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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

TUESDAY, 15 DECEMBER 2020

(45th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH AM, QC,

AND DEPUTY COMMISSIONER DAVID WOLF

Counsel Assisting: Mr Michael Tovey QC
Ms Amber Harris
Mr Tam McLaughlin

OPERATION SANDON INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

Every effort is made to ensure the accuracy of transcripts. Any inaccuracies will be corrected as soon as possible.

1 COMMISSIONER: Dr Ng, we're delighted to have you with us this 10:02:43AM
2 morning. 10:02:46AM
3 PROFESSOR NG: My pleasure. 10:02:47AM
4 <DR YEE-FUI NG: 10:02:47AM
5 COMMISSIONER: Ms Harris and Deputy Commissioner Wolf will 10:02:50AM
6 primarily ask you questions. Ms Harris, are you ready to 10:02:53AM
7 proceed? 10:02:59AM
8 MS HARRIS: I am. Thank you, Commissioner. Good morning, 10:03:00AM
9 Dr Ng?---Good morning. 10:03:03AM
10 Dr Ng, could we just go through your background first of all. 10:03:05AM
11 You're a senior lecturer at Monash University Law School; 10:03:09AM
12 is that right?---Yes, that's right. 10:03:13AM
13 And what do you specialise in?---I research in the area of 10:03:14AM
14 public law and politics focusing on actors in the shadows 10:03:17AM
15 of government such as ministerial advisers, lobbyists and 10:03:21AM
16 the effect of the media as well. 10:03:25AM
17 You're also a Victorian convenor of the Electoral Regulation 10:03:27AM
18 Research Network; is that correct?---Yes, that's right. 10:03:32AM
19 What does that organisation do?---So it's an organisation 10:03:35AM
20 that's funded by the Victorian and New South Wales 10:03:40AM
21 Electoral Commissioners and Melbourne Law School and it 10:03:43AM
22 aims to promote research and collaboration between 10:03:47AM
23 electoral practitioners and the academic community. 10:03:53AM
24 You've authored a book, 'The rise of political advisors in the 10:03:58AM
25 Westminster system' and 'The ministerial advisers in 10:04:04AM
26 Australia: The modern legal context'; is that 10:04:08AM
27 correct?---Yes, that's right. 10:04:11AM
28 As well as providing submissions to other corruption 10:04:11AM
29 Commissions, namely ICAC in relation to their Operation 10:04:16AM

