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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

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AT SYDNEY

ON TUESDAY 18 FEBRUARY, 2020

AT 10.00AM

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THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Commissioner, the proposal this morning is to actually start with an overview of some of the international material, and that's going to include a visual display of, at the very least, the lobbying registers and regimes in Ireland and in Scotland. Following that, I'll tender in due course a bundle of the material. So I propose to start with that now.

THE COMMISSIONER: Yes.

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MR CHEN: And the most convenient way, Commissioner, to deal with it is to perhaps give a sketch of the respective schemes. I'll then turn, and on the screens will be an interactive display to show how the various registers work and the key elements of the register, to look at other models and see whether anything can be gleaned from those.

THE COMMISSIONER: I'm sure that'll be very helpful.

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MR CHEN: Yes, Commissioner. Commissioner, just to explain the international lobbying material that I propose to tender in due course, it's from Canada, Scotland, and Ireland, and the material not only includes the relevant regulatory material, but it also includes a transcript of interviews that were conducted by the officers with a statutory responsibility to oversee lobbying. So in Canada, it's the Lobbying Commissioner. In Scotland, it's Parliament's Lobbying Registrar. And in Ireland, the Head of Ethics and Lobbying Regulation within the Standards and Public Office Commission.

THE COMMISSIONER: So these are interviews conducted by the Commission with the relevant officers in those countries, is that so?

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MR CHEN: That's so, Commissioner, it is.

THE COMMISSIONER: Yes, thank you.

MR CHEN: And I'll draw upon some of that material in the observations that I make as I explain the schemes, as well as when we see on the screen how the schemes operate in practice.

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Commissioner, I want to start with Canada. Canada, there won't be a visual display. Lobbying activities in Canada are regulated at a federal and state level, and at a federal level, they are regulated by the Lobbying Act 1985. Pursuant to that Act, the Act applies to contact made with a designated public officeholder, which includes ministers and those employed within their offices, and also to defined departmental officers. A Commissioner for Lobbying was created under that Act, and the functions and duties include developing and implementing educational programs to foster public awareness of the requirements of the Act, particularly on the part of lobbyists, their clients, and public officeholders. Commissioner, the scheme

applies to consultant lobbyists, what we would describe as third-party lobbyists, and they're required to lodge a return of lobbying contact – they use the term “communicate” – with a public officeholder, and the return is required to provide certain prescribed information. It's quite detailed about when, where, what it is proposed to discuss, the technique to be used. And the return must be lodged within 10 days after entering into the undertaking. Thereafter, further monthly returns are also required, and the lobbyist is required to attest to the accuracy of the information submitted to the Registrar or the Commissioner for Lobbying in the return that's submitted.

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Commissioner, from the investigations that the Commission has undertaken, including the interviews that were performed with the Lobbying Commissioner for Canada, it's apparent that the Lobbying Commissioner undertakes random verification, approximately 5 per cent of all returns filed. Commissioner, in addition to registering or requiring registration and the production and lodging of returns to what are described as consultant lobbyists, the regime also extends to what are described within their Act as in-house lobbyists, corporations, and organisations. These lobbyists, or these type of lobbyists are six times greater than what we know as third-party lobbyists in Canada.

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The application of these provisions, that is, the in-house lobbyists, corporations, and organisation provisions turns on a criteria where the duties of those within the organisation constitute a significant part of one employee. That's a slight paraphrase of the statutory provision, Commissioner. That definition has proven to be problematic, and the recommendation of the Lobbying Commissioner, which is supported by lobbyists, is that a reference to significant part should be removed from the Act, and it appears in a couple of places, Commissioner, particularly here.

30 The rule of thumb that was developed was to use a 20 per cent rule. So this was the rule of thumb used to inform whether significant part of duties meant that the corporation was an in-house lobbyist, be it a corporation or organisation.

30

And from discussions that the Commission has had with the Lobbying Commissioner, it appeared to work in this way, where the total lobbying duties of all employees within an organisation would constitute a significant part of the duties of one employee, then the provisions would apply. Commissioner, within the legislation as well, post-separation employment is dealt with, and there is a five-year prohibition with presently an irrelevant exception to it. The Lobbying Commissioner has power upon application to exempt an individual from this prescribed period if it would not be contrary to the purposes of the Act. As expected, Commissioner, a Lobbyists Code of Conduct, which is again directed towards the conduct of lobbyists rather than public officials, has also been prepared and approved by the Lobbying Commissioner.

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Commissioner, a significant part of the functions and duties of the Lobbying Commissioner relates to its investigative powers, and they are significant. The most relevant, Commissioner, are that the Lobbying Commissioner can summons and compel an individual to give evidence on oath, the Lobbying Commissioner can compel the production of material, and also it can receive information even if inadmissible within court. Put simply, there is a clear set of statutory powers that gives some real teeth to the position of a Lobbying Commissioner, so that the commissioner can fully and comprehensively investigate compliance with the provisions of the Act in the way that I've described.

Commissioner, that's the overview of the Canadian regime. I'm going to speak now briefly to the position in Ireland, and that will follow – sorry, thereafter I'll commence the interactive display with an explanation of the system in that jurisdiction.

Commissioner, in Ireland, lobbying activities are principally regulated by the Regulation of Lobbying Act 2015. Pursuant to that Act, lobbying activities essentially include all forms of communications to a designated public official, and there are some exceptions both in relation to exempted communications as you'd expect, and also who is considered a lobbyist. From the guidance material issued by the Standards and Public Office Commission, the examples of persons required to register are, a person with more than 10 employees; a body that exists primarily to represent the interests of its members, which has one or more full-time employee/s, and they're described as representative bodies; a body that exists primarily to take up particular issues which has one or more full-time employee/s, and they're described as advocacy bodies.

Commissioner, the reach of the Act is fairly significant. A designated public official is defined to include ministers, local authorities and public servants of a prescribed description. Persons who carry on lobbying are, as you'd expect, required to register and registered persons are required to submit a return detailing the lobbying activities conducted by them in the relevant period. The returns need to detail the subject matter of the communications and the results they were intended to secure, as well as other fundamental information about who met who, when and where et cetera.

Commissioner, the Standards and Public Office Commission was required under the Act and did produce a code of conduct for persons carrying on lobbying activities and they also have investigative powers which are similar to those that I mentioned in relation to the regime in Canada.

Commissioner, in relation to post-separation employment, the Act provides that designated public officials are precluded from carrying on lobbying activities or being employed by or provide services to a person carrying on lobbying activities for a relevant period which is defined to be one year.

Commissioner, it's appropriate now I think to commence the visual display of the lobbying register that's been created, and I'll start that now if I can, Commissioner. Commissioner, the first couple of slides are really introductory, just to explain the Irish model, and you will see the heading Lobbying Regulation and some of the key points have been set out there about what the model covers. There's a register, an independent registrar, submission of returns, post-employment restrictions, investigation and enforcement provisions and aspects of compliance and review.

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THE COMMISSIONER: So I understand from what you've said that the lobbyists who are required to register include those who are either third-party lobbyists and lobbyists who either appear for people like, or act on behalf of peak bodies or what we sometimes refer to as in-house lobbyists or subject to certain criteria being met.

MR CHEN: That's correct, Commissioner. They're subject to some exceptions of course, but generally speaking the reach would cover both, subject to there being exemptions, for example size and matters of that kind.

20

THE COMMISSIONER: There's some similarity at least in concept, then, with the Canadian situation and the Irish model in that regard.

MR CHEN: There is, Commissioner, there is. I'll turn to page 2 now, Commissioner – I apologise, page 3. What is Lobbying. Commissioner, this is intended simply to set out the steps involved in what constitutes lobbying relevantly for the purposes of this Act, and perhaps a point to emphasise is that it includes, or doesn't seek to limit the method of communication, so it's not limited to face-to-face communications, it's capturing all.

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Commissioner, if we turn now to page 4, and to pick up the point that you raise, Commissioner, here are some of the exceptions of the communications which wouldn't capture or wouldn't be captured. Some are unremarkable private affairs, strictly factual information and matters of that kind. Commissioner, that's broad overview of the system that - - -

THE COMMISSIONER: It's quite an interesting list of exemptions.

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MR CHEN: It is. Commissioner, I'll turn now to the register itself, and, Commissioner, if one accesses the website and simply presses the button "search", you'll see from the screen that since the introduction of it there has been 40,106 returns, and if the user wishes to interrogate the system more specifically it can do so in a number of ways, and I'll explain this in the later slides, but if we look at the left-hand side of the column, Commissioner, you'll see there's a search engine, but beneath that there are a number, five particular topics or particular areas that you can look into, Dates, Relevant Matter, Public Policy Area, Lobbying Organisation,

Designated Public Official, and if for example we click on one, Public Policy Area, and we click it and drop it down, you can see that you can make a more targeted inquiry if your relevant inquiry is directed to, say for example, legislation.

