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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC  
CHIEF COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 22 OCTOBER, 2019

AT 2.00PM

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

THE COMMISSIONER: Yes, Ms Curtin.

MS CURTIN: Yes, Commissioner, the next witness is Professor Mary O’Kane. I understand that she’s had the import of section 38 explained to her.

THE COMMISSIONER: Thank you, Ms O’Kane. Come forward, thank you.

10 MS CURTIN: And wishes to take an oath.

THE COMMISSIONER: Thank you. You take an oath to give evidence?

MS O’KANE: Yes.

THE COMMISSIONER: Then my associate, if you wouldn’t mind just standing for a minute.

THE COMMISSIONER: Thank you, Ms O’Kane. Professor, would you mind just stating your full name for the record?---Mary Josephine O’Kane.

Thank you. I understand the provisions of section 38 have been explained to you, and you don’t wish a declaration to be made, or you do?---That’s the nature of an open statement, is it?

10

It is. The provisions of section 38 are those provisions under our Act which applies to public inquiries which we conduct. Normally those public inquiries are being directed to ascertaining facts about the conduct of people. This is a different public inquiry. It’s more concentrating on issues and public policy matters concerning lobbying activity in New South Wales. So it may not necessarily be seen that a section 38 direction is required. A section 38 direction merely gives witnesses protection against their evidence given here being used in any future proceedings, whether they be criminal, civil, disciplinary, or administrative proceedings, other than evidence they might give which could constitute an offence under our Act, such as giving false evidence. As I say though, that provision normally applies to a different form of public inquiry, but it’s available to you. If you wanted a declaration made, you’re entitled to be informed about our Act’s provisions. ---Thank you. No, I don’t need the declaration, thank you.

20

Thank you. Yes.

MS CURTIN: Professor O’Kane, you are the Chair of the Independent Planning Commission, is that right?---That’s correct.

30

And you were appointed to that position in February, 2018?---I was, yes, I started at that point.

And that’s a term of three years, is it?---That’s correct.

Professor O’Kane, I understand that you’ve prepared a short opening statement. If I may, I might just take you through a bit of your background. ---Yes.

40

And then perhaps you can deliver to that to the Commission. Prior to being appointed as the Chair of the Independent Planning Commission, you were the NSW Chief Scientist and Engineer, is that right?---That’s correct.

And how long were you in that position?---Since 2008.

You’ve also been the Vice Chancellor of the University of Adelaide?---Yes.

You were formerly the Chair of the Board of the Australian Centre for Renewable Energy?---Yes.

You were also a member of the Commonwealth's Review of the National Innovation System.---Yes.

And as part of that review, I understand that you looked at open government processes?---We did, yes, that was an important chapter in that review.

10 You've also been a member of the Australian Research Council?---Yes.

And the Cooperative Research Centres Committee.---Correct.

You were a member of the board of F.H. Faulding and Co Ltd, and on the board of the CSIRO?---Yes.

In 2016 you were appointed a Companion of the Order of Australia?---Yes.

20 If it's suitable, perhaps now you could give your opening address.---Okay, thank you.

THE WITNESS: As you noted, I'm chair of the Independent Planning Commission and it's a three-day-a-week position. I'll provide a very short overview of the commission and its functions and why we introduce the main policies and procedures we did to improve transparency, openness and procedural fairness.

30 When I was appointed chair of the commission, the former Minister for Planning, The Honourable Anthony Roberts MP, gave me instructions that I was to ensure that the decisions of the commission were legally robust and its processes trusted by all stakeholders, including the community at large. We noted that the determinations of the commission may be unfavourable to some but its processes must be able to be trusted by the community to be fair and transparent.

40 The Independent Planning Commission was established as a corporation and a NSW Government agency on 1 March, 2018, under changes to the Environmental Planning and Assessment Act 1979. In general terms it replaced the Planning Assessment Commission which was established in 2008 and which itself replaced the Commissioners of Inquiry for Environment and Planning set up in 1980. The establishment of the commission, Independent Planning Commission that is, was part of a parcel of reforms intended to improve the planning system through faster, simpler processes, enhanced strategic planning, improved community confidence and participate and more balanced and transparent decision-making.

The commission operates independently of other government agencies, including the Department of Planning Industry and Environment that I'll

refer to as “the department”, although its secretariat is supplied by that department, and that is all its staff in the secretariat are department employees. Its wider support services are also supplied by the department, that is ICT, finance, HR et cetera.

10 The key differences between the former PAC, Planning Assessment Commission, and the current commission relevant to today’s discussions are that unlike the PAC, which acted under the minister’s delegation, the commission is a standalone consent authority for particular significant, state significant developments in its own right. The requirement that decision-makers provide reasons for their decisions and include how the community’s views were taken into account is an important new requirement, and that a planning body, which includes the commission as well as other bodies, is now required to record a meeting held in public and the records are to be made publicly available.

20 With regard to functions, the Independent Planning Commission determine state significant development applications, where there are 25 or more submissions by way of objection from the community, a reportable political donation in relation to the application, or an objection from the local council. The commission provides independent expert advice as well on any planning and development matter when requested to do so by the Minister for Planning and Public Spaces or the Secretary of the Department of Planning, Industry and Environment. It has various other functions as well, but the two I’ve outlined here are the main ones and the main ones that are relevant to today.

30 An important caveat is that as a consent authority the commission is the decision-maker for the applications before it. However, under the Act the Department of Planning, Industry and Environment is required to exercise a range of functions that would ordinarily be exercised by a consent authority. These arrangements are a mixture of administrative and more substantive functions from receiving applications and determining and receiving application fees, carrying out some of the community participation requirements, obtaining any required concurrences and undertaking any required consultations and going on to provide an assessment of the application for the commission. The department’s assessment report is not however binding on the commission. In the period from July 2018 to today the commission has dealt with or is dealing with 98 matters. There are 40 currently 13 cases in progress.

And just quickly on the revised policies that we put in place since I started and since the changes to the Act came in on 1 March, I’ll just quickly go through them. So on 1 March the Act was amended with those amendments involving several important changes to the commission as I described before. In line with the minister’s instructions to build trust and in order to meet various requirements with changes to the Act, we were specifically guided by the principles of open government as articulated on the

Information and Privacy Commission's website, and I quote from that website. "Citizens expert government decision-making to be open, transparent and accountable." One of the techniques to achieve this has been the use and publishing of transcripts of the commission's public and private meetings. Under the Act the commission is required to record and publish transcripts of its public meetings, as I noted before. In the interests of greater transparency, the commission however has chosen to record and publish the transcripts of its private meetings as well. Another major technique has been to emphasise procedural fairness, especially with the requirement to provide reasons for decisions and taking into account the community's views, which was a major requirement of those amendments to the Act, and we have done this in a formal way in our new statement of reasons template and in policies providing opportunities for all stakeholders to comment on new information received while an application is being considered. Also a period of seven days to comment on material raised at any public hearing or public meeting is given as well. We have also emphasised consultation with stakeholder groups and with the media to try to ensure that stakeholders and community are informed about the commission and its processes and have an opportunity to critique its processes.

And I make an important note in conclusion. A consequence of commitment to open government principles and in particular transparency is that one's mistakes are on full display. Accordingly we welcome feedback and we welcome people pointing out mistakes because this results in a more robust process and outcomes. When mistakes are pointed out we work quickly to rectify and address them.

Thank you.

THE COMMISSIONER: Yes, thank you Professor. Just before Ms Curtin proceeds, I'll just provide perhaps some terms of reference of what our particular interest is here and how you might be able to inform and assist this Commission. As you appreciate, this Commission a decade or so ago gave a report on lobbying practices. It made a number of recommendations. Certain of them but not all of them were implemented. The present inquiry is to revisit lobbying and to consider the activities of lobbying in the full context of those who are affected by it or involved by it and as I have said, there's really four interest groups. One is the client who may have a proposal about which he wishes to be heard and influence, persuade government to the merits of the proposal. Secondly, there may be the lobbyist who acts on behalf of the client if the client is not his own lobbyist or her own lobbyist and, thirdly, there's the government or government officials and, fourthly, there is potentially public or community interests involved, so that the matters to which you have made reference, in particular the issue of public trust, open government transparency would seem to have application equally in the area of lobbying. The area of lobbying is really involving an area of public law and in that way the obligations upon public

officials to support the public trust and those who work with public officials or deal with public officials such as lobbyists. In the lobbying area potentially it provides if you like a level for restoring what's said to be lost confidence in some areas of government and public administration. It seems that the present inquiry is now revisiting in order to determine whether or not there is a need for enhancement of the existing legislation over lobbying practices and if so how that should be achieved. At the end of the day it's important that governments have in place lobbying policy that does promote transparency, integrity and impartiality but emphasising that there are issues concerning transparency, transparency of process and accountability that may go a long way towards reassuring those in the community that lobbying practices are conducted according to a practice not necessarily behind closed doors in a non-accountable fashion. So with that just brief overview it is really of interest to the Commission to hear of the practices and procedures that you've spoken of, for it does seem that there is a very strong view that opaque lobbying processes do not serve open government principles or transparency or support the public trust concept. So we would be appreciative of any observations you might care to make about how in that space the balancing of interest might be achieved, appreciating of course that a lot of the processes you've referred to are dealing with determinative proceedings, decision-making in which procedural fairness rules apply and so on and it's a different area of public law in one sense in that sense from what we're talking about here but nonetheless the principles remain the same.---Thank you.

Ms Curtin has some questions I think.

MS CURTIN: Thank you, Commissioner. Professor O'Kane, you've said that the IPC determines state-significant development applications where there is significant opposition from the community or the potential for political corruption or perceived corruption. Is that a fair summation of - - - ?---Yes. Yes, I think that's fair.

Otherwise, is it the case that for other state-significant development applications, the Minister for Planning is the consent authority?---He is, and/or his delegate the department.

And the IPC's functions also include the provision of advice to the Minister of Planning, or the secretary?---That's correct.

And the conduct of public hearings.---Yes.

You've addressed briefly your statutory functions. I might just deal with them in slightly more detail now.---Sure.

The types of applications that the IPC has before it are often complex and contentious, is that right?---They are.

And there can be economic and nonfinancial ramifications of those applications?---Absolutely.

Could you just give the Commission an idea of the types of projects?---Yes. We typically would have mines in front of us. Obviously in New South Wales, coal mines will be quite a feature, but there can be other mines. Wind farms were another thing. Urban developments. At the moment, we have the Star Casino, for example. So, but they're the, typically they come under those urban, new urban development concept plans, et cetera, mines, wind farms is, oh, is probably the three major categories.