1 Eclipse?---Yes. 10:04:21AM

2 Am I right that that operation looked at lobbying of public 10:04:21AM

3 officers and public bodies and the corruption risks 10:04:27AM

4 associated with that?---Yes, that's right. And I was 10:04:32AM

5 commissioned with Professor Joo-Cheong Tham to write the 10:04:37AM

6 discussion paper for Operation Eclipse and that was used 10:04:40AM

7 as a basis for public consultation, and I also appeared as 10:04:43AM

8 an expert witness before that Operation Eclipse hearings. 10:04:47AM

9 And that was in relation to the topic of lobbying, was 10:04:51AM

10 it?---That was, yes. 10:04:55AM

11 You also published commentary for ICAC's Operation Spicer; is 10:04:56AM

12 that right?---Yes, I commentate in the media as well. 10:05:03AM

13 And can you remind us what that investigation was looking 10:05:08AM

14 into?---It was also looking at allegations of corruption 10:05:14AM

15 and also looking at the ways to reform the system in terms 10:05:18AM

16 of lobbying reform. 10:05:22AM

17 Thank you. You have provided a written submission to IBAC 10:05:25AM

18 which covers the themes of donations, lobbyists and the 10:05:33AM

19 role of ministerial advisers. I seek to tender that 10:05:36AM

20 submission, Commissioner. 10:05:41AM

21 COMMISSIONER: Yes. That will be public forum exhibit 4. 10:05:43AM

22 #PUBLIC FORUM EXHIBIT 4 - Written submission of Dr Yee-Fui Ng. 10:05:43AM

23 COMMISSIONER: Ms Harris, that submission of Dr Ng will be on 10:05:48AM

24 the IBAC website at some stage today? 10:05:50AM

25 MS HARRIS: Yes, that's my understanding, Commissioner, yes. 10:05:53AM

26 COMMISSIONER: Thank you. 10:05:56AM

27 MS HARRIS: Perhaps if we could deal first of all, Dr Ng, with 10:05:57AM

28 the topic of donations. In your view why do people donate 10:05:59AM

29 to political parties?---There could be a range of reasons 10:06:04AM

1 why people might donate to a political party. Part of it 10:06:09AM
2 might be ideology, so they might want to support a certain 10:06:13AM
3 political party. Beyond that there might be an idea that 10:06:17AM
4 they could gain preferential access or influence by making 10:06:21AM
5 large sums of donations to - and that's what we see, that 10:06:25AM
6 some people donate to both sides of politics, which 10:06:32AM
7 suggests that it's not really about ideology, it's about 10:06:34AM
8 trying to back the winning horse, and if you back the 10:06:38AM
9 winning horse you might get more access and influence, 10:06:42AM
10 particularly if the sum of the donation is very large. 10:06:46AM
11 In your paper at page 6 you indicate that any regulation of 10:06:51AM
12 donation needs to balance two competing interests. Could 10:06:57AM
13 you outline for us what you say those interests 10:07:01AM
14 are?---Sure. First of all, when you regulate political 10:07:05AM
15 donations, that's this idea that people have the freedom 10:07:10AM
16 to support political parties and that includes providing 10:07:14AM
17 donations and this is given expression by the 10:07:19AM
18 constitutional implied freedom of political communication, 10:07:24AM
19 that you can communicate in a manner that supports certain 10:07:29AM
20 political parties and that might include giving donations. 10:07:33AM
21 But on the other hand there's the principle of equality; 10:07:36AM
22 that is, that all people should be operating at a level 10:07:39AM
23 playing field and it doesn't mean that someone who has a 10:07:44AM
24 lot of money and is able to donate hundreds of thousands 10:07:49AM
25 of dollars to a political party should get preferred 10:07:53AM
26 access and influence over government policy making and 10:07:56AM
27 decision making. So, because of that there's the need to 10:08:00AM
28 regulate donations to ensure that all people have equal 10:08:06AM
29 opportunity to approach their elected representatives, and 10:08:11AM

1 there's also the idea that if there's a lot of money 10:08:17AM
2 involved the public officials might be swayed to behave in 10:08:23AM
3 an improper manner and that's the idea that, if you 10:08:28AM
4 regulate donations, that also would prevent corruption and 10:08:32AM
5 thwart people to exchange favour, so to speak, 'If you 10:08:39AM
6 give my party a lot of money I will decide certain things 10:08:43AM
7 in your favour,' and that goes to the integrity of 10:08:47AM
8 government decision making as well. 10:08:50AM

9 Thank you. You indicate at page 7 that increasing equity and 10:08:52AM
10 transparency, and I think you just mentioned that then, of 10:09:02AM
11 political donations through regulation is beneficial for 10:09:06AM
12 democracy. How effective - first of all, can you suggest 10:09:11AM
13 how equity and transparency could be increased in relation 10:09:17AM
14 to the current regulations?---Yes, sure. In terms of the 10:09:22AM
15 current donation regulations in Victoria, it's been 10:09:27AM
16 greatly strengthened in 2018 at the state level. So we'll 10:09:31AM
17 talk about the state level and then the local government 10:09:36AM
18 level. 10:09:39AM

19 So, at the state level it's been greatly 10:09:39AM
20 strengthened by the introduction of caps on donations of 10:09:42AM
21 \$4,000 over four years, so \$1,000 a year cap, and that 10:09:45AM
22 enhances political equality because it means that a rich 10:09:49AM
23 miner could then donate, you know, \$1 million to the party 10:09:54AM
24 and then have more favourable treatment potentially. So 10:09:58AM
25 caps on donations, ban on foreign donations as well, and 10:10:04AM
26 also, yes, the timing of the disclosures have been reduced 10:10:10AM
27 to seven days, so that's a lot more timely. So, there's a 10:10:14AM
28 lot of reforms that took place in 2018 and that made 10:10:19AM
29 Victoria one of the stronger jurisdictions in terms of 10:10:24AM

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donations regulations alongside Queensland and New South Wales. But this was not carried over to the local government level, which I think is a real shame because that would have solved some of these problems that we have seen come up in the hearings.

So, at the local government level there's more minimal regulation. Donations to candidates of more than \$500 have to be disclosed to the CEO of the local council. It applies just to the candidates for local government, so it doesn't apply to third party campaigners, whereas the state government one does apply to a broader range of entities, and anonymous donations at a local government above \$500 are prohibited. So it's a lot lower levels of regulation in terms of ensuring political equality.

Is it your view then that regulation should be consistent across all levels of government?---Yes, certainly.

I think there's no logical reason to distinguish between state government and local government for donations regulations, and you can see in New South Wales they've adopted a similar stringent regulation across both the state government and the local government, and I think that is a better model.

COMMISSIONER: Dr Ng, can I just ask you: in your research and experience is there any reason why one should approach the need for integrity controls at local government differently to integrity controls at state government level?---No, I don't think there is strong justification to distinguish in the regulation between the state and local government. The general principles for the

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1 regulation are the prevention of corruption and undue 10:12:40AM
2 influence as well and the idea of political equality, a 10:12:44AM
3 level playing field, and both of those considerations 10:12:50AM
4 apply equally at the state government level and the local 10:12:53AM
5 government level, so I would suggest that the regulation 10:12:58AM
6 be harmonised at the state and local government level. 10:13:01AM
7 Thank you. 10:13:08AM
8 MS HARRIS: What risks do you see or issues do you see in a 10:13:09AM
9 situation where the regulations differ at different 10:13:13AM
10 levels?---So what we have in Australia is a big mess, so 10:13:19AM
11 to speak, across the whole of the federation. So I've 10:13:26AM
12 done some research on political finance regulation across 10:13:30AM
13 the federation, so Commonwealth, states and local 10:13:34AM
14 governments and also the territories, so in total 16 10:13:38AM
15 jurisdictions, and what I found is that there's a lot of 10:13:43AM
16 different regulations that apply across the Commonwealth, 10:13:47AM
17 state and local government level in terms of all elements 10:13:51AM
18 of political finance. And the risk of that is that if 10:13:55AM
19 certain jurisdictions have a more lenient system, so say 10:14:02AM
20 the federal level has a very lenient system in terms of 10:14:06AM
21 donations, they are not capped, so the money gets 10:14:12AM
22 channelled through the Commonwealth federal fund and that 10:14:15AM
23 then circumvents or reduces the efficacy of the state 10:14:19AM
24 regulation because the states such as Victoria at the 10:14:24AM
25 state level and New South Wales are capping donations, but 10:14:28AM
26 if donations can then be channelled to a different 10:14:32AM
27 jurisdiction, then it just makes the regulation less 10:14:36AM
28 effective overall. So, you make a really good point that 10:14:41AM
29 if the regulation differs across the federation, there are 10:14:45AM