10 If we just close that up for a moment. Commissioner, if you follow the screen down the left-hand margin you can see that those five topics are actually spelt out in a bit more detail down below, so you can see Relevant Matter, Public Policy Area, and if we just pause, and Public Body, if we
10 simply go back and follow down the left-hand side – sorry, if we just stay on the actual website, Commissioner, you can see by a quick overview of that, that under the Relevant Matter heading you can see immediately that there are, in relation to Public Policy or Program, 17,701 entries since the commencement of the register and also there’s greater description to the other ones. If you look down a bit further, Commissioner, to Public Policy Area, again you can see that there’s specific areas that if your inquiry is concerned about you can search for more exactly in that way. If you click on them, Commissioner, and we will do this later, the 4,343 in relation to
20 Health would come up, if you then move to the right-hand side of the page you can then see them and simply click on them, and that will provide the substance of the return that has been lodged with the body by the lobbyist.

Commissioner, that’s a very broad overview of the – I’m sorry.

THE COMMISSIONER: That’s a quite sophisticated and easily navigable system by the looks of it.

MR CHEN: It certainly is, Commissioner. It’s simple, easy to use for any person interested in this area and it’s certainly far more sophisticated than
30 what is presently in New South Wales and for that matter, most other jurisdictions.

THE COMMISSIONER: I take it New South Wales does not have anything like this search facility. Is that right?

MR CHEN: Not of any kind, Commissioner. Certainly the register is accessible electronically, but, Commissioner, you would recall that some of the evidence by, in the first tranche of the inquiry was that it was difficult to search across much of it, but in any event the information contained within
40 it is fairly sparse, it’s confined to third-party lobbyists of course and their clients.

THE COMMISSIONER: So the Electoral Commission has a jurisdiction, does it not, in relation to the registration aspects of the lobbying scheme in New South Wales?

MR CHEN: It does.

THE COMMISSIONER: Has the Electoral Commission been shown this facility we're looking at now? I'm sure they'd be very interested, no doubt they'd say if they had the funds they would want one.

MR CHEN: Well, I can't answer the first part, but I can see you could certainly improve technology, I suppose technology evolves quickly and frequently, but the problem I suppose is that the Electoral Commission has only limited information which it's required to capture and record, namely registration.

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THE COMMISSIONER: Yes, of course.

MR CHEN: And whether there could be improvements technologically to access the information that they hold is a matter that perhaps we could look into further, Commissioner, but the problem as I would see it, if it be a problem, is they're not required to capture this kind of information.

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THE COMMISSIONER: Well, that seems to be the significant point, through no fault of the Electoral Commission, that the remit it's been given sounds to be as though it's been so narrow that it's just in a different space to what we're looking at here where the technology is such that you have a search facility which is very easy to navigate, but it deals with a vastly increased amount of data in relation to matters than the Electoral Commission's remit would require the Electoral Commission to consider.

MR CHEN: Yes.

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THE COMMISSIONER: So it really comes back to if the Electoral Commission is to remain the responsible authority for lobbying, we might need to consider what changes should be made to the, to existing legislation to facilitate the Electoral Commission having a much more effective role.

MR CHEN: Yes.

THE COMMISSIONER: Anyway, thank you.

MR CHEN: So, Commissioner, that's an overview of where the information is stored on this website and how one can access it.

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THE COMMISSIONER: Yes.

MR CHEN: What I propose to do in the coming slides, Commissioner, is to show for example how you could interrogate and find information about lobbying across particular topics, and these next slides will show that. So Commissioner, this slide here, as I indicated earlier, is a general search that shows that to date there's been 40,106 returns to the register, and it's shown in date order by the organisation. So, the most recent being Declan O'Toole and Co. Solicitors.

THE COMMISSIONER: It's interesting that in total the public policy or program plus legislation accounts for something of the order of 23,000 of the 40,000-odd matters. So there's – lobbying in relation to public policy and legislation looms large on this database.

MR CHEN: Yes.

10 THE COMMISSIONER: And it says something about what lobbyists have been interested in achieving. That is, either new policy, change policy, new legislation, repeal of legislation, and so on.

MR CHEN: Well, one of the benefits of this system, Commissioner, which we'll show shortly, is if there's a particular area of public policy or legislation that a person is interested in seeing what lobbying activities have been undertaken, you can search for it. Also, if there is a particular public officer or body that has been lobbied, you can actually go to that dropdown menu and search for and find out if the minister for a certain portfolio has been lobbied. So it enables the distillation of very targeted searches and
20 pulling up of information pretty simply, as I would see it.

Commissioner, we'll go to the next page, and you'll see on the left-hand column, there's a tick in the Legislation box, and that then facilitates the search for legislation. So this slide shows all returns for legislation matters, 6,018, by order of date and organisation. We'll go to the next slide, and you can see, Commissioner, that there's a similar tick then for Matters Involving Public Funds, and there's 5,014 returns, ordered in the same way. The next is Public Policy or Program has been ticked, and you will see there's 10,000
30 returns, organised in that way. And Commissioner, if you were interested in seeing what the Irish farmers wanted to do and what they disclosed in their return, you simply just need to click on them, and in some of the later slides, Commissioner, I'll show you what the detail of the disclosures record if you were to click on one.

So, page 9. Commissioner, this now has a tick under Zoning or Development, and there are 1,605 returns covering that subject matter. Commissioner, the next page – when I gave an overview of the front screen, Commissioner, I indicated that if you went under Public Policy, as one topic you could see, this is simply a screenshot of if you were interested in the
40 Public Policy Area, that's telling you the various categories within it and how many contacts were made. The next page. And so just picking off the top, you would have seen Commissioner, that Health had 4,343 returns. This is giving a bit more detail. You'll see Public Policy Area, and you can see there's an entry, Health, next to a red cross up the top, near the hand.

THE COMMISSIONER: Yes.

MR CHEN: So that's again listing the contacts made. If we turn to the next page, again this is giving detail of the public bodies that can be lobbied. I apologise, departments that can be lobbied, and it shows the lobbying entries. The next page will show the lobbying organisations. So these are the bodies that are undertaking the lobbying activities, and from highest to lowest, IBEC, which I'll explain shortly, is the highest with 1,735 lobbying activities. Now, if we turn to the next page, Commissioner, these are the returns by that body. Now, IBEC is a lobbying body, it's Ireland's largest and most influential business membership organisation, and it has, as I've said, Commissioner, lodged 1,735 returns. If we look at the next slide, Commissioner, this is the registration information of IBEC. It tells you the detail that has to be provided by that organisation pursuant to the Act.

Commissioner, just on the right-hand side you'll see there's a green box that says Report Inaccurate Information. That's a matter that I raised with Dr Solomon yesterday. So if it occurs that there's some problem with accuracy here, and again the lobbying returns which we'll see next, you can click on that and steps will be initiated to have that information reviewed and verified by the Commissioner.

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So we'll turn to the next page if we can. So, Commissioner, this is an example of a – I'm sorry. Just pardon me, Commissioner.

THE COMMISSIONER: The current Prime Minister might be aided by this one, Brexit withdrawal of the UK from the EU, implications.

MR CHEN: So, Commissioner, this is an example of the information that's taken from a return that's been lodged. You can see the relevant headings, Intended Results, and, Commissioner, interestingly as well, down the bottom you can see questions about did you manage or direct a grass roots campaign, so just on the, and was this lobbying done on behalf of a client. It gives you the date, it gives you essentially all the information you need. And again in the top right-hand side, Commissioner, you'll see there's that button, that if there's concerns about the accuracy of the information, then that button can be clicked on and steps are taken then to verify what's been provided.

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Commissioner, the next page is still, part of the same form. So, Commissioner, they key parts are identifying who were the designated public officials lobbied and you can see, Commissioner, the names of all of them down the bottom. So again this is part of a return by the Irish Farmers' Association, or the second part of it.

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The last page, Commissioner, is the type of corporate information required by an organisation, and again what's simply been selected for consistency is IBEC.

So, Commissioner, they're the key parts of that, of the Ireland lobbying register. Commissioner, I will – perhaps it's appropriate now if I could tender those electronically.

THE COMMISSIONER: Yes. All right. Which ones are you tendering?

MR CHEN: So it's the screenshots of the Irish lobbying register.

THE COMMISSIONER: Yes, that will become Exhibit 34.