And given the nature of those projects, the IPC is required to be involved in extensive consultation with a number of different interests and organisations. Is that right?---Certainly the, the public interest is important. Taking community views is very important. We put a particular interest emphasis on hearing from those involved. And so we are, well, if the minister requires us to hold a public hearing, of course we hold one. But in many cases we will of our own volition hold a public meeting. And we certainly will meet with stakeholders as well in so-called private meetings, but of course we transcribe them.

THE COMMISSIONER: Can I ask you, is there a process whereby potential persons affected are identified? Or is it just done by general advertising of the fact that you're going to conduct a public inquiry into a particular matter?---We certainly do the latter, but as well as that, in the, before the department has prepared an assessment report, the application has been on exhibition. So people will often have identified themselves in that process in putting in an application, in putting in a submission of some sort. So we tend to know those who want to speak. That's probably where we largely go. We, we tend not to go looking for groups that maybe haven't appeared that we might think it's odd haven't appeared.

I see. And those persons who do lodge submissions, they've become aware of proceedings by what means?---By, as well as we put ads in relevant media, as to where we'll be holding a public meeting or a public hearing, but as well as that, we tend to contact – I understand, I'd like to just confirm that on notice – people who did put in submissions at the exhibition period.

All right. Thank you.---We obviously contact the applicant directly, and give the department and other departments a chance to comment.

Yes, I understand. Thank you.

MS CURTIN: Professor O'Kane, you touched on the suite of policies that have been produced recently, that are geared towards ensuring greater transparency of the decision-making process that's involved at the IPC. ---Mmm.

I'd like to ask you about the motivation that was behind the introduction of those policies.---Mmm. Well, as I explained, the former minister made it very clear in recruiting me to the role as chair of the commission that he wanted a very independent, transparent commission that could, was trusted by all concerned, all the stakeholders and the public at large. He was anxious under the, anxious or keen under the changes to the Act that it be very good, and that its decisions be robust, and also, to some extent I think, as far as possible, passed the pub test.

10 So in large part it seems then that the transparency measures that we will touch on in more detail shortly have been introduced to build community confidence or public trust.---Mmm. That's correct. Very much so.

Are they also, in your view, important to the independence of the IPC?  
---Very important to the independence and that was something that Minister Roberts emphasised very strongly that we had a change of name and that meant something, it wasn't just a change.

20 THE COMMISSIONER: Can I just ask you one thing. The IPC, in effect, replaces what went before it, which was - - -?---The Planning Assessment Commission, PAC.

Planning Assessment Commission. But there was a previous tribunal?  
---Yes. That was - - -

What was that?---That was the – just give me one second to - - -

30 You just referred to somewhere in your - - -?---Just referred to, I mentioned it before, I'll just get the – I always forget the name.

Leaving that to one side at the moment, I'm not so much concerned about the name, but that body had a jurisdiction, but as I understand it there was a separate area in which the minister could make decisions, I think planning decisions, and if that's right, the body you chair now, as it were, has the jurisdiction in those matters the minister used to?---Yes, that's correct.

40 It's that area I'm just interested in.---The ministers can still delegate in certain cases to us but when those three conditions occur, where the local council objects, there are 25 or more objections to the case or there's a relevant political donation, then it comes to us and we are the consent authority automatically, along the lines you outlined.

And what was the rationale for, as it were, taking away those matters from decision-making by the minister and giving it to your organisation?---It predates me at that point. There's material in the second reading speech and that is along the lines that I read out before but I, but I don't know a lot more about the thinking.

But it does sound as though the decision-making by a minister perhaps was not seen as either transparent or independent, as the decisions your body makes. Is there anything - - -?---And again, I don't know exactly what went before but I do know the minister was extremely clear on what he wanted. They were not written instructions, they were verbal instructions but they were repeated several times.

That is instructions as to independence and transparency?---Independence, transparency, robustness.

10

Yes, thank you.

MS CURTIN: If you could just turn to the first of the policies that I would like to canvass with you, Professor O'Kane, and that is the meeting record policy that you introduced. Is it right to say that all meetings, whether they be public or private, that are conducted with external stakeholders by the IPC are recorded?---That's correct. With exceptions for where people ask for, where there's commercial incompetence material or Cabinet incompetence, but then we will say that the meeting was held, we will just redact the, the content in those cases. And we don't record, it's a private meeting but we don't record site visits. We make notes there because of the difficulty out in a mine, or whatever, managing the recording process.

20

And the way that you deal with that is through your site inspection guidelines which we can discuss - - -?---That's correct. And it's where the notes that are made and put up contemporaneously on the website.

30

And once the meeting is recorded by transcript, it's then published on your website. Is that correct?---That's correct. We try to be as fast as possible but typically the turnaround from Auscript will be about, up to three days.

Now, the decision to introduce this particular policy was not because it was mandated by legislation, in fact the IPC was exempt from recording, sorry, from holding public meetings. Is that right?---No. We can, we were able to hold public meetings. If we held a public meeting, we had to - - -

40

You had to record it?---Well, I need to check. Was that just a public hearing or a public meeting? But public meetings were there and were going to be, we were going to record them anyway. But it was the move to the private meetings, the meetings with the department, the meetings with the applicant, that we, probably the biggest change occurred.

And that wasn't required by legislation, it was just a policy that you introduced?---We were actually exempt from having to record that.

THE COMMISSIONER: What's the purpose behind private hearings?  
---I've never understood what - - -

In what circumstances would you conduct a private hearing?---Well, we don't. We refused one recently. I didn't see much point in holding private meetings since I was under instructions and, and there's the general government policy of open government that it seemed that it should be the very, very rare exception, if ever. So we've refused them.

Sorry, very rarely that?---That we should ever, I can't think of an instance where we should hold a private meeting.

10 I see.---A private, unrecorded private meeting. Obviously we hold what are called private meetings all the time with the applicant or the department but we record them.

Is there criteria which you employ to determine whether there should be a private meeting?---No. We, we tend to just say no.

Right.---Like we say yes to private meetings but we say no to not, to holding them in-camera.

20 I see. Yes, I see.---Along the - - -

So what's the difference between a private hearing and a hearing in-camera?---Let's say a private meeting because a public hearing has a special meaning where the merits, the merits (not transcribable) are extinguished. So let's talk about meetings. If we hold a meeting with, with one group, a so-called private meeting, then we hold it, we will record it and we just bring the transcript service in and they sit there and they record it. When we hold a big public meeting with a lot of people attending, it's recorded and transcripts produced in both cases.

30 In both cases the transcript is available then to anyone?---It is. Anyone. That's correct.

Yes. Thank you.

MS CURTIN: So the treatment of public and private meetings by the IPC is the same.---It is.

40 It's simply that private meetings are between the IPC and the applicants?  
---Yes. Or, and/or the department or, I'm trying to think if there could be a third party but generally they're those groups.

And public meetings are meetings to which members of the public are invited?---Indeed.

Now, the policy before this was introduced was to make a meeting note of the meeting. Is that right?---That's correct.

And would you be able to tell the Commission the objects of the change in policy?---Yes, certainly. The object again was to make it very available to anybody who might be interested in the case what was being discussed. So people could trust that there was no special deals being done. That nothing was, that we were operating completely above board in the questions we were asking and that all stakeholders could have trust in what we were, were discussing with other parties who might be interested in, in the, the other side if you like being, you know, being disadvantaged in some way. So to show what sort of questions we were asking, what we were, we were tracking down, what we were looking at, what material we were considering.

And in terms of the practical measure as in simply taking a transcript of the meeting, were there efficiencies involved in the policy as well?---Yes, because before that our very small secretariat had to make the notes on meetings and before we moved to this, this policy often the notes were not put up until about the time of the determination or up to five days afterwards. One of the, so one of the objects that I probably should have mentioned, we wanted to get this material out in a contemporaneous fashion so people had plenty of opportunity to raise things with us while the case was on foot.

And I think - - -

THE COMMISSIONER: Can I just ask you – sorry to interrupt.

MS CURTIN: Sorry, Commissioner.

THE COMMISSIONER: We've heard that lobbying activities or interactions with government may concern a number of different areas. Amongst those areas are the areas of policy, that is, policy being amended or changed or a new policy put in place, or the lobbying may be directed towards changing the law as it exists, or it may be a proposal for a new law. Wearing your present hat as it were, in matters of that character drawing on your experience in your present position as chair of the IPC, what would you suggest might be the fundamental guidelines whereby policy or legislation matters which may concern somebody other than the proponent for change, what would be the principles or procedures you would suggest would best serve government in determining whether or not to agree to a proposal to amend or invoke new policy or law?---I think the very first thing is to know what the purpose of the law or the change of it goes to, so being very clear as to the objects of any particular law and how it fits in with the wider suite of policies of government. And so that's the first thing. The second thing is to have a very good understanding of the ramifications of any change that might go to other policies or other legislation, and I think that has a practical side to it to look at scenarios and to stress test cases before sudden introduction and then to just test it I think on stakeholders more widely, both within government and outside and also to compare it to

similar and related policies in other jurisdictions to see if there's best practice in this regard that can be drawn on for issues.

Thank you, thank you.

MS CURTIN: Just to finish off the meeting record policy, I understand that it doesn't apply to internal meeting held between commissioners. Is that right?---That is right. Would you like me to explain the reason?

10 Yes, please.---We felt we needed a safe space for the commissioners and the  
commissioners working with the secretariat and legal advisors and any  
expert advice, a safe space in which to discuss the case. And this was  
somewhat also clarified by how when we get GIPA requests, so we wanted  
to have this space. So as such we defined that these areas would not be  
recorded, they would be closed, and when the commissioners email each  
other the heading of the email has to contain the words, "Panel in  
confidence," to indicate that it is a communication under that protocol.

20 THE COMMISSIONER: How many commissioners are there?---There's  
30 commissioners at the moment.

30?---Yes. The number is not mandated in the Act, it's just how many are  
appointed.

They're part-time commissioners, I assume?---They're all on a part-time  
basis, as am I.

30 MS CURTIN: And is there any means to protect the commercially-sensitive  
or confidential information of the applicants?---Absolutely. If the applicant  
shows us commercial-in-confidence material and asks us to keep it  
confidential, we discuss exactly what they want kept confidential and we do  
that and redact any transcript or any material that would normally go up on  
the website, it's not put up, we just say that there is material there.