1 ways to use loopholes to circumvent the benefits that the 10:14:50AM
2 regulation seeks to impose. 10:14:54AM
3 In circumstances where state funds are then, as you've 10:14:57AM
4 indicated, funneled through to the Commonwealth level, is 10:15:04AM
5 it possible then to funnel them back through to the state 10:15:07AM
6 level or do they then stay at the Commonwealth 10:15:09AM
7 level?---It's possible to funnel back, but to the donation 10:15:15AM
8 threshold at the state level. So one of the New South 10:15:18AM
9 Wales ICAC investigations found that the Free Enterprise 10:15:24AM
10 Foundation had channelled the federal - so the money was 10:15:28AM
11 donated at a federal level and was channelled back to the 10:15:31AM
12 state level by a banned person, a property developer, and 10:15:36AM
13 so that was exposed by the New South Wales ICAC inquiry 10:15:41AM
14 and what the New South Wales Electoral Commission did was 10:15:45AM
15 they withheld public funding to that amount. So, there 10:15:48AM
16 was a penalty that was imposed for breaching the 10:15:52AM
17 regulation. So, yes, they do have to comply by a certain 10:15:55AM
18 set of rules and if they breach that, that can be 10:16:01AM
19 prosecuted if you have an independent regulator that 10:16:05AM
20 enforces the scheme. 10:16:09AM
21 I see. You've touched already on the reforms in 2018 and the 10:16:11AM
22 strengthening of the regulations. How effective do you 10:16:17AM
23 consider the regulations are now in mitigating corruption 10:16:21AM
24 risk?---At the state level they I think have become pretty 10:16:25AM
25 effective because there's a low cap on donations and that 10:16:31AM
26 is really positive. The disclosures are within seven 10:16:35AM
27 days, which is good. Queensland has real-time disclosures 10:16:40AM
28 and the Queensland electoral disclosures scheme is also 10:16:44AM
29 very attractive, which is less of a consideration, but the 10:16:50AM

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disclosures are in real-time, there's visualisations, it's very easy to access and navigate the donations on their website. If you compare to the federal website, it's a lot clunkier, it's a lot more difficult to navigate and that goes to the accessibility of the website. If a website is more accessible - and this goes beyond the regulation - it enables journalists and civil society groups to be able to figure out what really is going on. So, I've had journalists ring me up and say, 'How do we work this website?' So I had to say, 'Okay, drop down this menu and this will indicate that.' So, yes, the accessibility of the website is also quite important if what we want to do is enhance transparency. We have to enable that by making it easy for people to access and navigate the information.

So, other than real-time disclosure which you've just canvassed then, what other changes to the Victorian system could be made to strengthen our system, in your view?---Well, all these great reforms apply at the state level only. So, if the reforms were also applied at the local government level, I think that would be a great strengthening of the system, because what we've seen exposed in the hearings is that there is a weakness at the local government level in terms of the regulation of donations and lobbying. So this suggests that there is a real need to regulate more strongly at the local government level as well. So the state level reforms are very commendable and are a great step forward for Victoria, but we need to extend that further to the local government as well, and that will be

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1 a very big step forward. 10:18:48AM