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#EXH-034 – SCREEN SHOTS OF THE IRELAND LOBBYING RETURN REGISTER

MR CHEN: Commissioner, I'll move now to Scotland. So, Commissioner, lobbying activities in Scotland are principally regulated by the Lobbying Scotland Act 2016. Pursuant to that Act lobbying activities fall within the compass of the act if they constitute regulated lobbying. Interestingly it is limited to communication that are, or are in effect, face-to-face. Commissioner, the schedule to the Act introduced by section 1 provides a number of exceptions in relation to what constitutes regulated lobbying, which by extension negate a primary obligation to register. Some exceptions are unremarkable, such as communications made on an individual's own behalf - - -

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THE COMMISSIONER: Sorry, what was that last one?

MR CHEN: Communications made on an individual's own behalf. But others perhaps not so. For example, communications made by an individual who is not making it in return for payment, or communications by small organisations suggested to be 10 in number. So again consistent with the other regimes, Commissioner, a lobbying register is created which is to contain information about the registrant's identity, and there's obviously a positive obligation or duty to register. The information of lobbying activity includes the names of those involved, date and location, a description of the meeting, the name of the person who made the communication, and on whose behalf it was made and its purpose. And there are as well investigation powers.

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Commissioner, I made some mention of some of the features of the register yesterday, and they bear repeating, and this information has come from the interview the Commission staff undertook of the registrar. The first is, there's a function described as an "inaccurate information" button, so notification can be given to the registrar that a person considers the information to be inaccurate. And there's also a live link sent to the public official so they can check the information. The interview also notes the system has been well received by both the lobbied and the lobbyists, and

that is considered to be due to the fact that before its introduction, there was an extensive education campaign. Post-separation employment is not dealt with under that Act, but under the ministerial code of conduct, so far as it relates to ministers. Commissioner, ministers are precluded by lobbying, are precluded from lobbying government for two years, and must seek advice from the Independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years, and they must abide by that advice. The Scottish Parliament has a dedicated section that deals, I think in their parliamentary handbook, I'm sorry, with lobbying and access.

Commissioner, I'll now turn if I can to the Scottish register and show some shots of that register now if I might. So Commissioner, the first page, oh, the first slide is the baseline for anyone conducting a search. So if you want to search the Scottish register, that's the screen you will see. Commissioner, onto the next page. Without a specific entry seeking to interrogate the system at all, just hitting the "search" button will show that there are 10,856 returns in total. The returns are listed chronologically, and searching can be made easier by using the option to output it into an Excel spreadsheet. The next page, Commissioner, this search of the register shows there are 1,300 registered entries, organisations or individuals, listed in alphabetical order, and that list can be exported to Excel format for easier searching. The next page, Commissioner, is a slide that shows an extract of data taken from an Excel spreadsheet exported from the register. So it's showing the registration of those entities there named. The next page, Commissioner, is a slide that shows you can search by the role of the person lobbied, and you can see, Commissioner, near the blue highlight and the hand, that can be in relation to civil servants, ministers, members of parliaments, a Scottish law officer, or special advisers.

Commissioner, later we'll be able to show you the specific numbers of contacts that have been lodged on the register for those public officials that I've just identified. So Commissioner, the screenshots for the next number of pages simply show the – sorry, the next one shows the nature of a return and some of the detail, particularly the most relevant being the purpose of the lobbying. And what the 25 returns actually relate to, Commissioner, are 25 lobbying contacts with civil servants, otherwise described as permanent secretaries. I'm sorry, there's one civil servant, I apologise, but 25 entries in relation to that civil servant.

Commissioner, the next four pages show similar information, namely the numbers of the individual officers or public officials, and the number of entries that relate to them. Perhaps I can just skim through those, Commissioner. Commissioner, if I turn to page 14, this screenshot shows a list of all members of parliament or persons that can be lobbied. Page 15, this slide shows the results if one searches by date range. So the date range here is the second half of 2019, and which shows that 830 returns have been lodged. Page 16, Commissioner, this slide shows a search by organisation

name, so the Scottish Council for Development and Industry, which shows 45 entries by them. 17, this slide shows an entry by the Scottish Council for Development and Industry in terms of who is meeting whom. Commissioner, you'll see as well at the top there's that button, "report inaccurate information". And the fields then that are required to be completed are the people who have lobbied, been lobbied, the location. If we turn to the next page, it shows you where the meeting occurred; a description of the meeting, event, or other circumstance; the type of meeting; and at the bottom, Commissioner, the purpose of the lobbying.

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Although there are obviously some subtle differences, Commissioner, between the way in which the websites have been set up when one looks at Scotland and Ireland, what is clear is that the information that is provided is far more descriptive of the activity that's been undertaken and the purpose or objects of it, and those that have been involved, and anything that's available reasonably in this state.

THE COMMISSIONER: The Scottish system, registration system applies to third-party lobbyists and other lobbyists?

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MR CHEN: It does, subject to exceptions, Commissioner. So it's not differentiating between those classes.

THE COMMISSIONER: So if there's a second or third lobbying contact made in relation to a particular matter, each meeting or communication goes through this process, is that what you - - -

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MR CHEN: That's my understanding, Commissioner, because there's an ongoing obligation to report lobbying activity and contact, so that's certainly my understanding, Commissioner.

THE COMMISSIONER: Ah hmm.

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MR CHEN: We'll go to 19, the next page. Commissioner, this is just some points about the oversight and compliance with the provisions within the Act and who has the obligation to investigate if there is suggestions of departures from the provisions. The Clerk of the Scottish Parliament delegates the powers to the Lobbying Registrar, and the Commissioner for Ethical Standards in Public Life has investigatory powers for matters referred by the Scottish Registrar. Next page.

THE COMMISSIONER: Just refresh my memory. The registration requirements under New South Wales legislation, does it require, it does require the purpose of the meeting to be identified?

MR CHEN: No.

THE COMMISSIONER: It does not.

MR CHEN: No, it does not.

THE COMMISSIONER: So the registration under our legislation is designed to simply have registered details as to the third-party lobbyist, who that entity is representing and details around that, but it doesn't descend into the arena of what we're seeing here in Scotland and Ireland of who met on when and about what, et cetera.

10 MR CHEN: Not at all, Commissioner.

THE COMMISSIONER: No. So in Canada there is a Commissioner of Lobbying?

MR CHEN: There is.

THE COMMISSIONER: Here, just on the screen a moment ago it showed the Clerk of the Scottish Parliament was responsible for monitoring compliance, so they're different officers but performing similar functions in
20 a sense.

MR CHEN: They do.

THE COMMISSIONER: That is to say, to make sure that relevant information that the legislation speaks of is being gathered, provision made for accuracy, updating and correcting inaccuracies, that sort of thing.

MR CHEN: That's the theme that flows from all three models, Commissioner, that's exactly what they're doing.
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THE COMMISSIONER: If our registration system doesn't conduct any form of registration that requires details about the actual lobbying, then its scope is extremely narrow compared to what we're seeing here in Ireland and Scotland.

MR CHEN: And Canada, yes, Commissioner.

THE COMMISSIONER: I mean there's nothing, for example if you look at the Electoral Commission as having some remit under the legislation,
40 there's nothing much for it to enforce, if all it is, is registering details about who the lobbying entity is and details about the lobbying entity and who their client is, but if it doesn't go much further than that, one explanation as to why there hasn't been much activity by the Electoral Commission in terms of chasing up registrants is that there's really nothing much to enforce by way of obligation, other than registering and declaring who their client is.

MR CHEN: That's an entirely fair assessment, Commissioner. I mean I was only drawing upon when, Commissioner, you were saying that about what Dr Solomon said, namely that it's meaningless and it's capturing - - -

THE COMMISSIONER: Doesn't serve much purpose it seems.

MR CHEN: Serves limited purpose.

THE COMMISSIONER: Limited purpose, yes.

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MR CHEN: And it's capturing what Dr Solomon described as potentially the least influential kind of lobbyists, or to put it another way by him, their influence shouldn't be overstated. But also just a small number, I think he described it as 20 per cent or one in six.

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THE COMMISSIONER: The other aspect of this is, the sort of systems we're looking here at in Ireland and Scotland as examples, there's quite a reservoir of information that's, as it were, drawn out and put into the system about a subject matters or topics to which lobbying relates, so it seems to arguably inform two useful purposes, one is to be able to track who's lobbying about what and who's being lobbied, but also arguably there's a social benefit in this because with the search facilities here you can pick up on issues that are being raised this part of Scotland or that part of Scotland, you may find that there's some commonality developing, people experiencing similar problems or concerns shared across the country, so it arguably could be a useful tool for government to be informed as to what's happening out there.

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MR CHEN: I agree.

THE COMMISSIONER: Anyway, that's very interesting.

MR CHEN: Commissioner, I'll just move if I can briefly to one more slide, and that will conclude that in relation - - -

THE COMMISSIONER: Sorry, could I just go back to that?