Does the meeting record policy set out how meetings are to be obtained in  
the first place by applications or is that dealt with elsewhere?---Not, it's, it's  
more or less dealt with more by practice than anything else.

40 And what's that practice?---The practice is that when an application comes,  
when an assessment report comes from the department to us we typically  
decide if there is to be a public meeting and of course if we have the  
instruction of a public hearing we also have to consider that, and then we  
call for that public meeting and hearing. Before that meeting takes place we  
typically contact the applicant and ask the applicant to meet with the  
commission, one of these so-called private but recorded meetings, we also  
meet with the department and, of Planning, Industry and Environment, but  
also maybe with other relevant departments and then all that material is on

the website and available and then we go to the public meeting for which we've given appropriate notice.

10 Having introduced this particular policy, what was the nature of the feedback that you received?---Well, overall I think the applicants, though a little wary at first, don't seem to have reacted very much one way or the other. The reaction from the community has been largely very positive. I can't think of an exception to that, so it is very positive, I should maybe get rid of largely. But the reaction from the Department of Planning and Environment as it then was and is now the wider department, has been somewhat negative or quite negative and so, so we have these different reactions.

One of the things or arguments that's often made against measures to increase transparency is that there may be a chilling effect on the flow of communication that takes place between government and members of the public.---Yes.

20 Has that been your experience as a result of this policy?---Yes, very strongly with the, with, in the, with the department, it has had a, a very chilling effect.

30 THE COMMISSIONER: Can you elaborate a bit on that? What do you mean?---Yeah, certainly. The department's discomfort has led it to, as well as telling us that they're uncomfortable, to often be very unwilling to answer questions at, at a meeting with the commission. And they'll often come and prepare, with a prepared statement and read the statement out. They often too when we want to see other agencies – typically, the department has done the arrangement of that for us. And often when we ask to see someone, we're told that they will not be seeing us. They would, they'll email us. They'll send something back to us but won't actually talk to us. So there've been several incidences where we understood a meeting was happening and then we were told it wasn't there. We've done various things to address some of that, which I could explain if you would like.

Yes. Well, I'll just let Ms Curtin take you down the path where she's taking you down at the moment.

40 MS CURTIN: So, the department aside, the feedback to date has been positive?---Very positive from the community, and we're sort of, I guess neutral to, if anything, from the, from the applicants. I mean, some have asked for confidential meetings and we have said no. But overall, it has not been strong.

And is that across the board the policy that's adopted when someone asks for a meeting in private or confidentially?---Yep, yes, yes, we, the answer's no.

That request is denied?---Mmm.

Moving then to the public meetings. The IPC holds public meetings when it's requested to.---Oh, public hearings when it's requested - - -

Sorry, public hearings.--- - - - hearings when it's requested to.

Sorry. The public meetings then, a determination is made about whether that is necessary?---Yeah.

10

In each instance?---Yes.

What in your view are the benefits of holding the public meetings?---Very much that it gives the community a chance to, to sort of hear what the case is about and to make comments. It gives the applicant a chance to put the latest version, if you like, of what they're proposing. It gives the, the department and any other government agencies a chance to, to comment. In particular the department gets a chance to talk about its assessment report that has come to us. And so it's a, a very good chance for all to hear things in a, in a very contemporaneous fashion. We then give people seven days after the public meeting to make any further comments, and we emphasise very strongly that written comments are just as valuable as oral comments. And so people can reflect after the meeting and send material in, or if they couldn't attend, they can send material in. So we found it very valuable, in that it tends to give the commission, the commission panel involved very strong guidance on what are the big issues of concern, and what are the big matters the applicant wishes to stress. And so it helps us when moving to our statement of reasons and determination, what are the issues, where we really must be extremely careful in looking at what needs to be considered.

20

30

The Commission heard evidence yesterday about the difficulties experienced by some communities in accessing government officials or communicating with government officials, simply because of their location. They may be in regional communities or in the country - - -?---Mmm. Yes.

- - - where it's simply not possible for them, those communities or members of those communities to come into the city and meet with the relevant government official.---Yes.

40

Do you then hold public meetings in regional areas?---Absolutely, yes. But we tend to go – but it is still a problem, because there might be something that, where someone lives at a distance, or – you know, there can still be quite big areas involved. But no, we, we go to the, the most appropriate nearby area where we can find a place to hold a public meeting.

Turning then to the public hearings - - -?---Yeah.

And that's one of your statutory functions.---Indeed.

They'll be held when the minister requests a hearing?---Yes.

Are there any other instances when they will be held?---I don't think so.

I see.---I, oh, just why I was hesitating there, was whether there's any provisions around the Greater Sydney Commission, but I don't think so.

10 And as with the meetings, public hearings are recorded?---Yes.

And a transcript is placed on the IPC website?---Absolutely.

Dealing then with site inspections. These, as you said, are private not public meetings.---Yes.

There's no statutory requirement to hold a site meeting in the IPC?---That's right.

20 Sorry?---That correct.

But you've introduced guidelines to deal with how those inspections are carried out.---Yes.

As you said earlier, no transcript is taken but a note is made of the meeting. Is that right?---That's right.

30 Is anything else from that site inspection put on the IPC's website?---A list of who attended. So typically we contact community groups who had written in at the time of a, of the exhibition period and say, "Would you like to attend?" And that might be people who are objecting to the application or who are very much for the application. So we will often have people with us sitting in the back of a little bus who are themselves (not transcribable)

40 And what motivated the introduction of this particular policy to do with site inspections?---It was pointed out to us by the Environmental Defenders Office that in the previous site visits there would be the applicant and the Commission and no one else, and so what were you talking about or what were you looking at. And so we felt that, again, in the interests of openness, transparency, it was important that people could see what we did on the site inspections and what we looked at and what we considered. And so this is why we invited community groups, pro and con, to come with us to the extent it was, it was doable in the health and safety sense, in the, you know, getting onto what are somewhat unsafe sites and so on. But it was really motivated again by transparency and the wish to make sure people understood or felt they could trust what we were discussing.

Do you receive some pushback, though, in terms of implementing this particular guideline?---No. I think overall that it been reasonable, or it's certainly been popular with the groups that come and I don't think anyone had objected seriously. The applicants have been extremely helpful in accommodating it.

And then the final policy that you touched on earlier, Professor, is the statement of reasons.---Yes.

10 Now, I understand that a template for the statement of reasons has been introduced?---Yes.

What was the object of that policy being introduced?---It was to make sure that we considered everything we needed to consider for, I pointed out that the minister had instructed me that things would be legally robust and that we had to meet the new requirements of the Act for the reasons. So it was to make sure everything that we were prompted, to cover all the things we needed to, to cover and it's a very detailed template, it's not just a one-pager, it's, it's several pages and it, it gives instructions on what, what to do and how to write things up.

20 THE COMMISSIONER: Is there a statutory right of appeal from your determinations?---Yes. To the Land and Environment Court. If there's been a hearing that merits appeal (not transcribable) but if it's a public meeting or the others, yes, it can go - - -

So on legal grounds only? Challenge on legal ground but not on the merits, is that right?---That's for when there's a public hearing.

30 I'm sorry?---When there's a public hearing.

When there is a public hearing – when there has been a public hearing, then a decision made, reasons published, there is a statutory right of challenge or appeal but only on limited grounds, is it?---Yes. But if there's been a public, just a public meeting, no public hearing, then there's a full, full appeal.

I see. Yes. And where there had been a public meeting, what are the grounds for an appeal?---Pretty much, the merits, pretty much anything.

40 Legal grounds, you know, the, the whole, whole shebang.

I see. Thank you.

MS CURTIN: Does the IPC have further transparency measures in the pipeline or that are being considered?---Yes. Some of them are, are relatively minor, some are major so that, for example, in the, the transcript issue, if for the, for people who are sight challenged, it's important that we can, if they request that we make available the, the actual recording. We

also, David Shoebridge MP, leader of the Greens pointed out when we were briefing him, that, did we have a policy about how I chose commissioners for a panel. So that was another, another policy that we introduced. I'm just, excuse me, just reminding myself if there's any others I need to point out, major ones. Oh, there is the additional information policy where we, if new information is brought into a case, maybe we wrote to a government department for something or we got an expert report on something, we will, the commission panel will make a decisions as to whether it wishes to put that out for public comment and if that is put out for comment it is generally  
10 put out for seven days' comment and that's taken into account as well. We've also recently through an MOU with the department, well, it comes after the MOU but it's in the spirit of it, have changed the policy under which we contact other agencies, we now do that directly as opposed to going through the department because of that problem I told you about before where departments were not coming to meetings. As well as all of that, we've, as I referred to right at the start, we've tried to be very open in terms of meeting with community, meeting with stakeholders like the Minerals Council with the Local Government Association Defender's  
20 office, a whole variety of environmental groups, for example, Lock the Gate, but several others, to talk about processes and to update them on our processes and to get feedback from them with how things have gone, and that we have found enormously helpful in refining things and knowing how it's having an impact on people. There's a whole series of measures as well that are not so much policies as things we have done to, some of them are symbolic. For example, we sought approval to use the New South Wales crest as opposed to the waratah to signal independence of the commission, and that was granted. Just checking. We've got our own legal counsel appointed in the commission who helps us get legal advice which, you know, much more structured in our legal advice, we have a media person  
30 appointed so that we do have a strong media presence, we're in the process of getting more senior planning advice into the commission, we recruited and executive director, we went up from director at the level of head of secretariat to executive director, we have restructured, in the process of restructuring the secretariat to put more emphasis on professionalism, within the budget that we've been allocated, and we've been looking at a variety of experiments, for example, scraping social media to see what people are talking about our cases coming up and so on. So we're, we're trying to experiment and talk about new ways of doing things and sort of keep a move to constant improvement, and I think there's still further things to do.

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It seems very much geared towards cultural change.---It is.

One of those measures that's calculated to achieve that change is that all correspondence between stakeholders is published - - -?---Absolutely, yes.

- - - on your website.---Yes.

Has there also been talk of making a register or record of phone calls?

---We haven't done that, and matter of fact we've been inspired by your Commission over this, over talks, you know, we've had that we would like to introduce something of that sort. We tend to note when they've come in, sort of notes and emails between secretariat and me, but no, that's an improvement I'm keen to make.

You told the Commissioner earlier that there are 30 commissioners within the IPC.---Mmm.