2 And in your view should they be brought in line with the 10:18:51AM

3 Victorian legislation?---Yes, that's right. Yes. 10:18:54AM

4 You touched on earlier the fact that other jurisdictions have 10:18:57AM

5 bans on donations from property developers. What's your 10:19:02AM

6 view on that?---So, New South Wales and Queensland, and 10:19:07AM

7 the ACT to a limited extent, have bans on donations from 10:19:16AM

8 property developers and these are justified in the sense 10:19:21AM

9 that where there are certain sectors of the economy that 10:19:29AM

10 pose a greater risk of corruption, then it might be 10:19:33AM

11 necessary to regulate those sectors more stringently, and 10:19:37AM

12 the ban on - well, the ban on donations from property 10:19:43AM

13 developers has been held to be constitutionally valid in 10:19:49AM

14 the case of McCoy and so this is a structure that's legal. 10:19:53AM

15 And the reason that they gave for that was that because 10:19:59AM

16 there were a lot of corruption inquiries exposed by New 10:20:08AM

17 South Wales ICAC and it involved property developers, so 10:20:14AM

18 say eight inquiries that showed that there was a history 10:20:17AM

19 of corruption in terms of property developers and that 10:20:20AM

20 therefore justified this special ban on the specific 10:20:23AM

21 sector of the economy. So, certainly bans on property 10:20:26AM

22 developers could be considered for Victoria as well. 10:20:32AM

23 The other counterpoint is that if you already 10:20:38AM

24 have low general donations caps it becomes less important 10:20:41AM

25 to ban specific sectors because the most that a property 10:20:45AM

26 developer in Victoria, say, at a state level could donate 10:20:50AM

27 is 1,000 a year. So, if you have low general donations 10:20:54AM

28 caps, the bans on specific sectors become less compelling 10:20:58AM

29 or less mandatory, but certainly if there are certain 10:21:03AM

1 sectors with a lot higher risk such as property 10:21:06AM
2 developers, bans can be considered for that and have been 10:21:10AM
3 implemented in other state jurisdictions. 10:21:14AM
4 In your experience what is it about donations from property 10:21:19AM
5 developers that make it a higher risk in terms of 10:21:23AM
6 corruption?---It's the direct idea of quid pro quo, that 10:21:26AM
7 property developers have a direct commercial interest in 10:21:31AM
8 government decision making, and a decision to approve a 10:21:36AM
9 planning development in their favour nets them a huge 10:21:41AM
10 monetary benefit. So then there's a stronger incentive 10:21:45AM
11 for them to behave in a - well, to strongly persuade the 10:21:49AM
12 government decision maker to make a decision in their 10:21:56AM
13 favour, and that may lead them to improper behaviour. So, 10:21:58AM
14 regulating the donations, the amount of money that they 10:22:04AM
15 can donate to government officials, will go some way to 10:22:08AM
16 mitigating that and, yes, that's why we would see property 10:22:17AM
17 developers as a higher risk. They do have a direct 10:22:22AM
18 financial benefit and a substantial financial benefit in 10:22:26AM
19 the decisions of government. We've seen in the New South 10:22:29AM
20 Wales ICAC investigations and indeed this investigation 10:22:34AM
21 that there are incidents when property developers have 10:22:38AM
22 induced government officials to engage in corrupt conduct 10:22:45AM
23 and that shows the big risk to our system, that it will 10:22:51AM
24 encourage government officials to behave in a corrupt 10:22:55AM
25 manner. 10:22:59AM
26 In your view is it feasible to ban all donations and move to a 10:23:00AM
27 publicly funded model?---So that's a good question. It 10:23:05AM
28 depends on what the High Court says to some extent. So it 10:23:10AM
29 depends on what infringes the implied freedom of political 10:23:14AM

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communication. So, we haven't gone down the US route of saying money is speech. Because the High Court hasn't gone down that route, it is possible to regulate donations and regulations on donations, as I said, have been held to be constitutionally valid. So, if the High Court allows for a ban on all donations, then that would be fine, actually.

So if you look at the level of public funding across the federation, it tends to vary quite a lot. So in some jurisdictions it approaches full public funding. So the ACT public funding amounts to about 82 to 97 per cent of their campaign cost. New South Wales and Queensland, about 80 per cent of their campaign costs are covered. At a Commonwealth level, about 50 per cent are covered. And on top of this there are some jurisdictions such as New South Wales, Queensland and South Australia provide annual funding to political parties through administration or policy development funds, so it enables all these parties to promote their policy platforms and some of them include new parties as well. So there's this idea that the regulation of a political finance system should enable political parties to get their message across, and public funding is part of that.

Another reason why we want public funding is because it's clean money, so it's coming from the government, you are not beholden to this one giant donor, you are not beholden to this huge corporation that just donated you hundreds of thousands of dollars. So it's seen to be clean money and that is strong justification of

1 public funding. So, even if there's not full public 10:25:11AM
2 funding, and I think that probably is feasible, there 10:25:16AM
3 could be combination of public funding and strong 10:25:19AM
4 regulation of donations, so that when the pot of money 10:25:24AM
5 that is coming from individuals and corporations is 10:25:29AM
6 smaller, the justification is greater to enhance or 10:25:33AM
7 increase public funding. 10:25:38AM
8 Are you aware of any other jurisdictions that use the purely 10:25:41AM
9 public funding model?---I believe some overseas 10:25:44AM
10 jurisdictions have strong initiatives in terms of public 10:25:49AM
11 funding such as Canada at the Federal level and Seattle 10:25:55AM
12 and Maine where they have public funding of election 10:26:01AM
13 campaigns. So there is precedent overseas and there 10:26:08AM
14 already is significant public funding in some interstate 10:26:13AM
15 jurisdictions. So, it is a good model to not rely on all 10:26:17AM
16 these rich donors which may then skew government policy 10:26:25AM
17 making and decision making. 10:26:29AM
18 DEPUTY COMMISSIONER: If I can just draw you back, Dr Ng, to 10:26:34AM
19 the donor or donation values and the regulation of it, and 10:26:39AM
20 we heard from Dr Murray yesterday that donations are 10:26:44AM
21 around developing the connections and that once the 10:26:49AM
22 connections develop, then the value of the donation is 10:26:53AM
23 largely immaterial, albeit accepting that to get that 10:26:55AM
24 connection a larger donation might expediate that 10:27:00AM
25 connection; and then secondly that where you are to 10:27:05AM
26 consider greater regulation, then that more or less 10:27:07AM
27 creates a cottage industry of how to work around that new 10:27:10AM
28 framework of regulation. And particularly if you're 10:27:15AM
29 talking about banning a particular class, then you look at 10:27:17AM