MR CHEN: Yes.

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THE COMMISSIONER: Before we leave that I just – so we have the Clerk of the Scottish Parliament being responsible for monitoring compliance of the Act and so on. In the third document there is another officer, the Commissioner for Ethical Standards in Public Life in Scotland, who is said to have a duty to investigate and report on complaints about compliance with the Act, and that office has investigative powers, compulsory powers. So there seems to be a dual role there, maybe overlapping, between the Clerk of the Scottish Parliament and the Commissioner of Ethical Standards in Public Life. If it's something we can look at later on – thank you.

MR CHEN: Commissioner, the final page was a diary example. Diaries are presented each month to show ministerial engagements, travel and gifts, and it's in Excel format. All diaries are located in one place. This is a publication of a Minister for Europe Migration and International Development, Ben Macpherson, a member of Scottish Parliament and simply a random sample. On one view of it the limited subject matter is partly explained by the detail contained within the register itself.

10 THE COMMISSIONER: Yes. Yes, thank you.

MR CHEN: That's on a separate website, Commissioner, it's not on the - -
-

THE COMMISSIONER: I see there on 3 August a Scottish minister met in relation to what's described as The Secret River from the Sydney Theatre Company, et cetera. Hmm, interesting.

20 MR CHEN: Commissioner, I tender those screenshots relating to the Scottish lobbying register and the ministerial diary.

THE COMMISSIONER: Okay. Yes, the Scottish screenshots will become Exhibit 35.

#EXH-035 – SCREEN SHOTS OF THE SCOTLAND LOBBYING REGISTER

30 MR CHEN: Commissioner, the bundles of material, Commissioner, if I could defer the tender of that shortly and perhaps if it's convenient now, the next witness is available to give evidence and I can tender the balance of the material once that evidence has been taken by you.

THE COMMISSIONER: Yes, we'll do that.

MR CHEN: Thank you.

THE COMMISSIONER: Yes, Ms Curtin.

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MS CURTIN: Commissioner, the next witness is Mr George Rennie.

THE COMMISSIONER: Yes, thank you. Yes, thank you, Mr Rennie.

MS CURTIN: Mr Rennie will take an affirmation and I also explained to him the effect of section 38 but he does not wish to avail himself of that protection.

THE COMMISSIONER: Thank you. Yes. Thank you, Mr Rennie. If you wouldn't mind just standing and we'll administer the affirmation.

THE COMMISSIONER: Yes, thank you.

MS CURTIN: Mr Rennie, you're a lecturer in political science at the University of Melbourne. Is that right?---That is correct.

You've previously lectured at RMIT University as well?---Yes.

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And your research is in the area of lobbying, interest groups, political advocacy in Australia and also the United States. Is that right?---That's correct.

And I understand you've written extensively on the issue of lobbying and its regulation in Australia?---Yes.

Mr Rennie, you have a particular interest in your research in the phenomenon that is described as the revolving door. Yes?---Yes.

20

The Commissioner has heard some evidence already in phases 1 and 2 of its inquiry into the notion of the revolving door, but if you could perhaps describe in general terms how you understand the concept?---Sure. The revolving door is a phenomenon that exists in politics wherein politicians, staffers, other members of government either come from business and enter politics and then after leaving government go back to business. The particular interest for me is where members of government go and work in, in businesses that they had some oversight or some responsibility for when they were in government.

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I see, so it describes the movement of public officials, where they be legislators or regulators, from government into the private sector, and the particular concern is whether that movement is into an industry about which they made decisions or regulated when they were working for government, is that right?---Yes.

And it's a phenomenon which is applicable to politicians, political staffers, and public servants, is that right?---Yes.

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And have you observed it to take place at both the federal and state level within Australian politics?---Absolutely, yes.

I understand that your particular focus on this phenomenon is at the federal level, is that right?---Yes.

Perhaps you could give the Commission some examples, just speaking in general terms, about whether that phenomenon has been recorded or noticed recently?---It is a common phenomenon, and it is becoming more common.

Studies on the matter show that around about a third of ministers go onto work for, in businesses that they oversaw. My own research shows that that may be an understatement or that may understate the matter. In fact, if you look at ministers that, particularly ministers that, that have procurement, or, oh, that, oh, that, that have a significant role in terms of procurement. So Defence Ministers, Treasurers, Finance Ministers, they actually seem to almost always now, well, oh, it's approaching 100 per cent of them will go and work in businesses that they oversaw.

10 And are you talking there at the federal level, or more generally?---At the federal level, yes. But a similar phenomenon exists at the state level.

And so you've identified a growing trend in recent years?---Yes, it's, it's, it's growing, yes.

Now, you've written extensively on this phenomenon, and in particular, you've said that the problem with it is that it has the potential to undermine efforts to regulate corruption in lobbying and create what you've described as systemic democratic risks. Can you identify why it is that the problem is
20 so difficult or creates so many problems?---Sure. On, it, it, it creates problems on a number of levels. In terms of the issue of corruption, what we in academia look at is this thing called grey corruption, or it could be a sort of subtle corruption. So it's not a strict, it's not corruption in terms of the law, or it's not a, strictly illegal. But it, it is to do with essentially a conflict of interest that arises. So I like to use the analogy of a brown paper bag of cash. It used – you know, if, if you see in a film, for instance, political corruption, there's the cliché of a, a, a literal brown paper bag or a suitcase that contains, say, \$50,000, or some other sum of money. And there is a very clear quid pro quo arrangement wherein the, the brown paper
30 bag of cash is handed over. Say, a, a minister or a, or a senior decision-maker takes it and, and essentially, you know, there's a wink or a, you know, an, an, an, a fairly explicit agreement that, that there will be a favour. Now, the problem with a revolving door is, rather than suitcases full of cash, you have ministers that make decision or decision-makers and various other members of government that make decisions that benefit certain organisations, and lo and behold, many of those decision-makers go then to work for those organisations. And the, the thing that I find most interesting about that is, okay, they've made the decision. They may have made the decision knowing that they, that there is a likelihood that they'll be able to
40 work for that organisation. And then they go and work for that organisation, and rather than being \$50,000 one off, they may be paid \$500,000 a year for a number of years. And so the, the components of a significant conflict of interest are still there, except one we are very easily able to identify as corruption, and the other, it's almost impossible. And the revolving door is that other. It makes it almost impossible to identify corruption. That's the grey corruption that I referred to before.

I see. So, so one problem with the phenomenon is this idea of bias and the potential for bias that it carries. And what you've described is this possibility that a public official may be unlawfully partial in their decision-making, or unduly biased in favour of a company that might later employ them, is that right?---Yes. And they may not be even aware of that, is the interesting thing.

Yes.---So they may, they may not even be aware that they're, that they're being biased in that way.

10

And I think what you've identified then is an issue of transparency and an issue of accountability, is that right?---Yes.

And so, further reform in this area or the notion of reforming the current prohibition that applies – and we'll go on to discuss that – is about increasing transparency and accountability.---Yes.

20

So another potential problem with this phenomenon is the issue of unfair access, and I think you've identified that in your writing as well, unfair access and influence over former colleagues or subordinates, can you discuss that briefly?---Sure. For a democracy to work well, there, oh, it essentially relies on the sort of old, a, a, an old idea of the marketplace of ideas. So any decision-maker would need to be apprised of a number of different competing views. I mean, that really is just the basics of a good democracy, a functional democracy. One of the problems with the revolving door is it, it, it'll, it, as you say, it's, or as you suggest, it, it, it makes it very easy for some views to get access to decision-makers or to be presented to decision-makers, and that is, if you're a former minister, you go and work as a lobbyist, it's much easier for you to meet with the current ministers. And what that does is it essentially, it, it, it, it monopolises or substantially takes, it, no, it, yeah, it, it almost monopolises the time of the current crop of ministers. So, rather than that marketplace of ideas at work, you have a very limited set of views being presented, and they're being presented moreover by people who, who are sometimes even friends with those current ministers. And so not only do, not only do those who've gone through the revolving door have, you know, access to information, they may have information that's sensitive, and they may unknowingly or knowingly act on it. Not only do they have those advantages, but they also have significantly enhanced access which others just don't have. So important stakeholders are sometimes not heard at all. That's a big problem for a democracy.

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Yes, I think you've described it as leading to a pay to play scenario, whereby the companies that can afford to hire former public officials or ministers are granted a much greater degree of access, and correspondingly, a greater degree of influence over policy-making and decision-making. ---Yes. That's well established. The pay to play exists because of that revolving door problem, and of course because of other problems such as

donations and, well, donations is a big one, but donations and gifts, and things like that. There, there, there are, there is one group who have almost easy access to decision-makers, and there are another significant, a significant group that have almost no access to decision-makers.

