts of interest and so on, but basically so that they would know the Integrity Commissioner was there and that they had obligations as well. So that was an annual meeting.

Was it well received so far as you were aware?---It was, it was.

And also when I took you through the Integrity Act, you had a specific role to give advice to deal with integrity issues to designated officeholders, did you not?---Yeah.

And that educative role and that meeting of members of parliament more generally continues I take it to this day, does it?---As far as I'm aware, yes.

Now, just in terms of the Queensland Integrity Commission whilst you were the Commissioner, aside from yourself, how many other permanent staff were in the office of the Integrity Commissioner?---I had three.

And were some of them administrative support?---Basically yes. One, one administrative support, one person who was looking after the lobbying side of things and one person who was a sort of policy administrative officer.

And it obviously was funded through an annual budget, was it?---Yes, it was.

And in rough terms what was the annual budget of the Integrity Commissioner perhaps at the time you last held office?---I think it was, it was just over half a million dollars. There was a reasonable amount for travel around Queensland because particularly with lobbying the, that took in local government, and trying to educate local government about who was a lobbyist took some doing.

And in terms of models of a Lobbying Commissioner, would you support the view that any proposed Lobbying Commissioner should assume some responsibility in other areas such as ministerial diaries or post-separation employment?---It ties in well enough with, with that, yes.

And is it important if a body is to be given oversight of these important matters – particularly post-separation employment – that they be given investigative powers and other powers to require production of material and matters of that kind? Or do you think it could be done with, in a lesser form or a lesser way?---I, I think it's highly desirable that they have such powers. In, in their absence I think it would be too weak.

And in your submission you talk about oversight still being with or can be overseen through the Electoral Commission and (not transcribable) with what is the Department of Premier and Cabinet. Were you addressing that in your submission from the perspective of within the existing framework it's probably not so bad that it stay that way?---Yes.

But you'd support more generally or advocate for something more substantial in terms of overall reform.---I would.

I want to move to a new topic if I can. Commissioner, I'll be about 10 minutes.

THE COMMISSIONER: Yes, I think it's best to finish so that Dr Solomon can get away.

MR CHEN: Thank you. Dr Solomon, you have written widely on this concept of public trust, the duty to serve the public, and some of your articles will go into evidence shortly, and you've heard what the Commissioner opened on this morning, as did I.---I did.

And one of the, bearing in mind the importance of these principles, education is critical, is it not, to the effective integrity program, however it is.---Absolutely.

And you would support, to the extent only limited education is given to members of parliament, increased education around this for public officials generally?---Yes.

And one of the matters that I opened on – but as it happens you refer to this in one of your submissions – that in other areas principles or codes that inform the way things should be done are reasonably common, and I referred to the Nolan Principles, with which you're familiar.---Yep.

And Dr Longstaff, who you may or may not know of, who is a well-respected ethicist from the Ethics Centre, talked about the need to perhaps set things out, and in his evidence he said it wouldn't be too hard to do it, but thought that was important, to rebuild what he described as the ethical infrastructure in New South Wales. And your submission also refers to the, I think the 10 principles for transparency in lobbying, which are from the Organisation for Economic Cooperation and Development.---Yes.

You're obviously familiar with those 10 principles for transparency and lobbying.---I am.

Do you think that principles like that would serve a useful purpose to bring together from various sources or to clearly state obligations? Is that

something that you think could and should be received in public life? ---Certainly, certainly.

At the moment it seems that some of these obligations on public officials are spread out in some documents at various levels, as you would understand, of specificity. Do you think it's useful or is it more window dressing to have specific principles such as the Nolan Principles which would apply to lobbying? Do you think that would be a useful and worthwhile endeavour to restate the importance of these principles that underpin lobbying and influencing?---Yep. I mean, as I say, some of those are included in the Lobbying Code of Conduct, but it's, it's those who are being lobbied who should also be conscious of them.

And some of them are also contained within codes of conduct applicable to ministers in handbooks and in parliamentary handbooks and that kind, but it's really drawing it to and spelling it out, amongst other things, but do you consider that to be a substantial and worthwhile reform?---Certainly.

Just pardon me, Dr Solomon. Dr Solomon, I'll just draw your attention to some of the articles – oh sorry. The first article is an article you prepared, described as, "Public office as/is a public trust," and that's an article I think prepared by you.---Yep.

I'll tender a couple, Commissioner, if I can. And the next article is an article described as, "Ministerial access and the public trust." Do you see that on the screen now?---Yep.

And there's a third one which I'll just draw to your attention. Sorry, Commissioner, they're the two articles that I will tender, if I can.

THE COMMISSIONER: What I think I'll do is we'll put the articles together with an index and call them all Exhibit 32.

#EXH-032 – PAPERS WRITTEN BY DR DAVID SOLOMON

MR CHEN: Yes, Commissioner, thank you. And just to show you for completeness, Dr Solomon, the other article called, "Current mechanism for the registration of lobbyists," which was attached to your submission and which is already in evidence. That is it there, is it not?---Yes.

And attached to that were the, "10 principles for transparency in integrity and lobbying"?---That's correct.

Commissioner, that was the evidence for Dr Solomon.

THE COMMISSIONER: Very good. Dr Solomon, just before we release you, I'd like to express the Commission's appreciation to you for going to the trouble of preparing your submissions in April and November last year and also for travelling here today from Brisbane to Sydney. Thank you.
---Thank you.

Much appreciated. I'll adjourn.

THE WITNESS EXCUSED **[1.17pm]**

LUNCHEON ADJOURNMENT **[1.17pm]**