1 all the industries that benefit from perhaps a rezoning, 10:27:19AM
2 you know, the development industry, infrastructure, 10:27:23AM
3 building, home building, et cetera, et cetera, so you've 10:27:26AM
4 got a range of industries you could consider. So I'm 10:27:29AM
5 interested in your thoughts around whether the capping of 10:27:32AM
6 the donation is actually effective or whether it will 10:27:35AM
7 disrupt that quid pro quo and then, secondly, around 10:27:40AM
8 greater regulation and the desire of people then to work 10:27:44AM
9 out a way around that regulation?---Sure. In terms of 10:27:48AM
10 what the purpose of donating is, certainly it would 10:27:54AM
11 expedite access to decision makers. But I think it goes 10:27:59AM
12 well beyond the initial, 'Okay, I've gotten to know this 10:28:04AM
13 person.' So, there are corporations that donate year 10:28:09AM
14 after year large amounts. If they were to only donate to 10:28:14AM
15 get that access, that donation would have stopped long 10:28:20AM
16 ago, right? But they keep donating. And the reason that 10:28:23AM
17 they keep donating is that they believe that the level of 10:28:27AM
18 access and when particular sensitive decisions are made 10:28:31AM
19 that involve them, the donations go up. So, the idea is 10:28:34AM
20 that they are trying to get this level of access and 10:28:37AM
21 influence over decision makers and it's not a one-off 10:28:42AM
22 thing right at the beginning, it's something that - a 10:28:45AM
23 pattern of behaviour that happens over time. And, yes, 10:28:48AM
24 all these individuals and corporations do donate 10:28:53AM
25 consistently over time. So I would disagree that a low 10:28:59AM
26 cap on donations would be ineffective because it has been 10:29:04AM
27 effective. You've seen that with that cap then, you know, 10:29:08AM
28 they just can't do it anymore, it's just impossible 10:29:14AM
29 because it's unlawful, okay, so the money gets channelled 10:29:17AM

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to the Federal level. That's a different issue. So that's an issue that hasn't been fixed yet. And so I would say that caps, if they are consistent over the federation, would be the most effective thing you could do. The problem is that it's not consistent across the federation at the moment, which is why we see all these loopholes where, 'Okay, we'll go through there and go through there.'

As to enhanced regulation not being the correct solution, I think that what we've seen over the years is that everything was hidden and there's a lot of backdoor deals that were not disclosed to the public. So what we don't know we can't control or regulate and so this idea goes beyond just a pure notion of corruption. It also goes to this idea of political equality. If we don't know how much money is being channelled through the system, then the other grassroots groups, the public interest groups don't know that they need to mobilise, they need to contact the government representatives, they need to seek their own ways of influence and access, and less resourced groups are less able to do so because they don't have the deep pockets that some individuals and corporations do. So, there's this idea that the system is unfair if it's not regulated because it gives a bigger voice to those who have money and it puts at the sidelines those who are less privileged and have less access, less influence.

COMMISSIONER: Could I just take up, Dr Ng, this quid pro quo point?---Yes.

The quid is the value that's offered by someone and the quo is

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the return, the favour in exchange for the quid. If regulation of political donations is effective so as to reduce or remove the inappropriate influences of political donations, we can't assume, can we, that the planner, the developer, the commercial enterprise that's got a huge financial incentive in seeing the decision maker favour the decision they want as an outcome, so do we not have to accept that where someone has a disposition to engage in inappropriate conduct they will simply find other means of seeking to influence the decision maker? So, while addressing the dangers of political donations, we need to be on our guard to ensure that there are not other means adopted for achieving the same outcome?---Yes, that's certainly right, that the incentives of the property developers would still exist and persist and they would still try very hard to influence government decision making in their favour. But if you regulate donations, it reduces the incentive on the other side for the government official to give that preferential access and influence and treatment to the developer because there's not a huge amount of money, like huge amounts of money that's at stake any more. They just get the \$1,000, same as everyone else. So, although it doesn't reduce the desire of the property developer to influence government, it reduces the desire on the other side, on the government official to seek to curry favour with this developer in order to get more and more donations each year. So it's aimed at the government official rather than the developer. And you're quite right we have to keep