So would you agree then that the importance of regulating or ensuring proper regulation of this revolving door idea is very much linked to ensuring that influence and access is regulated and that there is more equality in terms of influence and access?---Absolutely.

10

And that the failure to ensure proper regulation of this phenomenon can lead to an imbalance in policy influence.---Yes.

And I think you touched on previously, Mr Rennie, the idea of insider information, which is another problem that arises with the phenomenon, is that right?---Yes.

20

And so what are you talking about there, precisely?---Well, particularly senior members of government have all sorts of information that is sensitive, it may be that they're aware of purchasing decisions, it may be that, you know, all sorts of sensitive information that they may – again, they're, they're, they're not, they're not, they're not supposed to use it, but they may unwilling, unwittingly use it, certainly they have access to it, and if they do, if they do act on it, it gives them or their firm, their organisation, a competitive advantage, and oh, potentially an illegal, illegally so. But it, it gives them a significant advantage over other groups. Again, that's a big problem with democracy, where the ideal is essentially equal access and equal information.

30

THE COMMISSIONER: Can I just ask you about whether or not, in the area of procurement, the systems that are employed by government can counteract the risk of what might be regarded as the influence of the former minister going across, so if you got a minister joining a company, and then a company is tendering for a procurement contract with the Federal Government, so their new employee, the former, previous minister may facilitate access, but then the procurement systems, which requires competitive tendering and so on, would negate ongoing influence in terms of the actual decision, how does it, what's your view about that, that – well, does it just give them, give a company a leg-up in terms of access, but at the end of the day, how far is it likely that that would turn into influence of government decision-making?---There is significant evidence or there are certainly many examples that suggest that at least at the federal level, which is what I can speak to, that the systems in place aren't working. So there are numerous examples of where those with very close relationships to government are winning contracts where there was no, no tendering process, very opaque, and there are clear conflicts of interest associated with a number of decisions, often relating to the revolving door. It's a significant problem.

40

I see, yes. Thank you.---But just to add briefly, if, if the safeguards were implemented more rigorously, then that would certainly reduce these problems.

10 Well, to what extent then would a government that does not employ proper process run the risk of being picked up by the auditor-general and that that itself might be said to be some form of sanction against opaque or non-competitive processes?---Well, we've recently seen an example of the auditor-general at the federal level, flagging concerns and the reaction has been minor. So we're there for instance referring to the recent sports rorts and various examples of ministerial discretion being employed in a way that the people of Australia are clearly not very happy about. The consequences for those ministers was that they were essentially demoted and they were somewhat sorry for themselves, but beyond that the consequences weren't significant. I think that there is a, at the federal level there is a big problem with a lack of meaningful consequences for breaches of say the lobbying code, or a whole range really of regulations that are supposed to keep integrity in government.

20

Yes, thank you.

MS CURTIN: Mr Rennie, you referred to the term, "grey corruption." With respect to the use of information that's acquired in office, the use that a former minister or public official might make of information acquired in office is particularly difficult to monitor and regulate, is it not?---Yes, it's almost impossible.

30 Yes. Absent there being some kind of fit-for-purpose prohibition on employment in the private sector.---Yes.

Yes.---You would need a prohibition. It's the only mechanism that appears to have any potential to work.

40 THE COMMISSIONER: Can I ask you this, as to whether there's methods that can be employed to safeguard against a former minister being in a position whereby even unconsciously they may, he or she may use confidential information acquired during their period as minister. Such a person might be engaged by the company in a particular role for argument's sake styled advisory consultant, but that description or title may not be very definitive or helpful in terms of the actual duties performed or the role performed, so that theoretically at least that former minister may be involved in a project that might result in confidential information being imparted, even inadvertently. Is there a safeguard that could be employed that for example requiring a former minister, once employed, to for example six-monthly put in a sworn declaration as to what duties they have been performing as some way of monitoring what's actually going on after they leave public service. Would that be viable or feasible or is it something that

wouldn't really be rigorous enough to serve any useful purpose?---I certainly think that that would serve a useful purpose. The fourth estate, as it were, the journalists, would make good use of that information and it would add some scrutiny. I think it would also have an educative effect, which is very important in the sense that those, by writing, making an undertaking and writing essentially what your role is may remind the individual, remind say the former minister or the former member of government of the expectations of society, however that's defined. I think that things like that are very useful, as are many of the other things that I know that the Commission has looked at thus far, but there remains a significant problem, and I think that the only solution would be a prohibition, in terms of dealing with the most serious elements of the revolving door.

So then you get back to determining what's an appropriate period of time if with the revolving door can activate, so whether it's a specified period, whether if so it's 12 months, two years or as in I understand it, at least in some cases in Canada, five years. Is that right, or it depends then on determining either on a case-by-case basis or at least for certain classes of case a preclusion period which is going to operate as a safeguard on the one hand but not operate unduly unfair or severely to the individual.---Yes. Five years is something that the United States, they have prohibition on the revolving door at executive level, they also have a prohibition in the House of Representatives and the Senate, but that's 18 months and two years respectively. Five years is an interesting number. There is actually some empirical evidence that suggests that that's actually, that that's the right length of time for the most important decision-makers. So a study in the US found for instance that essentially the efficacy of lobbyists dropped off substantially around the five-year mark, in large part because the contacts that those lobbyists had tend to move on or change their roles at around five years.

I suppose also the information that the might have gained in office has become, as it were, stale or a spent force.---Yes. I think that that happens more quickly certainly than five years. The five years is more about access in terms of the reason five years was chosen by various countries, but I think that there's also again that potential for grey corruption and five years would help mitigate the problems with that.

Could a period of time that might be seen to be severe, some might argue five years would be too severe, act as a deterrent from people running for office politically because in the nature of the political life they may be in and out of office after five, six, seven years or so and then they've got to turn around and find themselves a career in private enterprise so is that a factor?---There's that argument and I think that that argument is, is important to explore. I think that you tend to find that that argument is made by politicians and other professionals who see themselves as somewhat similar to politicians, but it's not something that, most people in

the electorate I've found, most other citizens think that that's, that five years is completely reasonable. I think that there's an important question of the expectations of ministers, what we expect from particularly ministers but, but politicians generally and members of government, are they public servants or are they people who can reasonably expect to leverage their ministerial position say to get a job. It strikes me that more and more often former ministers are using their position as leverage to get a job and it's a job that they wouldn't otherwise get. So I think it's actually very reasonable in a democracy to say look, you're a public servant and that carries certain 10 privileges actually as a minister. You're very well compensated and perhaps we could look at perhaps, you know, if there were to be a revolving door prohibition of five years, perhaps ministerial other, perhaps the pensions I should say of those affected by it could be increased. I think that that would actually be quite a reasonable solution but I think it's also very reasonable to say if you take this job it means small sacrifices, and I would call it a small sacrifice. You can't take certain jobs for five years. I think that's a reasonable expectation. The question of whether that would prevent good people from entering politics is very difficult to answer but I, I 20 certainly haven't seen any evidence that, that prohibitions prevent people from entering politics and I have seen evidence, at least circumstantial, that some people who perhaps aren't very good have entered politics and done very well for themselves anyway. So it's, it's a very interesting argument. It's one often presented by again, people in that area, people who see themselves as future maybe ministers and ministers themselves. It just strikes me as an argument that falls apart quite quickly under interrogation.

So this discourse we're having is focused largely on the situation where a former minister might be taking up a position in an area which was within his or her portfolio as a minister.---Yeah.

30 But you're saying that reality is that ministers who have served well perhaps have enhanced employability not just in the limited field that they were minister but more generally and widespread.---Absolutely they have an enhanced employability and it would be very easy for a minister to go into a field that isn't directly related to their portfolio in almost every case, at least I'd imagine that. So it's not as if they'll be bereft of work after leaving office and again, there is a ministerial, for at least certain ministers there are ministerial pensions, there's a generous superannuation scheme, and to reiterate I think that it would be worth examining whether perhaps that, the 40 scheme should be enhanced, that the pension should be increased in, I guess, as a compensation for not being able to work in certain fields.

Yes. Thank you.

MS CURTIN: Mr Rennie, I wanted to now turn to the prohibition that currently exists in New South Wales, but before I do that I just wanted to ask whether in your research you've inquired into the effect on the increase

of movement from the government sector to the private on public trust?---I haven't specifically researched that but there, there is at least a correlation.

Yes.---We're seeing as various issues to do with lobbying have become more and more, better understood let's say and as there has been an increase in, in the rate of the, the spinning of the revolving door to use the analogy, there has been a correlated and significant decline in trust in government and this has been occurring in all the countries where the problems of the revolving door are, are most marked.