10 What measures or education measures in particular have been introduced to deal with potential risks that might be involved with the commissioners?

---Thank you for raising that. We hold quarterly commissioner meetings and at those we typically have an agenda for the day of specialist presentations where commissioners, again in the safe space of the set of commissioners with appropriate secretariat members, can learn about new topics. I surveyed everybody on the commission last year as to what topics they wished covered in the commissioner meetings of this year and we've largely ticked off that list of issues. We also typically take people through presentations on process, all these policy changes I talked about, how they would operate, get feedback from commissioners, I don't think this should happen this way, why don't we think about that, and so on, and also as well as that we, as I said, we have legal counsel in the commission who the commissioners go to when there's questions about process and law on cases, so that – and then we have the statement of reasons will often be checked not only by our in-house legal advice but also by barristers that we commission from outside to look at things, to check issues. So we're, we're not, we're trying a mixture of education and a mixture of resourcing to provide expert advice.

20  
30 Yes.---We can also seek expert advice on topics where necessary, so further assessment can be done if necessary.

One of the things that I forgot to address with you, Professor, is the issue of the functionality of information that the IPC makes available. One of the things that's important for community participation is the capacity to access the information that is available. Do you have a particular view on that or how that can be achieved?---Can I clarify that this is about how people access it and so on.

40 Yes.---Well, I feel it needs to be as available as possible. That's why I raised the issue, for example, of people who are sight impaired. It's really important that in some way they can see it and we want it to be very available and we want the community not only to, we want more, more people to learn how to use it so we've been delighted that many people are following the transcript. I mean, it has led to many quite amusing incidents where people have heard things and, you know, wonder what is actually meant on it, but it shows us that people are actually out there reading it and accessing it.

Yes.---And that word of mouth thing, the fact that people know they can go to our website and read the letters that are up there and the exchanges and the emails where we might be sending questions to the department and so on to clarify things it, it really is heartening to know that the community at large, the applicant, they're watching really closely.

Thank you. Professor O'Kane, you prepared a detailed paper for the benefit of the Commission.---Yes.

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I might just tender that now, Commissioner.

THE COMMISSIONER: Yes, very well.

MS CURTIN: Titled Statement of Professor Mary O'Kane for the ICAC Operation Eclipse.

THE COMMISSIONER: Yes. What's the number. Thank you. Yes. The Statement of Professor O'Kane will be admitted and become Exhibit 21.

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**#EXH-021 – STATEMENT OF PROFESSOR MARY O'KANE AC**

THE COMMISSIONER: It's a hard copy, is it?

MS CURTIN: Yes.

THE COMMISSIONER: Thank you.

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MS CURTIN: Thank you. And I should also tender the policies that - - -

THE COMMISSIONER: Yes, that's Exhibit 21.

MS CURTIN: The policies of the Independent Planning Commission namely, the site inspection and locality tour guidelines.

THE COMMISSIONER: They'll be admitted and marked together as Exhibit 22.

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**#EXH-022 – INDEPENDENT PLANNING COMMISSION - SITE INSPECTION AND LOCALITY TOUR GUIDELINES**

MS CURTIN: The meeting record policy.

THE COMMISSIONER: Become Exhibit 23.

**#EXH-023 – INDEPENDENT PLANNING COMMISSION - MEETING RECORD POLICY**

MS CURTIN: And the public meeting guidelines.

THE COMMISSIONER: Thank you. Exhibit 24.

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**#EXH-024 – INDEPENDENT PLANNING COMMISSION - PUBLIC MEETING GUIDELINES**

MS CURTIN: And that's the evidence of this witness, Commissioner.

THE COMMISSIONER: Professor O'Kane, I'll just put to you a hypothetical for consideration and drawing on your experience from process and transparency principles. We've heard that some proposals that are put by a lobbyist to either a minister or a senior member of department may involve matters of some technical, requiring some consideration of technical matters. In terms of process one of at least two approaches could be taken. One is that the proponent wishes to meet with the minister or the head of the department or agency to formulate and support the proposal in the hope that he or she be able to convince government to adopt this proposal, whether it be a proposal to do with a contract, procurement, policy, legislation or other matters. So the process starts with a meeting and ends ultimately with a decision. In terms of process and transparency principles, the proponent may wish, if he or she had a choice, for this to be dealt with privately by way of private session. The alternative process would be one which is not private but it's done in a more open fashion. The proponent may be concerned that aspects of it do involve matters of confidentiality. In terms of public office holding obligations to act in the public interest, in general terms, you've been asked to advise your preference and your suggestions as to process in either of those two different scenarios or approaches, how would you approach it and what would you be suggesting are the important matters to be observed in formulating the process?---I would definitely be approaching it from the point of view of a more open process and, and a very transparent process. The things I think need to be considered are why it is being raised, why it is being sought, why somebody would seek to do it in private and there could be good reasons of state, high security, high security reasons are something one could think about, but I think it needs to be thought through. I think the default should always be open, an open approach to meetings and transparency, and if there are exceptions then they should be treated on their merits and appropriately noted and recorded. I think the other thing that is really important is the protection of public officials, including ministers. I think there is a great deal of protection in an

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open process in that even if nothing untoward happened, if it's open, no one can accuse somebody of something untoward happening, and I think levels of public trust in government tend to go up if the process is, by default, open. I, if I may, I draw on my rather long experience with an organisation called Development Gateway that was spun off the World Bank and that I chaired for many years, which was about supplying open-source software and data to the developing world for the purposes of transparency. And watching how the products we produce there helped governments, most notable in Africa and some governments in Asia, to protect themselves from accusations of corruption through moving to greater openness and how it helped with aid disbursement and made it more effective, it was, it was very, very telling and had sort of made, made me a great supporter of open processes, both for the organisations I'm associated with and governments I serve.

I suppose it might be said that if a proposal is being put up for consideration of government in the hope that the government will go along with it, can in fact, act as some protection for a proponent too.---Absolutely. Thank you for that.

If the matter was dealt with in the manner you just described.---Yes, absolutely. I think it is, it is very good and, and I would add that if there are commercial incompetence or some special confidential areas, they can be extracted and dealt with particularly and the process noted. I think often the protection is, I'm talking about a process protection as well as the whole matters being by default open.

So the question I'll put to you is really focusing on process. In the hypothetical scenario I put to you, because it might involve some consideration of technical aspects, it might be envisaged that perhaps the minister or the head of the department might see the necessity to refer it to someone who has got the technical skills or professional skills to be able to examine the technical aspects of it and in due course report back to the minister, one would, or the head of the department. So that is part of the process further down the timeline when we're dealing with the decision-making process?---Yes.

And in relation to that area of the decision-making process – again, I'm speaking again in the context of lobbying – what would you see as being, if you like, a minimum standard of transparency in the decision-making process in the hypothetical? In other words, you might have a minister who's involved, head of department involved. You might have somebody from the public service who's been tasked with reviewing or getting expert advice on aspects of it, and then it comes back to the decision-maker eventually, whether the decision-maker just ticks the box or whether there's some obligation to exercise some actual decision-making power and if there's any discretionary aspects to consider, the balancing exercise, and so on. In terms of the minimum requirement for transparency in the decision-

making process, what would you hope to see, as it were, left as the evidence trail from which somebody can at a later point in time or if there's an issue and there's some tribunal or court examining what happened, what was the process, what was considered, how was the decision made, what would you see as some of the basics that would need to be in place to enable a reconstruction, if you like, as to what happened and what were the grounds of the decision, so that there is a accountability at the end of the day?---Oh, I think there's a few things. At a very minimum, an excellent set of notes at all levels. So at the level of the, the minister, the head of department, and anybody providing expert advice. So there should be file notes  
10 appropriately dated as setting out what information it was, the, the advice was based on, and what was drawn on in terms of technical material or discussions with other people, and what they were, going right through, and if it's a major issue, of course going to Cabinet, with appropriate Cabinet processes, so that the whole thing can be examined. I think, if I can add to the minimum, I think it's very wise where possible the matters be made as open as possible, particularly if it's very contentious, and I would point to my previous role as Chief Scientist and Engineer where I was often asked to  
20 give advice on matters, for example, coal seam gas, or koalas, and various other things, but in all cases we sought permission to make sure that was all kept open and published on the Chief Scientist and Engineer's website, so the, the whole process and the expert advice sought was available, and that the minister might wish then to consider things, but he or she had a full amount of material available to, to do it. But I think superb record keeping and preferably double-checked by bureaucrats at all levels, if more than one person is involved, and where appropriate, it's open, and also where appropriate, issues are consulted with appropriate stakeholders, put out for consultation, not just by identifying people, but putting out for broader consultation so anyone can comment I think is as important as possible, as  
30 long as it's consistent with, you know, time limits and also with requirements of balancing government policies.

Some in the lobbying profession might say, I hear what you say, but you've got to live in the real world, and that is, firstly, not all matters are as technical and difficult as others, so you've got to be flexible. Secondly, it's overkill if you overprescribe by regulation or otherwise, and it becomes burdensome to the point where it can be counterproductive to a good flow of information between the private sector and government. Not to mention, they would say, the cost that you're imposing upon us if you overregulate.  
40 Have you got anything to say in answer to that?---Yes, I do. I think one of the reasons things become burdensome is that they're often put as an extra layer of regulation on top of existing regulation. I think one thing that we have to become very good at in government and in the public sector is completely and very quickly restructuring regulation legislation so that it is relatively simple to administer and test, and, and not burdensome on the people who it will apply to, and is very easy to, to understand. And that was, I would draw your attention to one of the reports under the coal seam gas inquiry that looked at the regulation applying to coal seam gas at that

time, and it was extraordinarily complex and hard to administer and hard to follow and I had, you know, could quite understand why the private sector was concerned, and it was hard on the public sector too because it was a very complex set of things to administer and look at and there weren't the resources to do it. So we need to become very good at legislative development and redevelopment, and these days with various tools and techniques, particularly from artificial intelligence and so on, it is possible to do that better just as it's possible and Australia has been a great example of looking at drafting, sort of legislative drafting by automatic means to try to address some of this. But I think that is a skill that we are remarkably lacking in the public sector, is rapid legislative overview and repackaging, if you like, with all the stress testing that's needed and all the scenarios that I referred to in a previous answer to you.