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1 vigilant. We can't put in the regulation and then go on 10:33:46AM
2 holidays and spend our time at the beach. We still have 10:33:50AM
3 to monitor to see that there are no loopholes in the 10:33:52AM
4 system and that the channels of access and influence don't 10:33:56AM
5 flow somewhere else and, sure, we have to be vigilant, 10:33:58AM
6 definitely. 10:34:03AM
7 Ms Harris, will you be addressing the question of transparency 10:34:04AM
8 with Dr Ng? 10:34:08AM
9 MS HARRIS: Yes. Dr Ng, and perhaps this goes to that issue 10:34:10AM
10 that the Commissioner just raised then. We have spoken 10:34:17AM
11 already about funneling funds from state through to the 10:34:20AM
12 Commonwealth level. What other mechanisms are you aware 10:34:23AM
13 of that are used to disguise donations?---So there's also 10:34:27AM
14 the potential practice of trying to channel through other 10:34:33AM
15 people, so friends, associated people, so channelling 10:34:38AM
16 donations through a whole range of people, so in fact 10:34:43AM
17 having straw people to donate when the true source of the 10:34:47AM
18 donation is just one person. So that's one practice and 10:34:50AM
19 that is quite difficult to regulate because, you know, you 10:34:54AM
20 can't quite - because these are all individual people 10:34:58AM
21 donating, but the truth lies somewhere else. So that is 10:35:00AM
22 one mechanism I'm aware of. Yes, so that's the other way. 10:35:06AM
23 Yes, so that's the one I can think of. 10:35:12AM
24 Are associated entities used in that way?---Yes, so certainly 10:35:14AM
25 that's right. So if you regulate the main political 10:35:20AM
26 actors, which are the political parties, that's often 10:35:23AM
27 insufficient because they do have a range of associated 10:35:28AM
28 entities that they might be able to channel their money 10:35:32AM
29 through, corporate structures and so forth. So that's why 10:35:34AM

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the Victorian regulation targets not just the political parties and the candidates, but also associated entities and third party campaigners as well.

So, there's also a question as to whether political finance regulations should cover third party campaigners such as GetUp or, you know, people who campaign, and there's probably less justification for doing so because they are not (indistinct) like the political parties are to actually getting elected representatives up. So, certainly associated entities I think should be covered because that closes that loophole of saying, 'Okay, I'm just going to put it through this corporate structure,' and that's a different structure. So, yes, that's a really good point.

So in relation to the current system that we have now, what would you suggest could be done to improve transparency in our system?---So in terms of donations, I think that at the state level the transparency is already high in terms of the frequency of disclosures and the levels of disclosures and the parties that are covered by the regulation and the fact that there is a general low cap in the system at the state level. So the state level I think has a very strong system that has been put in place since 2018. I would suggest that it gets translated to the local government level. What suggestions I could make at the state level are more cosmetic in terms of there could be real-time disclosures such as Queensland, the accessibility of the website could be enhanced such as Queensland, so that will enhance transparency in allowing

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civil society groups and journalists to more readily and easily access the information.

Another thing could be to require the regulator, the Victorian Electoral Commissioner, to issue reports each year on the donations and, yes, to give more fulsome information that's integrated to the public. So, yes, that's one possible reform as well.

COMMISSIONER: Dr Ng, does the donation require an accompanying declaration by the donor that no other person is associated with the provision of the donation?---I'm not aware of exactly how it's administered. So that would be a good idea, to have disclosure that there's no other associated entities involved, so that would solve that straw person problem. Again that's a little bit more difficult to enforce. So, if a husband and wife donated, who's to say that the husband gave the money to the wife or the wife donated on her own initiative. So this kind of regulation is a lot more difficult to manage, I guess, in a sense.

DEPUTY COMMISSIONER: I wonder, Dr Ng, whether the transparency is sufficient enough in terms of scrutiny or does there need to be a compliance audit regime on the back of that to ensure probity?---I think at donations level, donations regulation in Victoria at the state level is pretty strong with all the reforms since 2018, so it makes it one of the stronger regulations in the country comparable to New South Wales and Queensland. So I think that it's all been positive. One other recommendation I could make is to have a cap on electoral expenditure, which has been

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1 imposed in a whole number of different jurisdictions in 10:39:59AM
2 Australia, but not in Victoria at all. And the reason why 10:40:02AM
3 we would have a cap on electoral expenditure is to reduce 10:40:06AM
4 this idea of an arms race between the political parties 10:40:10AM
5 where they fundraise and fundraise and they spend lots on 10:40:13AM
6 the election campaign. The reason why this is a problem 10:40:17AM
7 is because it reduces the - so it privileges the 10:40:20AM
8 established parties which have a strong fundraising arm, 10:40:25AM
9 they hire all these fancy consultants and they mount this 10:40:29AM
10 expensive campaign, and that goes to the expense of the 10:40:32AM
11 small, minor or new parties who don't have that same war 10:40:36AM
12 chest that they can fundraise a lot, spend a lot. So this 10:40:39AM
13 idea of expenditure cap will level the playing field for 10:40:43AM
14 the political parties and that has been imposed in a whole 10:40:47AM
15 number of Australian jurisdictions, and I think that is a 10:40:51AM
16 really strong reform that could enhance the Victorian 10:40:55AM
17 system. That doesn't exist here at the state or local 10:40:58AM
18 government level. 10:41:02AM

19 MS HARRIS: Dr Ng, what's your view on anonymising 10:41:05AM
20 donations?---The current regulations don't allow anonymous 10:41:09AM
21 donations above \$1,000 and I think that's a good reform in 10:41:16AM
22 the sense that that enhances transparency. So it allows 10:41:21AM
23 people to know who the large donors are, how much they are 10:41:28AM
24 donating, and that allows scrutiny from the public, civil 10:41:30AM
25 society groups, journalists. So I think that's a good 10:41:34AM
26 thing that we don't allow anonymous donations that are 10:41:38AM
27 large. 10:41:41AM

28 Given the relatively low cap in Victoria in any event, is there 10:41:42AM
29 any benefit in having a provision for anonymous 10:41:48AM

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donations?---Yes, you're quite right. Because there is a low cap in Victoria, it becomes less of an issue. So everyone gives \$1,000, yay, that's it. So, yes, you're quite right. The value of anonymising donations is lower when you have a low cap, and the low cap is a really positive regulatory method, as I said, to enhance political equality.