10

So post-separation employment in New South Wales is regulated through the Lobbying of Government Officials Act and specifically section 18, which provides that a minister or parliamentary secretary who has ceased to hold office must not during the cooling-off period engage in the lobbying of a government official in relation to an official matter that was dealt with by the former minister or parliamentary secretary in the course of carrying out their portfolio responsibilities. So there's a cooling-off period of 18 months. It applies only to ministers or parliamentary secretaries and it relates specifically to matters about which they dealt whilst in office. I understand that there's a similar prohibition at the federal level in that it also applies for a period of 18 months but only to ministers. Is that right?---There's also - -

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Sorry, ministers and staffers. Sorry, is that right?---And senior public officials as well.

Yes, sorry.---Yes, that's correct. It doesn't apply to staffers. It applies to ministers and members of the executive.

30 Could you tell the Commission how the prohibition at the federal level is enforced?---It isn't.

I see.---Well, I mean, it's essentially covered by the ministerial statement.

Yes.---It's interesting to note that the ministerial statement doesn't have a section dealing with enforcement and there have been no incidences where the various organisations overseeing, overseeing the, the, say the ministerial statement or the lobbying code, there haven't been any breaches found at any point and my theory is that this is because breaches aren't possible, that, that it would be impossible to enforce them. So quite apart from the fact that - sorry if I misspoke about staffers.

40

No, that's all right.---The, it would be, it is unenforceable essentially because there is no enforcement section, and also because in my view there is the, the organisation that oversees the relevant codes is, is not impartial.

And sorry, the organisation being?---The organisation, well, the organisation being perhaps the wrong term. The Department. So for a long

time it was the Department of Prime Minister and Cabinet and the PMO essentially jointly oversaw those, those two codes.

Yes.---Now it's more under the Attorney General's Department. Yes. Those working within the Attorney General's Department who don't - - -

Determine - - -?--- - - - who don't have carriage of the lobbying code for instance are very happy that they don't have carriage of it.

- 10 So how would members of the public be satisfied then that breaches are not occurring or if they are occurring that some kind of consequence apply?
---They can't be and they're not. Again, this is, my experience is that, that increasingly members of the public are becoming aware of these, of these potential problems. They're increasingly becoming aware of the fact that ministers are going on and working in, are partaking in the revolving door as it were, and as we, as was alluded to before there are problems with declining trust associated with that, but as I've said in response I just do not see how the, the prohibition can be enforced except perhaps, as far as I can tell the only way, the only effective punishment for a breach of, of the
20 revolving door would be for the Prime Minister's Office to prohibit access. So if say a former minister was found to be in breach of the ministerial statement, then the PMO might say, well, current ministers and current members of government cannot meet with this person for any lobbying activities. Apart from that there's really nothing that they can do.

In terms of when a breach has been suspected or has been alerted to the relevant person, what powers does the Department investigating have to investigate whether the breach has occurred?---Well, they can investigate it.

- 30 Yes.---And this is an interesting question. I have asked at various stages the PMO, the Department of Prime Minister and Cabinet, and the Attorney-General's Department those same questions and have received no answers. My sense is that they don't, they don't tend to know.

So as far as you're aware there are no powers bestowed upon the Department to, for example, compel information from the former minister?
---As far as, as far as I'm aware, no, they don't have such powers, but I could be wrong on that.

- 40 THE COMMISSIONER: Are there any parliamentary processes whereby parliamentary committees can conduct a hearing to interrogate the, or a former minister in relation to firstly taking up a position before it's taken up or subsequent to the person taking up the position?---I suppose the Senate could use its powers to interrogate those questions but there's no - - -

I think there has been such a process employed not so long ago in relation to former ministers.---There, there's - - -

I don't know what, what it was directed towards or what the outcome was.
---There have been Senate inquiries that touch on these issues, but in terms of the formal process, the Senate plays no part. That is to say in terms of the administering of the lobbying code and the ministerial statement, that is left to really now the AG's Department and the PMO.

We've been talking about the position federally essentially in the last few questions, but there are jurisdictions aren't there, there's a parliamentary ethics advisor who a minister may turn to to get a ruling or an opinion from.
10 Are you able to elucidate that sort of process and what benefit it might bring?---I'm sorry, I'm not following the question.

I thought there was a position, which I'm loosely describing as a parliamentary ethics advisor, who's available to assess whether or not the intention of a minister to take up a position would be compliant in terms of the preclusion period or whether there would be any ethical problems arising out of taking up employment, and that's whether you had any experience in relation to that mechanism as to whether it's useful.
---I think that is useful. Some jurisdictions, as you suggest, do have such
20 roles. For instance in the US the Clerk of the Senate or the Clerk of the House I should say, can offer such advice. There's a similar process I believe here in New South Wales. That has a lot of use to it, but you have to also associate consequences, as it were, for ignoring that advice and that's, that's really the, that's one of the biggest problems. Advice may be given but at least at the federal level it may also be quite easily ignored, given the flimsiness frankly of current codes.

I see. Thank you.

30 MS CURTIN: Thank you, Commissioner. By way of an example, the Integrity Act in Queensland, Mr Rennie, has a provision section, sorry, section 20A, the capacity for a former public official to request advice from the Integrity Commissioner, so within two years after ceasing to be a public official the person may ask for the Integrity Commissioner's advice on an ethics or integrity issue involving the person that arises from a post-separation obligation. Would you support a provision such as that?---Yeah, absolutely. But again you need – my experience is that you need a third party, not a third party, you need an independent body.

40 Yes.---An independent person such as an Integrity Commissioner or whatever the term will be.

Yes.---The process seems to fail where it's sort of done in-house, as it were, so federal level again, the reliance on the PMO and DPM&C and sorry, I'm throwing a lot of initialisms, but all those organisations.

I think we're following you.---It just seems not to work. It's the same thing in the US, they rely on, so at the federal level they rely on the Department of

Justice and then the House and the Senate each of their own processes. And the processes aren't used. Interestingly, and forgive me for banging on about the United States, but it offers a lot of interesting examples that are highly analogous. The most effective prosecution of lobbying laws in recent US history has come as a result of the Mueller inquiry, which is to say an independent, well-resourced body using existing laws but actually using them.

Yes.---Quite interesting.

10

So just stepping back a bit, the object of the cooling-off period, both within the Lobbying of Government Officials Act in New South Wales and then at the federal level, is to delay the movement between government and corporate sectors. Yes?---Yeah.

And what you said in your evidence is that it's not doing that, it's not achieving that purpose. Is that right?---Yeah.

20

And we've identified I think at least two problems, one is the problem of enforcement, namely that in your opinion it's not being enforced, and possibly another which is that the cooling-off period in your opinion is not long enough. Is that right?---Yes.

Is a potential further problem, Mr Rennie, that it is just simply too easily circumvented by virtue of the wording of the prohibition itself?---Yeah.

30

And that is that the cooling-off period, whatever period it might be, is only as good as the wording of the regulation that support it or precludes the employment.---True of any law I think.

40

So in the case of New South Wales the prohibition seeks to prevent a minister or parliamentary secretary from engaging in lobbying activity, but would you agree that the problem with that wording is that it doesn't actually stop access because it wouldn't stop a minister or parliamentary secretary from providing assistance to others within their new employer who did do the actual lobbying.---Yeah, or organising meetings or what have you, or just having the proverbial Rolodex, literally or otherwise, but you know, having those phone numbers helps. There are all sorts of aspects that are a great advantage.

So would you agree then that to be effective the post-separation employment provision needs to actually stop former public officials or public servants or even staffers from engaging in lobbying, both directly and indirectly?---Yes, which is incredibly difficult to do, but, and obviously to do with definitional problems if nothing else.

Yes.---There's been a longstanding problem of defining a lobbyist. For instance, if a CEO meets with a minister they are very much lobbying, but it

is incredibly difficult to have a definition of lobbyist that captures that. And that's why, to refer to the slides we saw earlier, I think there's great use in the transparency offered by more detailed ministerial diaries and interactions with lobbyists.

10 So in terms of potential reform then, you've already given some evidence this morning about the possible extension of the cooling-off period and in your view you say five years would be appropriate?---For ministers, yes. I'm mostly concerned with the most senior decision-makers. I don't, I don't actually believe that staffers should be subject to anything like five years.

So well then we'll deal with just the question of to whom the prohibition should extend. You've said that it shouldn't extend to staffers, at least for five years, but would you agree that the prohibition should extend to ministerial staffers for a period of time?---I think that there's certainly evidence for it. I'm almost agnostic on that actually.

20 Okay.---I'm, I'm, I'm really concerned with decision-makers and this idea of well, how can we, you know, to use a slightly naff term, how can the buck stop with them, you know, how can we ensure that the decisions that they ultimately make and the departments they oversee are run with integrity, and I think that placing restrictions on them and emphasis on them in terms of regulation is the most important thing.