Just on, again drawing on your experience, particularly with technology, we heard today in fact one organisation say, "But we represent many of our members who are small in size and resources, they may be working in the field of social services for example, and if they're to prepare an elaborate business case to present in a lobbying proposal, they just don't have the resources to do it." It seems to me that you may be able to contribute to this point, but in this day and age, rather than a proponent wheeling in trolley-loads of documents to the minister's office, if there's a process whereby for example the proponent's case was put on a USB stick and they had the USB stick over to the government official, that's downloaded onto the system, can you envisage a possibility where that then becomes a digital or electronic living record that grows over time, as it were, this time in the hands of government, being the record-keeper or the record creator if you like, and it goes right through to the end of the decision-making process? Now, you have spoken about your experience in relation to the Third World and technology and so on, but can you see, can you envisage something along the lines I've just mentioned going forward?---Absolutely. And I think the great thing about that is that such records can be searched and using intelligent search techniques can even be summarised. And we have great strength in New South Wales in ICT research and work on natural language understanding and in Australia, but yes, you know, we can develop a lot of tools that would help draw out what are the main themes, what are the highlights, what are the issues you should concentrate on if you're a small body so you don't have to spend, you know, loads of time getting someone to interpret the material for you, you can pull out the themes from a document, you know how you would do it yourself, machines can do it, maybe not as well as you can but they can certainly do it to a degree. So there's a lot to do and I think it's something we could put emphasis on. I mentioned that we used, we commissioned NICTA to do a trial, it was National ICT Australia and now called Data61, to do a thing to look at social media, we were interested to know what out there was chatter about, cases that were coming to the commission, so we got a sense of what was concerning the public before it arrived with us as the assessment report from the department. And I think there's lots that can be done there for – as

I said, it was too expensive to go through the full thing but it's not so expensive that if governments across several departments sought this activity as part of an open government move it can be done well and can really increase, I think, government transparency and effectiveness but also public sector productivity.

Thank you very much.---Thank you.

Is that it?

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MS CURTIN: Commissioner, that's the evidence of Professor O'Kane.

THE COMMISSIONER: Professor O'Kane, thank you very much for your attendance here today. The Commission is very grateful to you for giving your time and your expertise.---Thank you.

Thank you again.

20 **THE WITNESS EXCUSED**

**[3.15pm]**

THE COMMISSIONER: Yes.

MS CURTIN: Commissioner, the next witness is Matthew Hingerty. I understand he's had the effect of section 38 explained to him and he doesn't wish to avail himself of that protection.

THE COMMISSIONER: Does or does not?

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MS CURTIN: Does not.

THE COMMISSIONER: Thank you. Yes, good afternoon.

MR HINGERTY: Afternoon.

THE COMMISSIONER: Would you like to give evidence on oath or affirmation?

40 MR HINGERTY: Affirmation.

THE COMMISSIONER: Thank you. If you wouldn't mind just standing and my associate will administer that.

<MATTHEW HINGERTY, affirmed

[3.15pm]

THE COMMISSIONER: Yes, thank you. Yes.

MS CURTIN: Mr Hingerty, can you tell the Commission your full name?  
---Matthew Hingerty.

10 And you're an Executive Business Director at Barton Deakin, is that right?  
---I am, yeah.

You've worked there since 2012?---I have.

You were formerly the CEO of Barton Deakin?---I was, yes.

You've recently been replaced by Andrew Humpherson?---That's correct.

Barton Deakin is a registered third-party lobbyist company.---That's right.

20 It's described as a partisan lobbying firm.---Yeah.

By which is meant that you lobby the Liberal and National Coalition, is that right?---That's correct.

Prior to joining Barton Deakin, you've held a number of positions. You were the ministerial chief of staff for the first 15 months of the O'Farrell Government.---I was, yes.

30 And to which minister?---George Souris.

You were also the chief of staff to Minister Joe Hockey in the Howard Government.---I was.

You were the adviser to Peter Collins as the Opposition Leader in NSW.---I was.

And Peter Collins is the founder of Barton Deakin.---Yes.

40 You were an adviser to the NSW Premier John Fahey.---Yep.

And several ministers throughout the Greiner-Fahey governments.---Yes.

You were also the Managing Director of the Australian Tourism Export Council.---I was.

And have held roles with TTF Australia and the NSW Minerals Council.---I have.

I understand you have a short opening submission.---I do, yep.

You can give that now.

THE COMMISSIONER: Would you care to read that?

THE WITNESS: On behalf of Barton Deakin, I'd like to thank you for the opportunity to support ICAC in this inquiry into the lobbying industry in NSW. We are happy to contribute our views regarding potential  
10 improvements which might enhance public confidence in the system. We'd like to make a couple of observations on the industry. Lobbying is a little-understood industry, and more public understanding would be a good thing. I sincerely hope that this inquiry marks the commencement of a process or study of and sensible accommodation of the regulated and appropriately transparent third-party lobbying sector in our democratic process.

As an aside, it mystified me when doing my MBA that I could find endless research on disciplines such as finance, human resources, governance, operations, marketing, et cetera, and yet precious little on government  
20 relations. This is even though most, if not all, businesses are exposed to government regulation and licences, and many rely on government contracts for a portion of their income. There may be an opportunity for academic institutions to offer courses and research in applied government relations, and thereby add to our understanding of this deal.

This lack of education on what we do leads to misunderstanding. For example, many of the critics of our industry paint a simplistic portrait of governments standing passively back, waiting for industry and community groups to come knocking. This is an imperfect understanding.  
30 Governments themselves initiate multiple conversations with the private and community sectors. Beyond Premiers and Treasurers, they have Ministers for Trade, Ministers for Investment and Ministers for Regional Development all wanting to entice economic activity in their jurisdictions. Then they have Ministers for Welfare and Human Services wanting to converse with their stakeholders. Further, governments across Australia spend annually tens if not hundreds of billions of dollars procuring goods and services from the private and community sectors. To do this, they need to talk to the private sector. Unsurprisingly, many in the private and community sectors do not understand what governments are asking of them  
40 and they are often concerned they are somehow at risk, so they come to us. If nothing else, we can serve to reassure them that it is okay to talk to government.

The second problem that this inquiry has illuminated is one that vexes us too, and that is what to do with the vast majority of lobbying that occurs outside of the registered third-party lobbyist regime. Many of those operating outside of the third-party lobbyist regime include in-house government relations officers, NGO leaders, and they are legitimate, careful

10 contributors to our polity, and indeed many of them are our clients. They are just as sensitive to the risks to the reputation of their companies and organisations from doing the wrong thing as we are to ours. Many, however, and it is a deep well, populate the world of consultants, single companies and individuals. Again, many of these are legitimate players acting in the public interest, but some may not be, as previous ICAC inquiries have discussed. In terms of public opinion, it is the lowest common denominator that drags the entire sector down. How to regulate this end of lobbying is not an easy task. We expect it will involve a process of continuous improvement and inquiry, and we are very happy to assist government with this process.

20 However, the conundrum remains, how do you regulate those that you cannot see? To that end we have taken a position, which may surprise some, to support in principle the creation of a Commissioner of Lobbying. We believe that an independent officer charged with being the integrity backstop for and adviser to the government is far more effective and a broader approach than a continuous cycle of regulation, inquiry and re-regulation. It would, to an extent, level the playing field for all who lobby government. We would see the principal role of a Commissioner of Lobbying as being an adviser to politicians, their staff and the bureaucracy. It should be positioned as a confidential adviser to government allowing staff, for example, to take their concerns and to talk it through with the commissioner. However, it should also have teeth and therefore the ability to escalate formal investigations to the Electoral Commission or to ICAC. The Commissioner of Lobbying could also play an active role in educating government, lobbyists and the broader community about the role of lobbying, and that it should have the ability to provide advice to government on the regulation of the industry. Hopefully it too will stimulate inquiry and research into the field.

30 In conclusion, it is our hope that this inquiry cements lobbying as a legitimate player in our polity, and the regulated lobbying sector with our rights and obligations as the sector that both government and industry can deal with with confidence. At the same time, if we can make it harder for those bad actors that operate outside the regulatory regime that give our whole sector a bad name, if we can make it harder for them, then we will have achieved much. Thank you.

40 THE COMMISSIONER: Thank you. Yes.

MS CURTIN: Mr Hingerty, I understand based on the statement you've just given that obtaining meetings with government or government officials is but one aspect of the work that you do as a third-party lobbyist.---Yep. Yep.

Notwithstanding that, I am interested in that aspect in particular of your work.---Sure.

Could you tell the Commission how you, as a third-party lobbyist, go about obtaining access to a government official?---Principally it's similar across all, all offices. There are portals where either we, but most likely our clients, will write to them, asking them for a meeting.

10 And dealing specifically, then with a minister, how does that happen? You send a meeting request?---We send a meeting request to the minister via their office, via their portal. Depending on the circumstances, we may ring the office, the officer, the policy officer responsible, and inform them that we have, or our client has written to the minister asking for a meeting, and if there's some delay between the reception of that letter and a response from the minister's office, we may follow up and say, and query if they had, if they received the request.

20 Do you often have cause to go straight to the chief of staff, for example? ---Sometimes the chief of staff. Sometimes it will be the policy adviser responsible for the area in question. Sorry, and if we follow up, it may just be with the, with the diary secretary.

And what criteria apply, to your knowledge, to determine whether or not a meeting request is granted?---The minister or their chief of staff will decide whether or not it is in their interest or the public interest to have that meeting themselves. They may have, they may say to a staffer, "Well, you meet with these people and maybe judge whether or not I should meet with them," or they may be referred directly to the department.

30 Is the process similar when you're trying to arrange a meeting with a senior public servant?---Yes. Yes, similar, although they, they don't have portals, so we, we may ring ahead, ring the officer that we think is responsible. There has been a high turnover and major restructuring, for instance, in the public service at the moment. You'll look on the website, look at the organisational chart, make a judgement of who you think it is that the, that the client should meet, ring ahead. Invariably you'll talk to an executive assistant who will say to you, "Yes, this is the correct person. Can you please provide a written request?" Or they may say, "No, this is not the correct person. You should be meeting with X and I will pass on your written request."

40 Barton Deakin is a partisan lobbying firm?---Yep.

Can you explain the benefits of being a partisan lobbying organisation? ---Yep. So we, we understand how Liberal and National governments think. We've been part of it from a philosophical and political basis. So as you said earlier, direct lobbying of ministers, their staff, bureaucrats, is only a very small part of what we do. A lot of what we do is preparing our clients on their journey of talking to government and in some cases we ask them to pitch to us. There is an element of role-playing and if we think they have a

good case and if they're presenting it well, we'll say, "Okay then, go and talk to, to the government." If not, we may say, "You should modify this approach because the ideas you're taking to the government is not something within their policy DNA."