I'm just mindful of time, Dr Ng, and perhaps if we move on then if there's no other questions about donations to lobbyists. In your view what role do lobbyists play in particular in relation to planning matters?---Sure. So, lobbyists have a role to play in our democracy, so they make representations to government officials, for third party lobbyists for their client and for in-house lobbyists, yes, they have an employer and they have a client as well, so they make representations on behalf of their clients to advocate for the benefit of their clients. And the role of lobbyists in planning matters are to advocate on their client's behalf for government decisions to be made in their client's favour. So lobbyists do have a role to play in our democracy because they do enhance the ability of people to approach government decision makers and that is part of democracy. But there are risks as well in the use of lobbyists in terms of the same risks we talked about before: the risk of corruption, the risk of unfair access and influence as well, because it takes a certain amount of deep pockets to have the funds to hire these fancy lobbyists in the first place who are the well-connected people who do have that

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access to the government officials.

So you speak about it being a part of our democratic process.

What principles do you think need to underpin lobbying?---Yes, sure. There are several principles that need to underpin lobbying. The first is the idea of freedom to lobby, so the freedom of people to engage lobbyists to make representations on their behalf. But on the other hand there needs to be countervailing principles such as that of integrity, that it's preserving the integrity of our government decision makers that they are not swayed by the persuasive arguments made by the lobbyists or the connections that they have with the lobbyists to decide matters not on the public interest or on the merits of the decisions but on the connections that are brought to bear here. So, integrity is an important one.

And there's this idea of fairness that we discussed before, the idea of political equality, that everyone should have equal access to their government decision makers and policy makers, regardless of who has the funds to hire a lobbyist to advocate on their behalf and the lobbyist who has the connections to get the door open for them.

And there's this idea of the principle of transparency as well, that we want to have an idea of who the government officials are meeting and who is facilitating access to these government decision makers, how regularly are they meeting, what are the subject matters. So, let's say there's a lobbyist for the mining

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industry trying to advocate for a certain mine. We want to have the level of transparency that, okay, the environmental groups know that this is happening so they can counter-lobby as well and put forward their views, and that will enable a broader range of views to be put before the decision maker and then improve the integrity and the quality of government decision making.

What other controls in your view should be put in place to reduce the risks that (indistinct)?---Sure. So at the Victorian level, lobbying regulation is utilising executive regulation, that is a lobbyists' code of conduct at the state level, and that imposes an obligation on lobbyists to be on the register, third party lobbyists and government affairs directors to be on the public register. This is enforced by the public sector standards Commissioner. So that's what we have at a state level.

At the local government level there is no real regulation of lobbyists because the lobbyists' code of conduct in Victoria doesn't apply at the local government level. So this is not a very strong system overall. What we can see in other states in Australia is the move towards legislative regulation of lobbying. So, say in Queensland and New South Wales, the lobbying is legislatively regulated and it's overseen by an independent statutory officer with broad, strong, coercive powers. So in New South Wales it's the New South Wales Electoral Commission. In Queensland it's the Integrity Commissioner. So there is a potential to move to a stronger model for lobbying regulation in Victoria which

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has lagged behind.

An independent regulator is one of the key elements you identify in your submission for an effective regulation system. Could you outline the other elements that you think are important?---Sure. So there's a number of elements for effective regulation of lobbying. The first is the adequate coverage of the lobbying register. So it's a good thing to have a lobbyists register that tells us who the lobbyists are, but it needs to be a comprehensive regulation. So, in Victoria if we included third party lobbyists and in-house lobbyists, say government affairs directors, that will be a more comprehensive regulation. In a lot of Australian jurisdictions they have only regulated third party lobbyists such as in Queensland and that's only 20 per cent of the lobbying community. So we're not really regulating if we're only regulating a small percentage of who actually lobbies government.

So, the first thing is that the register needs to be comprehensive and complete to provide a full picture and full transparency. The second element is adequate disclosure of lobbying activity. So, to have full transparency we need the lobbyists to record each and every contact that they have with a government official. So we can see, okay, they've met with the mining industry 18 times in the last five months. They've met with environmental groups one time in the last five months. So you can see how frequently it happens. Right now there's no transparency in terms of the activity of lobbying.