30 Yes.---You run into significant difficulties from all sorts of perspectives, definitional, regulatory, et cetera, when you expand the regulation and the policing of things like the revolving door to say staffers, just by virtue of the fact that there are so many of them, but also I'm more sympathetic to the employability question that was raised by the Commissioner before, as it applies to staffers.

Would you agree though that there's a considerable degree of influence that can be wielded by ministerial staffers?---Yes.

40 Such that very similar problems could arise were they to then venture into the private sector in a similar area in which they had been working?---Yes. You run into some of the same problems. The idea is that, as I said before, there have been problems with extending the revolving door significantly to staffers, but there is, there is certainly a compelling argument and some compelling evidence to suggest that a prohibition of say 18 months or two years is warranted, even for staffers.

So what would be needed though, based on what you've just told the Commission, is some kind of assurance that you're pitching it at the right level in terms of staffers, whether it be senior advisers or chief of staff, or—do you have a view about what level it should be pitched at?---Again, it's very difficult to demarcate. As you suggest, staffers can wield a lot of power, not just in terms of their ability to potentially sway a, a decision-

maker, but they may limit access to information. You, you, you run into the same problems of conflicts of interests, and, and all sorts of other, all sort of other problems that we've discussed or I've particularly discussed with focus on ministers. You run into those same problems with staffers. It's just a very difficult area and it – for the reasons that I outlined before, and that's again why I think the emphasis, the significant emphasis has to be on the most senior decision-makers, departmental heads, ministers, et cetera.

10 You've said, Mr Rennie, that you have some sympathy for the employability issue of staffers. Could perhaps a compromise be that there's a graduated level of prohibition that applies to staffers?---Yes. Yeah, I think there would need to be. But again, you, you, you run into that problem of, you know, is the chief of staff necessarily the most important person in the office? Do they necessarily have the most sway? Not always.

Are you familiar with systems overseas where there is that graduated level of prohibition?---I, I don't believe there are, are graduated levels.

20 Right.---But I of course could be wrong on that.

So, in addition to the period of time that should apply for the cooling-off period, the other matter that you touched on is that of enforcement and oversight. Is there a particular regime that appeals to you in terms of how that enforcement should be achieved or compliance achieved?---Yes, you need a, a fairly well-resourced, independent body to oversee it. That's absolutely necessary. That, that, it just, it, it seems to work very poorly, as I said, forgive my repetition on this, but it seems to work very poorly where there isn't that independent body. There would also need to be, in, in say Australia's example, the federal example, dramatically rewritten laws. You could not rely on the existing system. The, the, the code, the Lobbying Code of Conduct and the ministerial statement are barely more than distractions. Oh, they, they, they, they seem to have almost no meaningful impact on the behaviour of, of our politicians.

40 So, to remedy that, one of the things you touched on is the importance of an independent oversight or independent regulator, such as they have in Canada, with the Lobbying Commissioner. And then I think the other thing you touched on is the monitoring of compliance, which obviously that regulator would do. And then the third thing is some kind of meaningful consequence or penalty that attaches to a breach, is that right?---Yeah. Good law. Well-written law would be nice. It would need to be legislated. You know, it's, it's, it's worth pointing out that the code of conduct for lobbyists is, is, is not part of legislation. It's, it's just a code. It's a piece of paper in some respects. And the ministerial statement is similar.

THE COMMISSIONER: There is in New South Wales a – I'm not sure how familiar you are with our legislation. There is the Lobbying of Government Act of 2011, and that provides in section 8 for a Lobbyist Code of Conduct

to be prescribed by regulation for both third-party lobbyists and other lobbyists. And then we find the code, in a Regulation 2014 copy which I'm looking for, and it sets out, well, what you'd expect to find, at least the basic provisions as to avoid conflicts of interest, proscribing dishonesty, things like that. But I take it from what you've said that you support proper regulation, by that I mean effective legislation, regulation of lobbying practices. And firstly, you agree with that, that lobbying activity should be the subject of regulation?---Yes.

10 And does that apply to both third-party lobbyists and what might be referred to as in-house lobbyists?---Yes. There, there are, there are great difficulties with properly defining a lobbyist. I, I have, I, I, I am not aware of anything that has dealt with that problem particularly well, but you would, but, but at a minimum, you need include in-house lobbyists, which again, at a federal level, we don't, we don't consider in-house lobbyists to be lobbyists.

Yes. The other issue that's being examined in this inquiry is whether obligations that fall upon the lobbyists, the lobbied, the public official who
20 deals with lobbyists should be the subject of express provisions, to ensure that there is, as a matter of process, both transparency and accountability. Do you have any views about that area?---I do. I believe that the emphasis should be on the lobbied, the decision-makers. Well, you know, some of the, some of the presentations so far have been very interesting in terms of this idea of requiring lobbyists to, to provide certain information in terms of what they want from, say, a meeting and, and include information about what the, where the meeting's taking place, or whatever. That's all great. I think that anything that enhances transparency in that way is very useful. But my focus is on decision-makers. Ultimately, they're the ones that can
30 do the right or wrong thing, as it were, for, for our system of government, and also they're the ones that are better resourced. A minister has significant resources at their disposal. It becomes therefore much easier to insist that that minister lives up to certain standards. And at the end of the day, we know what lobbyists want, most of the time. You know, if it's a business council lobbyist, they're going to present pretty clearly delineated views that we're, that we, you know, we can almost know what they want before they even enter the meeting. The question is, say with a minister, the question is not what lobbyists are going to want, the question is much more, will the minister be unduly biased by those lobbyists? And that requires an emphasis on and a, a regulation of ministers.

40 So what principles should the regulations give effect to in terms of the decision-making process vis-à-vis transparency and accountability, in your view? Without drilling down into minute detail, but in general, what would those principles be?---Well, there are three main areas where significant conflicts of interest occur. One is to do with donations, political donations. The other is gifts. And the third is the revolving door. I think that we could make significant changes to all three of those, and they would significantly reduce the, the likelihood of conflicts of interest areas.

And what of transparency of decision-making, by the minister or by the chief executive officer, for example, of a government agency?---Well, we're never going to know exactly what they, the, what goes on and, and, and that's actually for, it's quite necessary. There are times when ministers will need whatever degree of privacy. But again, the, the, the submissions so far, in terms of the transparency efforts of countries like Ireland and Scotland, strike me as, as very useful in terms of, in terms of that question of transparency in decision-making. Knowing that a decision, sorry, 10 knowing that a lobbyist is meeting with a minister, where and when and the basics of that meeting are I think, is very useful for again, the press and concerned public citizens if there are any and, and I think it's also useful in terms of it may serve the purpose of reminding ministers and reminding lobbyists of the expectations of regulators and indeed broader democratic expectations. This idea of if you, if you, if you were in a process of constantly having to submit certain details to do with lobbying regulation, I'm not speaking very well on this because it's quite complex, forgive me, but if, if you're constantly being reminded of the, of, of the, of a lobbying regime via these transparencies, via various transparency mechanisms 20 including enhanced ministerial diaries and perhaps even things like undertaking a six month statement or something about your activities as a lobbyist or your activities as a minister, those kinds of reminders would have an educated effect I think and may help behaviour somewhat. Forgive me again. I'm not being clear on that.

You accept that lobbying has benefits in terms of the ability to convey the benefits associated with a project, change of policy, change in the law I assume?---Oh, yes. Well, lobbying is inherent to represent a democracy. It's, it's absolutely a necessary thing. The concern is not that lobbying 30 occurs. It's a good thing that lobbying occurs. It allows people to make representations to government. It is again, those questions of undue influence and undue bias and the issue of access. That's the greatest concern. There are organisations that have, that represent millions of Australians who, who would, would love to have even a tenth of the access of say our biggest companies. That's a problem in a democracy.

Yes. So if you're going to regulate lobbying, safeguards I take it may need to be devised, depending upon perhaps the class of lobbying or the matter to which the lobbying is directed, that provides an appropriate measure of 40 transparency as to, for example, how the minister or senior bureaucrat ultimately ends up endorsing and supporting the proposal?---Yeah. There, there is some really interesting, there are some, there are some interesting examples in democracies of, of how important it can be to have more than one person in a room. So in the case of ministers I for instance would very much be in favour of, of having a system whereby any, any representations from lobbyists to ministers, to government I should say are not done on a one-on-one basis. That is to say, they should occur with public servants in the room and I think that that would have a positive effect in terms of

transparency and integrity and decision-making processes. There are also things like, I consider it a problem that so many meetings with lobbyists occur say over lunch or dinner.