Presumably being partisan though means that you can capitalise on pre-existing relationships that you have with members of government or other public officials?---Capitalise is, is, is a loaded term.

- 10 Yes.---If I could put it this way. The most precious commodity in lobbying is time on behalf of the government and resources on behalf of, of the client. If we can cut down the time that is spent informing the relationship by saying, "Your proposal won't wash for this government, it's not part of their policy agenda," then we can save, save a lot of confusion, save a lot of time and save a lot of resources.

So you're saying it's more about the knowledge that you developed rather than the relationships that you developed?---Yes, yeah.

- 20 Do you, though, have any difficulty in obtaining access to government officials that you want your clients to meet?---Difficulty is a, is a relative term. Yes, there can be difficulty but for, for reasons of the minister may not want to meet, they may not have the time, they may refer our client to a, to a different process, talking to a, to a public servant, for instance. So I wouldn't say difficulty. If, if it's just the process of making sure our client speaks to the person that they need to speak to, and invariably it's not the minister, it can be someone in the department.

- 30 And now is it the case that you're generally not invited, as a third-party lobbyist, to the meetings that do in fact take place?---Yes.

So the meeting proceeds then between your client and the government official?---Yep.

Would it be an exception for you to attend those meetings?---Meeting with a minister?

- 40 Yes.---It's, it, one of the biggest issues we face is that different ministers and different offices have different policies. So my default position is usually they won't want the lobbyist to be in that position. So our role is to prepare our client prior to the meeting and then we may check back in with the officer that they have met with or the officer that has been in the ministerial meeting afterwards to say, "Our client said this happened, is that correct?"

Yes. And why is it, in your opinion, that ministers don't typically want the lobbyist in attendance?---That would be for them individually to answer. It vexes us. We think we are the regulated lobbyists, we are publicly

transparent, we should be able to attend these meetings but it's not the case, so in some, some, some ways we've just given up.

And sorry, is that attitude that you've just described widespread?---Yes.

10 THE COMMISSIONER: And what drives it, do you think?---I really, I really don't know. It goes, it goes back many years to the issues around the start of this government, Operation Spicer and Credo, there was just a fear, a general fear of, lobbyists got a bad reputation. As I said in my opening remarks, the lobbyists that got the bad reputation weren't third-party lobbyists, they were operating outside the system but we've all been tarred with the same brush.

MS CURTIN: Mr Hingerty, you said it's widespread, so it is across all the portfolios that you would have cause to - - -?---No, not all of them, no, no, but most of them.

20 Are you able to mention which ones?---Well, I couldn't exhaustively say because I haven't approached every single minister's office, but put it this way, I've met with one, I've been in one meeting with a, to the best of my knowledge, one meeting with a client with a minister this year.

And how many meetings have you arranged that your clients have attended? ---I couldn't put a figure on it, but it would be, the process is continuous of preparing, requesting, following up, but from, from my perspective, from the company perspective it is probably weekly, whether it's a minister or a staffer or - - -

30 Now, lobbying also takes place not just with members of the current government, also members of the opposition.---Yes.

Crossbenchers?---Yes.

MPs?---Yes.

Shadow ministers?---Yeah.

40 Is the access, when you require access to those individuals is it the same method used or is it a different system?---Well, the same, not, we, we don't lobby the opposition in New South Wales, there may, there may be some crossbench, but we've taken, or we take the opinion and it's our code of ethics that we will follow those processes. It's, it's not just the regulator, it's not, it's common courtesy to say client wants to meet with you and this is what they want to discuss, however it is an issue, and I know it's been ventilated by previous witnesses, that only the government is caught up in a lobbying regime.

Now, you've written a submission for the Commission for the purpose of this inquiry. And, Commissioner, that's Exhibit 2, page 192.

THE COMMISSIONER: Sorry, page again?

MS CURTIN: Page 192.

THE COMMISSIONER: Right. Thank you. Yes, thank you.

10 MS CURTIN: I just want to touch on some of the matters that you've addressed in your submission, Mr Hingerty.---Sure.

And the first of those is the current register, the lobbying register that's in place.---Yes.

Your position I take it is that you support the current system insofar as it relates to the register?---Yes.

20 And you don't support further regulation of third-party lobbyists. Is that right?---No. As I said in my opening remarks, there will be a continuous process of improvement in the regulation, so I've been following, obviously been following the inquiry closely and I, if that's what it says in the submission I'd like to modify that slightly and say I think there needs to be a continuous process.

30 So as part of that continuous process would you support expanding the register to include in-house lobbyists?---We're agnostic on that. The, the, there are good arguments for it but the problem is where, what's, what's the definition of an in-house lobbyist, where does it end? Which is why, I mean discussing this and thinking this through we came back to the proposal made by another party around the Commissioner for Lobbying which would be a backstop which would allow – and I'm particularly thinking about staff, in particular new and younger staff who may have a conversation with someone, anyone, not just a registered third-party lobbyist, but anyone that would give them cause to second think afterwards and think, should I really have said that? The capacity for them, and this is from personal experience from my time in politics, the capacity for them to go to an independent third party and say this is what happened, I may have, I think I may have done something wrong, can you please advise me whether I have or not, I think  
40 would be a wonderful backstop for them and it would be a signal to the community that, you know, don't try and take advantage of these people because they do have this backstop which then could potentially escalate, as I said, up to the commission, either of the two commissions.

Just in relation to the unregulated lobbyists, amongst that indeterminate group there are well-known entities, be they organisations or corporations who have in-house lobbyists who regularly use them.---Yeah.

THE COMMISSIONER: So that one approach – well, firstly, just taking those groups who can be regarded as full-time professional lobbyists.---Yes.

Without them being regulated, you have the anomaly, it seems, on one view of it, of having people doing exactly the same sort of work as the third-party lobbyists who would be regarded as professionals in the field. And then you've got the others, the in-house lobbyists who are totally unregulated. ---No.

10 You end up with a completely uneven playing field, and it seems anomalous to have at that situation, it seems, on principle.---Yeah.

Especially when you can readily identify those who are regular lobbyists who do lobby and lobby hard, and frequently. Often it may be that their lobbying practices are different from yours, because they just pick up the phone and say, "I want to speak to Minister So-and-So." And that's the wrong exercise. "It's me again." So, I'm fantasising of course. I'm not basing that on anything I know is a fact. But one can concede that that situation could come to pass. So the difficulty of definition, though it is a  
20 difficulty, may be capable of being overcome by some formulation. It would seem, if it can be, from what I gather, you would be in favour of them being regulated. Is that your position?---Generally in favour, although, and, and I agree with what you're saying. You don't want a perverse outcome where you might have – and these are not too far from the truth in what I do – you might have a young start-up company who comes up with an incredible invention, but they don't know how to talk to government. They can't afford at this stage of their, their, their company's growth an in-house lobbyist. But they think, well, we need to go and talk to government about this. We, we need to let them know that we found the cure for cancer, or, or  
30 whatever it may be. But, and then they engage us to help them, or anyone in the, in the third-party register, and if, if the minister or the office says, "No, we're not going to talk to you because you're, you're a third-party lobbyist," but they're up against a corporation who may be disturbed by this invention, but have that team that – and they'll talk to them. So there's, there's a, there's a bit of imbalance there, which, which hopefully can be addressed.

Well, the potential at least is that if you have what we're calling this unregulated group of lobbyists, they're unregulated, they're not bound by any code of conduct. Well, I suppose they are under - - -?---There is, yeah.

40 They are under the legislation bound by the code of conduct.---Yep.

But the code of conduct might be said to just record what's innate in all of us. You don't act dishonestly, et cetera.---Yeah.

You don't mislead, and so on, and – but the benefit to them of being unregulated is that they don't have to comply with any protocols or transparency obligations, because perhaps most of the lobbying is done over

the telephone.---Well, my sense is that – we deal with a lot of in-house lobbyists, as I said. My only remarks – and a lot of them are our clients. By and large, they are upright people who, who want to have a long career in what they are doing, and they, they will not take risks that will prejudice that career. But there are a lot of people out there who may only come to the government once to push, push something, who may be unaware of the code of conduct, unaware of how they are to behave, and have we, as we have seen in previous inquiries in ICAC, it's those people that upset the apple cart and give us all a bad name.

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But then the other risk is – and again, some people say, well, you know, where is the evidence of corruption? You haven't demonstrated that there is sufficient corruption to warrant enhancing regulation of lobbying. But as the first report of this Commission on lobbying emphasised, it's the risk, the cultural risk or the risk of corruption, which is a real risk in some situations. And it's the risk that you're trying to manage, and there is a risk in lobbying and it may be in many areas, most areas perhaps, that it is properly managed and controlled. It's in those areas which you have alluded to where there are people who do and can lobby government without any regulation at all and may be driven by special interest or commercial interest to such an extent that they are successful. But therein lies the bias, again which you have referred to, that there seems to be a large section of the community out there who have a distrust about lobbying and really the distrust, although it's spread generally over the industry, is really of a certain sector. And trust and confidence in government, if that risk can be properly managed, will go a long way to settling the community down about accepting that lobbying is here to stay, it's professional and it fulfils a useful purpose. So it's a question of whether or not it may be said that there are certain industries or commercial pursuits that are well known for being active lobbyists and the community perceive, rightly or wrongly, that they get what they want and that government policy can be moulded to fit neatly into their commercial plans. Now, I'm not saying it does happen, we're not here looking at specific examples of it, but we have identified in the previous public inquiry, an operation that was conducted some 10 years or so ago, that these are areas where there is definitely risk. These are areas where the public are not satisfied, and rightly so, because these people, as honest as most of them may well be, are totally unregulated, there's no accountability, there's no transparency and therefore you're ever going to satisfy the community unless there is.---My sense is that in principle that's, that's correct. My experience is that the current State Government is very attuned to this as well. If I could be so bold as to suggest this inquiry should turn its attention to local government. There are times when – we don't do a lot of lobbying of local government and from time to time we have them as clients, but there are times when we wish for process, we wish for regulation because we're cautious about lobbying local government ourselves. If there, there are established rules, then it is a lot easier for us to do so.

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Sorry, I've interrupted.

MS CURTIN: Thank you, Commissioner. So we're discussing the lobbyist register.---Yes.

What about other professional services providers, such as lawyers and accountants? In your experience they are at times involved in lobbying or communications with government. They're not captured by the register.  
---No.

10 They're not required to register as lobbyists. Would you support an expansion of the register to include those kinds of people or those kinds of service providers?---I would, but the Commission needs to understand that in some ways I'm talking through my hip pocket because they become competitors to us, and in experience, in the past, in the federal jurisdiction, the good ones will register from time to time, particularly when they are constantly talking to government. But I think there is a very strong case for professional houses to be registered, yes, I do.

20 You've touched, in your submission, on the question of a secondary register or what you term a secondary register.---Yep.

Which would be similar to what's currently in place in Victoria, namely that it could record where former elected officials or senior public servants and advisers are not acting as in-house lobbyists transcription third-party lobbyists. I understand that you support the introduction of such a register?  
---We, we studied the Victoria model, not in detail, but it seems to us to be a good solution to that area of transparency, yes.

30 Could you perhaps elaborate on why you think that kind of measure would be important?---I, I think it's, and we've seen even in recent time, the Commissioner talked about areas of public mistrust, where previous parliamentarians go directly into a lobbying business, there need to be some transparency for community to know that they are doing this.

40 And so the point of it would be simply that those people, a list of those people would be available so that anyone dealing with them would know their former role.---Yes, yeah. Yeah, indeed. I mean, if they, if they've just left parliament, then you would assume that those in the parliament – government and opposition – would be aware of who they are. But over time, one of the, one of the significant developments over the 30 years I've been involved in the public space, and particularly in the last 10 years, has been the high turnover of governments and the high turnover, particularly in the federal space, of prime ministers, of ministers, of staff. So where once upon a time you would have seen staff and parliamentarians in there for careers of 10, 20 years or so, that's less the case now. So, again, from a transparency point of view, people may need to be reminded that a person like me or an elected parliamentarian has served in the past.

But can you identify what the particular risk is that you would be seeking to address by having that register?---It's simply transparency, to allow people to know that a previous parliamentarian or previous minister has been involved with that government.

Yes. I mean, another measure obviously to deal with that is post-separation employment provisions.---Yes.

10 The current regulation in NSW is confined to ministers and parliamentary secretaries, but you do know that at the federal level that cooling-off period applies to more than just that particular group, it applies to public officials at lower levels, including ministerial staff at an adviser level. Is that right?  
---Yes. That's correct, yes.

20 And would you support the system that's currently in place at a federal level being imported into New South Wales?---Yes. Yes, I would. We, in fact we self-exclude. We, we, we practise the federal system ourselves, so we've put a process in place where if you join Barton Deakin, we don't allow you to lobby the previous office that you have just left, and we make sure that that office knows that as well.

And how long do you impose that particular restriction?---A year, yeah.

THE COMMISSIONER: Sorry, for how long?---A year.

30 MS CURTIN: Mr Hingerty, in your submission to the Commission, you say that in combination with the register and the code of conduct and the ministerial diaries – that is, the Premier's memorandum on publishing ministerial diaries – there is a system that serves the community well.  
---Yep.

But you also say that you're not opposed to expanding the diary regime that's currently in place to all MPs and senior public servants. Can you explain why you think it should be expanded?---I'm not sure that I'd say it should be expanded, I'm just not opposed to it. Again, if it gives the community more confidence in the legitimated regulated lobbying sector, then we are supportive of that proposal.

40 THE COMMISSIONER: Have you had the opportunity or do you regularly look at the ministers' diaries?---No, no.

When they're released.---No, no, I don't, and, you know, I think there was a view in the media and amongst the lobbying sector that the world was going to end and it would see, you know, front-page news stories about ministers' diaries, and that hasn't happened.

Well, that's right. And it certainly doesn't meet what you envisage or recommend in your submission, that a register of meetings should include

greater detail as to the persons present and the matters discussed. I think if you look at some of the ministers' diary entries, you wouldn't have a clue what the meeting was about.--I followed the previous evidence.

Anyway, right.

MS CURTIN: Mr Hingerty, so you're familiar with the level of disclosure that's currently included in the ministerial diaries.--Yes. Yes.

10 And you said that you followed the evidence that was earlier given.--The earlier evidence, yes, I did.

Perhaps if we could bring up the ministerial diaries for the Minister for Planning. You just told the Commissioner that you don't have cause to look at those diaries.--No, we don't study them on a daily basis, you know. We will check them from time to time to make sure that it accords with our understanding of if we are involved in a meeting for instance.

20 Yes. You said in your submission that it served the community well in combination with those other aspects. Just taking a look at this disclosure summary that's on the screen now, and that's the Minister for Planning and Public Space's diary for the period 1 April, 2019, to 30 June, 2019. What utility do you see in the level of disclosure that's apparent there?--It's very hard to answer that without knowing the individual reasons for the meeting in the, in the first place. It's hard to know, again, I go back to, to what I said earlier, whether or not these meetings were initiated by the third party or in fact imitated by the minister. The minister may say, "I want to discuss my ideas around changes to the Planning Act, with you know, a range of stakeholders, the Committee for Sydney would be a good example. I am, I am thinking of changing a section of the Act and I want to consult." There, there, there is this assumption that it is always about third parties coming to the government to press a case. In many instances, it is a minister or a shadow minister or a parliamentarian who wants to, a good minister will want to consult with stakeholders. So at times they will initiate those discussions.

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But you'd agree with me, wouldn't you, that looking at that particular excerpt of the diary, if someone wanted to look at that and determine what took place at the meeting, they'd be none the wiser by looking at that diary?--It, it could commence that start of a chain of a process of enquiry, however, whether or not the media might ring a minister and say, "What did you meet about? Can you tell us?" And then there's the GIPA Act, there's section 54 motions I think in, in the Upper House. So there are, there are some avenues available to the community to interrogate those further but, and there was previous discussion about confidentiality, commercial incompetence. If you're a private company going and discussing your new widget with a minister, you may not want your competition to know the ins and outs of your widget. Also it's difficult, it can be very difficult to be too

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prescriptive about what should be disclosed because, again, you may have a perverse outcome where ministers say it's all too hard, I'm not going to meet with anyone. And that's, it's not an easy, I gather it's not an easy answer and it's a very difficult balancing act, so - - -

But you'd agree with me that, as it currently stands, all that this could serve in terms of its purpose is to be a starting point for further enquiries?---Yes.

10 One can't deduce from that diary who was at the meeting or what took place?---The, the other, I mean, looking at, "Discuss planning issues," it's also a catch-all as well. You may have discussed a range of issues that relate to the request and then it may go, there may be consequential discussions about other issues. So, you know, I've, I've sat in these meetings, I've been a ministerial staffer and sometimes a meeting may go off on a tangent and go into other areas. A minister might say, "While I've got you, what do you think about this particular issue?" So, it's a catch-all.

20 Presumably you take records of the meetings that you attend?---We don't write extensive notes but as an aide-memoire for follow-up actions, I will dot point down, yes.

THE COMMISSIONER: Can I just ask you, from your practical experience, we're talking about proponents putting up a proposal for consideration by government. The argument's put forward in writing or however. It may then undergo a process, of course, it may take months, even years, maybe. It may need to be referred off to the department at which, in your experience, I assume that does happen fairly regularly. Is that right?---Yeah. Even prior to the meetings – so a, a, a meeting request that is successful, of a minister or, a minister or maybe a secretary as well, 30 but certainly a minister, sets off a chain of events. So before the minister has that meeting they will request a meeting brief of the department and the dot will go into detail on this, let's say it's a company, a company, what it is they're asking for, if the minister or the government were to grant their wish, who would be affected. Is it a zero sum game? Is, is there other, and they may suggest a course of action or at least speaking notes.

40 Right.---You'll then have the meeting and then the minister will dictate to their, their staff and to the public servants present a course of action, and that may range from I never want to see that person again to this is a good idea, we should have thought of this, can you please prepare a discussion paper for me and a way forward which may involve a public discussion paper, a parliamentary committee or a range of other processes.

Or some form of expert consultant's review or - - -?---Yeah, yeah, yeah, yeah, absolutely.

Or that sort of thing.---Yeah, it's quite often.

So eventually it might come back to the minister if it's still going.---Yeah.

And in your experience does the minister just tick the box, accept the recommendation or does he say, well, you know, I want to look at the pros and cons myself, I want to look at discretionary decision-making here, I might go with this, I may not, and so does the minister actually work like that or is it - - -?---It depends. The ministers in the parliamentary system have a whole range of processes and a chain of decision-making as well, so they may prepare a cabinet minute to take it to cabinet, then it has to go to the party room, it may go to the ERC, the Expenditure Review Committee, they may delegate to the secretary of the department, in my day liquor licensing matters for example were delegated to the secretary of the department and as far as I know that still exists, to remove the minister from any charge or prejudice or influence. So it would depend on the scale of the issue and whether or not it has previously been codified as well.

But there may be an issue, let's take for example an issue of policy, a change, or change of policy which the proponent would like to achieve. It may not require referral off to the department, it may be a question of, yes, I can see the merit myself by changing it or not.---Yeah.

There would be decisions there, would there, be made by the minister himself on a common sense basis upon what he sees and understands about the area of policy?---Potentially, but it is very rare that a minister will make a decision in a vacuum, without referring it up the chain, down a chain, to take further advice, to engage a consultant, as you said earlier. A parliamentary committee system is a very important part of our democracy and I think at times it's underplayed. They may ask, and I've seen this happen, they may say to a chairman of a committee or an upcoming backbencher on a committee, I would like to know more about this and the community's opinion, can you please have an inquiry into X.

Right.---And I've seen it happen on numerous occasions.

But there may be matters coming back again to a change of policy perhaps that doesn't require legislative instruments or anything like that, in other words, we're in the area of general discretionary decision-making vested in ministers' office. It would still be theoretically, would it not at least be a scenario whereby the unregulated lobbyist we spoke of earlier who regularly speaks to the minister about the industry situation, it would be open to that person to make contact with the minister, it's me here again, this policy I mentioned last week, something's got to be done about it.---Mmm.

It would be open to the minister to look at it and say yeah, it really is a rotten policy, I'm going to change it. That could happen as easily as that? ---It is, that would be an extremely rare case and I'm struggling to think of where it did occur in my experience, and if I was that minister's chief of staff my advice to them would be, minister, you should take some

independent advice on this, you should refer it both to cabinet but also to external advice. It's about risk management.