Or by telephone.---Telephone is less of a problem but my concern is that when I say over lunch or dinner I'm talking about numerous cases where it's a \$500 per head lunch and there's some bottles of wine that everyone finds very lovely and the lobbyists are meeting under those circumstances. That strikes me as, as, as strange if you're wanting to make impartial decisions as a minister. It's unnecessary. So there's all sorts of things like that that I think could be, be improved and tightened.

Yes. Thank you.

MS CURTIN: Just getting back to the question of - - -

THE COMMISSIONER: I'm sorry, I haven't taken a morning tea break as yet but - - -

20 MS CURTIN: I won't be much longer at all, Commissioner. Just have a few more questions.

THE COMMISSIONER: All right. Well, we might as well press on. Yes.

MS CURTIN: Thank you.

THE COMMISSIONER: Is that suitable to you?---Happy to press on.

30 Thank you.

MS CURTIN: Mr Rennie, we were speaking before about the question of meaningful enforcement provisions. You understand in Canada that fines can be applied to breaches of the post-separation employment. Is that right?---Yeah, I believe so.

And is it the same in the United States?---Fines and potential prison sentences depending on the relevant Act but, yes, significant penalties can apply in the United States.

40 Is it the case that there actually have been prison sentences imposed on former public officials?---Under the Foreign Agents Registration Act, yes. Going back some time I believe so but there haven't been recent prosecutions and it's certainly not normal.

Right.---Again, I think that that's largely to do with the fact that there isn't an independent and dedicated body to have overseen the relevant US legislation.

You've mentioned an opinion earlier about the prospect of perhaps increasing the pension that is given to former ministers. If one was to increase the post-separation employment cooling-off period, could a potential penalty be the, for a breach, be the reduction in a government pension?---Sure. Anything that has teeth is the word, anything that actually has consequences would be, would be good.

10 The inquiry has heard some evidence about the possibility of requiring public officials to complete statutory declarations when leaving office and then perhaps at intervals during the cooling-off period. Would you be supportive of that, that is, a statutory declaration that provides that the former public official is complying with their obligations?---Yes. When I was waffling before and not making much sense I was actually alluding to things like that.

I think you did touch on that, yes. I just wanted to clarify.---Yes, I think that things like that are very, very useful. Again, there's an educative effect that I think can, can really help.

20 And then finally, would you, Mr Rennie, be supportive of the idea of a separate register for former public officials which would require them to indicate the activities that they're now undertaking in the private sector? ---Again, that I think has great utility to it, yes.

I believe there's such a system in Victoria in place currently so that the public can actually see what they're doing and who they're lobbying for. ---It's not the most detailed thing but, but there's, there's something in Victoria, yes.

30 Or something along those lines that you'd be supportive of?---Something along those lines, yes, yes. I'd be in favour of something more detailed than, than what Victoria has.

Thank you. That's the evidence.

THE COMMISSIONER: Yes. Thank you, Ms Curtin. Ms Curtin, I'm aware of the fact that Mr Rennie has written in this area or areas that we're dealing with.

40 MS CURTIN: Yes.

THE COMMISSIONER: No double you'll take me to any such literature at any stage. I don't know whether you need to discuss that with Mr Rennie but if there is anything of that kind then it could be valuable for the Commission to have access to any such articles. Is that - - -?---I'd be more than happy to provide any help I can.

Thank you. Commission officers might talk to you about that in due course. Thank you for your attendance, Mr Rennie. The Commission does appreciate very much the input from people who can assist the inquiry and in your case particularly who have travelled from interstate. Thank you very much.---Thank you for having me.

You're excused.

10 MS CURTIN: Thank you.

THE WITNESS EXCUSED

[11.59am]

THE COMMISSIONER: Nothing else?

MR CHEN: Commissioner, the remaining thing - - -

20 THE COMMISSIONER: You want to tender some material.

MR CHEN: That's so, Commissioner, and if it's convenient now - - -

THE COMMISSIONER: Yes. Step down. Yes, thank you. Yes.

MR CHEN: I can do so reasonably swiftly.

THE COMMISSIONER: Yes.

30 MR CHEN: Commissioner, I tender a folder of documents shown to Dr Solomon, and to be clear it's the regulatory material from Queensland.

THE COMMISSIONER: Thank you. That will become 36 will it? Yes, thank you. Exhibit 36.

#EXH-036 – QUEENSLAND REGULATORY MATERIAL

40 MR CHEN: Commissioner, I'll tender, in electronic form only if I may, a folder described as Transcript of Interviews, including those with the Scottish Lobbying Registrar, the Head of Ethics and Lobbying Regulation Ireland, and the Lobbying Commissioner from Canada.

THE COMMISSIONER: Oh, do you want to mark those as separate exhibits, or - - -

MR CHEN: The folder, I think just as a group, Commissioner, would - - -

THE COMMISSIONER: All right. The electronic folder then, containing the transcripts of interviews with the offices identified from Scotland, Ireland, and Canada, will be admitted and form Exhibit 37.

#EXH-037 – TRANSCRIPTS OF INTERVIEW

10 MR CHEN: Commissioner, I tender a folder described as Scotland Regulatory Material.

THE COMMISSIONER: Yes, the Scottish Regulatory Material will be admitted and become Exhibit 38.

#EXH-038 – SCOTLAND REGULATORY MATERIAL

20 MR CHEN: Commissioner, I tender a folder described as Ireland Regulatory Material.

THE COMMISSIONER: Yes, the folder of Irish Regulatory Material becomes Exhibit 39.

#EXH-039 – IRELAND REGULATORY MATERIAL

30 MR CHEN: Commissioner, I tender a folder described as Canada Regulatory Material.

THE COMMISSIONER: Yes, Canada Regulatory Material folder will become Exhibit 40.

#EXH-040 – CANADA REGULATORY MATERIAL

40 MR CHEN: Commissioner, I tender an Operation Eclipse data analysis report from the Strategic Intelligence Research Unit dated January, 2020.

THE COMMISSIONER: What's it called, again? Operation - - -

MR CHEN: Eclipse data analysis report.

THE COMMISSIONER: Right. The Eclipse data analytical report made by officers of the Commission, January, 2020, will be admitted, Exhibit 41.

**#EXH-041 – OPERATION ECLIPSE DATA ANALYSIS REPORT –
JANUARY 2020**

10 THE COMMISSIONER: Just for those who might be interested, can you just say in general terms what that material relates to, the data analysis? How is it best described? Or perhaps that could be dealt with later if you wish.

MR CHEN: Could we do that, Commissioner? Thank you.

THE COMMISSIONER: Yes.

MR CHEN: Commissioner, I tender a folder described as Submissions Responding to the Commission's Interim Paper.

20 THE COMMISSIONER: Is that a paper by, a submission by one or more person?

MR CHEN: Commissioner, there are - - -

THE COMMISSIONER: Persons.

MR CHEN: Persons, it's persons, or bodies.

30 THE COMMISSIONER: All right. Then the folder containing Submissions Responding to the Commission's Interim Paper becomes Exhibit 42.

#EXH-042 – SUBMISSIONS TO INTERIM PAPER

THE COMMISSIONER: Sorry, just for the record, that contains a submission by the Secretary of the Department of Premier and Cabinet, does it?

40 MR CHEN: It does. Submission 53. There's an index within the folder, but it certainly does involve, contain that submission, Commissioner.

THE COMMISSIONER: Yes. Thank you.

MR CHEN: Commissioner, I tender material described as Department Policies, Protocols, and Processes, and Ministerial Diary Protocols.

THE COMMISSIONER: The material so described, Department Policies and Procedures, and Ministerial Diaries Protocols, becomes Exhibit 43.

#EXH-043 – DEPARTMENT POLICIES, PROTOCOLS AND PROCESSES AND MINISTERIAL DIARY PROTOCOLS

10 MR CHEN: Commissioner, the Commission issued a number of notices under section 21 and 22 of the Act. Material has been produced which in due course will, sorry, that is being reviewed. It's fairly substantial. But in due course, material from those notices will need to be tendered. But I just wanted to foreshadow, Commissioner, that that body of material will need to be tendered at a later point.

THE COMMISSIONER: Yes, all right. Well, that will be dealt with on a date to be fixed.

20 MR CHEN: Yes, Commissioner, thank you. Commissioner, that's it, in terms of - - -

THE COMMISSIONER: There may or may not be need for some oral evidence in relation to those notices or the material responding to those notices, but I think a decision about that can be made in due course.

MR CHEN: Yes, I agree, Commissioner.

30 THE COMMISSIONER: Very good. All right. Thank you. Yes, then I will adjourn.

MR CHEN: Thank you.

**AT 12.05PM THE MATTER WAS ADJOURNED ACCORDINGLY
[12.05pm]**