10 Were all matters of policy change for example of new policy, change of a legislation, new legislation, have to go through that more elaborate chain of - - -?---Legislative change and policy change, particularly where it is, particularly a new government gets elected with a policy platform – and this can happen, an opposition has a police which seems entirely sensible, they get elected on it and then they get into government and the bureaucracy gives them good reasons why that policy can't happen or why it needs to be delayed or why it needs to be amended, and yet the community has said, we've elected you to do this policy, and I'm thinking of a live example, they then need to go back to their party room and to their cabinet and ultimately to the Premier or Prime Minister and say, hey, I think we got this wrong, we need to change.

20 So you are painting a picture of there being already in place a series of protocols perhaps or procedures that almost automatically kick in both at the parliamentary level as well as the departmental level with most matters the subject of lobbying.---Mmm. Yes, yeah. Yeah, absolutely.

Well, then, if there's already these various measures in place to regulate – in other words to prescribe by way of regulation such protocols as mandatory for everyone – it wouldn't be adding to the burden of anyone in government or the parliamentary area, nor the cost, because it's already, you say, in place.---Yeah.

30 So isn't it an open-and-shut case that, yes, if everyone who practises properly has the protocols in place at the departmental and the parliamentary level, then it doesn't complicate the system. It doesn't make it more onerous. It doesn't make it more costly. So why not have the regulations so that those outliers that you spoke of before won't be able to succeed in using their association or their friendships as the gateway?---Probably three responses to that. Firstly, I heard the evidence of your previous witness, who I respect greatly, and I think she's right. It's, regulatory reform is, can be about bringing in further regulation, but it can also be about modifying it and taking it away.

40 Can also be - - -?---About modifying it and taking it away so that the overall regulatory burden is not increased. And I also agree with her comments about technology. Sometimes I think government processes lag some of the technological developments that are occurring out there. So that would be my first response. My second response is, this sounds fine in theory, and in the normal course of government, in the normal course of a parliamentary year it could work. But stuff happens, and I've been involved in a number of external events. A lot of my career has been involved in the tourism industry, and in my time, you know, we endured September 11, we endured SARS, we endured the Global Financial Crisis, and things need to be

addressed by governments urgently, critically. You've got an opposition who's preparing to attack you in parliament. You need to come up with answers quickly, and sometimes the, the time-honoured and slower processes go out the window, and sometimes for very good reasons. So, so that's, that's the hesitation. And then, then you have to go back and retrofit a process against something which was perfectly defensible in the first case.

10 Yes. Just the other aspect I was interested to hear you on, and Professor O'Kane dealt with this to some extent, if you've got transparency, it's not only in process. It's got to be transparency around the decision-making, what was the basis, how do we get to this point. So there's either a paper trial which is required so that you can reconstruct what happened, who was spoken to, et cetera, et cetera, what assessments were made along the way, and how did the minister possibly come to this result, what are the grounds and reasons. What do you see as being appropriate and practical in terms of there being transparency of pathways or systems which would enable in the event of inquiry, for example, by a tribunal or by government itself? What would be required, without being overly burdensome, to be able to provide transparency and accountability?---I, I hesitate because I do not want  
20 overburden the decision-making system with too much regulation, nor do I, and I, I, speaking from a citizen, I want them to make decisions with a clear head, rather than second-guessing, "Oh, one day this may come up in a tribunal. This is risky. I'd better, better not do it." It's – you're in a very - -  
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It's overly defensive.--- - - - very difficult area. And the other response is, ultimately in Australia ministers and governments have to face the voters and they have to be accountable - - -

30 I'm sorry, they've got to?---Got to face the voters. And they have to be accountable for their decisions, and a fundamental difference between our jurisdiction and most of the other jurisdictions – and I've seen a lot of comparisons to international jurisdictions – in Australia and New South Wales, you have to vote. We, we all have to cast judgment.

But you're dealing with a more rational mind, which hopefully most people in public office have all the time.---Yes, yes.

40 But if they don't, most of the time.---Yep.

But we know through history that people do silly things sometimes. It may be by reason of pressure, influence by a friend who makes a public officer act as he shouldn't or she shouldn't, but it does happen.---Yep.

It's a question of what protections and systems are in place to be able to go back if such cases occur – and they're going to occur, they've always occurred in history, they're going to occur from time to time – to be able to say, how did this happen?---Yep.

How was this decision ever made?---Yeah.

And there still has to be, doesn't there, without being overly defensive, at least a minimal, that's I think the expression I asked Professor O'Kane, what would be the minimum requirements for transparency and accountability.---Yep. Yeah.

10 Are you able to suggest anything that, well, which is practical, in the sense that it's - - -?---Look, look, not off the cuff. But look, one thing I would say and my father always said to me, if you have the choice between a conspiracy and a stuff up, choose the stuff up 99 times out of 100. And people do make mistakes in government, particularly those who are under, in a ministerial office who are under significant pressure, that can make mistake, mistakes by omission. And, and other genuine, and, and they'll realise it later on and they'll think, oh God, I made a mistake, I made a mistake, what am I going to do? And I come back to, to the, to the idea of a Commissioner for Lobbying. I think this, this question that you've posed, Commissioner, should undergo further inquiry. But it would be good if  
20 there was a person in place who has experience both within government and some experience with the lobbying sector, some experience with public policy, to be able to independently generate these discussion papers and discussions and, and make them public. I think that would be worthwhile.

Thank you. Now, Ms Curtin, I'm sorry, I've taken away your time.

MS CURTIN: Sorry, Commissioner. No, just getting back to the question of what reform you've said in your submission you would support and what reform you might not.---Yes.  
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In some jurisdictions internationally, Canada and Scotland are two examples.---Yep. Mmm.

And I'm pretty sure they vote in those jurisdictions.---No, they do.

There is a requirement that in addition to the lobbyists recording on a register who they are and who they represent, that they also record - - -?  
---Contacts. Yeah, yeah.

40 - - - their contact with government officials, and not just their contact, but the purpose of the contact.---Yeah. Yeah.

If such a reform were to be introduced here, would Barton Deakin have any difficulty in complying with it?---I think I say in the submission that my preference is against that, or our preference is against that. I've since taken advice of my former colleague in the Queensland jurisdiction who, who had the same obligation. He said it was not overwhelmingly onerous for them. Queensland jurisdiction in terms of volume of work might be a little

different to New South Wales and to the federal jurisdiction. It wasn't overwhelmingly onerous. However, it created, again, a, a perverse outcome where ministers' staff would not speak to him, because they knew that it would be recorded, and yet they would speak to, to others where it didn't need to be recorded. So, again it's that, be, be aware of the perverse outcomes of those regimes.

Yes. So the concern that your colleague identified, which I understand you share, is that there would be a chilling effect on the communication?---Yes.

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Other than that though, you I think are saying that the administrative burden would not be too great for firms such as Barton Deakin?---It, yeah. Yeah, again, I mean, we're only a small business ourselves, but again, in the course of a normal year in a normal business, year, it, I, I am told is it, it is not that onerous in the South Australian division, and I've taken some advice there as well. But again, when there is a, a disaster or a major external event, and there are constant interactions – also when they're, when they're mundane, it's checking times of meetings, checking, you know, attendees at meetings, varying those. I, I understand that, that that's - - -

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I think there are thresholds that can apply.---Yeah, yeah, yeah. But, you know, we would, we would live with it. But we would be concerned that it would create that two-speed system.

And another possible area for reform that you've touched on, both today in the course of your evidence and also in your submission, is this idea of a Lobbying Commissioner.---Yes.

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But as I understand it, what you're talking about when you use that term is more of an internal resource for the public service, is that right?---That would be the principal role, but it will also be an educative role of the public service, of staff and of the community, a capacity to suggest changes, because the communications is changing rapidly. You know, I'm, I'm lucky enough to represent some of the start-up companies around the place, and the way people communicate is changing, and, and governments need to keep pace with, with how that is done.

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It's the educative part of what you're suggesting that I want to perhaps explore just more closely.---Right, yeah. Yeah, sure.

So is it your experience that there is perhaps a lack of education or a call for more education both on the government side and also the lobbying side? ---Yes, yeah. At, at the moment, well, I go back to my time, which again I hasten to add was in a difficult period around Spicer and Credo and a range of other areas. There was a stand-offishness between public service, lobbyists and staff. I don't want to use the word "mutual suspicion" but there was a stand-offishness and I think that was unnecessary, and if there was a forum, and I think, I believe there is a forum. I'm a member of the

Institute of Public Administration of Australia and I think that is an excellent forum where some education campaigns can be run, where conferences can be held to bring us together to discuss some of these issues.

But one of the things you touched on in your submission is perhaps a lack of support within government.---Yes. Yeah. Yeah, I experienced it myself at times when I, and I'm, I'm not a young staffer. I was, I was a quite experienced one, where I thought at the time, wow, I don't know if I should have spoken to that person, I don't know if I should have said that, and then I looked for external help to test my concerns and it was not, not really forthcoming, and I felt alone, and in the end you start second-guessing whether or not you should be speaking to anyone at all, rather than, other than your colleagues.

So the support that you would recommend being implemented is along the lines of ethical guidance, is that right?---Yeah, yeah, there, there is an ethical adviser in the parliament. I'm not sure how well that is used. But a, a, a wise old head that staffers can go to that is removed from their, their own minister or from the bureaucracy, and say, "Can you, can I test whether or not I've done the wrong or the right thing?" They may say, "That's fine," or they may say, "Next time you'd be better off if you ask them whether or not they are on the register," for instance. Or, "No, that sounds pretty serious. We better go and talk to the Electoral Commission or even ICAC about that." That would be my view.

That's the evidence for this witness, thank you, Commissioner.

THE COMMISSIONER: The Commission would like to thank you, Mr Hingerty, firstly for your written submissions, which have been very thoughtfully put together, and for your evidence here today. Thank you for your contribution to this inquiry. Just by way of further information, I've determined that we will conduct a third tranche in this public inquiry. It won't occur until about mid-February, and that will focus more on the government officials' perspective, if you like, and role. But it may be of interest for you to follow what happens, and if you wish to make any further contribution, of course, it's always open to you.---We will. Thank you.

Thank you for your attendance.---Thank you.

Nothing else?

MS CURTIN: No, Commissioner.

THE COMMISSIONER: Okay, I'll adjourn.

**THE WITNESS EXCUSED**

**[4.14pm]**

**AT 4.14PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.14pm]**