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1 They put your name on the register in Victoria, that's it. 10:49:50AM
2 We don't know how often the lobbyists get to meet with 10:49:53AM
3 the minister, what issues they're lobbying on. 10:49:57AM
4 So, on the other hand you can also regulate the 10:50:00AM
5 ministers, ministerial advisers and senior public servants 10:50:03AM
6 to get them to proactively disclose their diaries, so if 10:50:07AM
7 they proactively disclose their diaries we know who the 10:50:11AM
8 minister is meeting with and we know that ministers are 10:50:14AM
9 busy, a finite amount of ministers, they're really 10:50:19AM
10 difficult to get to. So what the lobbyists try to do is 10:50:24AM
11 to get to the other people who can influence the decision, 10:50:27AM
12 and ministerial advisers are one of them, senior public 10:50:31AM
13 servants are another one. So to have a proactive 10:50:33AM
14 disclosure scheme for ministers, ministerial advisers and 10:50:36AM
15 senior public servants to proactively disclose their 10:50:40AM
16 diaries will be a really big step forward. 10:50:43AM
17 The next issue is that the data should be 10:50:47AM
18 integrated and all made publicly available. So if we 10:50:49AM
19 integrate data about the political donations made by 10:50:54AM
20 lobbyists, the register of lobbyists, ministerial diaries 10:50:58AM
21 and any details of investigations of corruption or 10:51:03AM
22 misconduct and any gifts given by lobbyists to government 10:51:06AM
23 officials and details of all these lobbying contacts, 10:51:11AM
24 when, where, what the subject matter is. So those are all 10:51:15AM
25 very important elements to regulate lobbying. 10:51:18AM
26 Just to pick up on a comment that you made then that you don't 10:51:24AM
27 consider that there's transparency around the activity of 10:51:26AM
28 lobbyists, what's your view then on how well the Victorian 10:51:30AM
29 model promotes transparency?---Oh, you know, not very 10:51:35AM

1 well. So there should be more information about lobbying 10:51:44AM
2 activity, and this can be done in two ways. The first is 10:51:47AM
3 to require the lobbyist to give information about each 10:51:51AM
4 time they lobby a minister or ministerial adviser or 10:51:56AM
5 senior public servant and get them to specify the reason 10:52:01AM
6 for the contact and whether it relates to any legislation 10:52:04AM
7 or award of contract or award of grant and get them to 10:52:09AM
8 specify what the bill was and what the contract was and 10:52:13AM
9 give further information about that, because that will 10:52:16AM
10 greatly enhance the level of transparency. This is a 10:52:21AM
11 requirement in Queensland. It's also a requirement in 10:52:26AM
12 other overseas jurisdictions as well such as Scotland. 10:52:34AM
13 So Scotland has that as well where there's 10:52:40AM
14 fulsome disclosure. You go to the lobbying website, you 10:52:43AM
15 can scroll down and choose which minister, adviser, all 10:52:46AM
16 these people that can be approached, you can have a look 10:52:49AM
17 and see what the subject matter is and there's quite a lot 10:52:52AM
18 of detail on who they approach, what they were trying to 10:52:58AM
19 achieve when they approached the minister or adviser or so 10:53:00AM
20 forth and, yes, so that's an example of really fulsome 10:53:04AM
21 disclosure and that will be of public benefit. 10:53:11AM
22 Is it your view that the lack of transparency that exists at 10:53:15AM
23 the moment increases the potential for corruption?---Yes, 10:53:19AM
24 I believe so, because when things happen behind closed 10:53:24AM
25 doors there is more of a risk that something improper 10:53:28AM
26 might happen. So if there's no scrutiny of the activity 10:53:33AM
27 of lobbyists, then we run the risk that government 10:53:39AM
28 officials might be swayed in improper ways, and that is a 10:53:46AM
29 reason to regulate the activities of lobbyists and also 10:53:50AM

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the disclosures that are provided by public officials so that they are transparent about who they're meeting, how often, what the subject matter is, and if it's on the public record then the public can scrutinise that and that's a really positive thing, and the journalists and, you know, civil society groups.

COMMISSIONER: Dr Ng, the concept of registration of lobbyists presumes that we are dealing with lobbyists who are conducting the business of lobbying, who are in the activity of lobbying. But I think as you mentioned and as we know, a lot of people can lobby that aren't in the business of lobbying and we have a variety of examples of that, starting with the individual who wants to see the legislation introduced for his or her own personal benefit and then that person approaches the ministerial adviser or the minister. So they are engaged in a lobbying activity, but they wouldn't be obliged under present schemes to be registered as a lobbyist. Similarly, members of parliament who are approached by the person who has an interest in seeing a particular outcome and they in turn lobby the ministerial adviser or the minister. So what sort of system can be introduced that will place some level of transparency on the activities of those who are not engaged in the business of lobbying?---That's a really good question, and in terms of regulation of lobbying we do want this Goldilocks balance, so not too much, not too little, so we want it just right. So, we don't want to cover the really insignificant or small bit players, say, you know, mum and dad trying to approach their local MP to

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advocate for a personal matter that's not of public interest. So we wouldn't want to cover it that far. What other jurisdictions have done such as Canada and the United States is to introduce a threshold of significance. So, if the lobbyist spends 20 per cent of their time in the last three months on lobbying activity, then they are covered by that threshold of significance. So that's people who do spend a significant amount of their time lobbying.

Another method is to do it based on financial thresholds. So, have I spent X amount of dollars within the last three months on lobbying activity or have I earned X amount of dollars in lobbying activity in the last three months. So there's a way to exclude the minor or insignificant or small bit players and that is to introduce a threshold of significance that can be based on the time spent lobbying or the amount of money spent or earned lobbying and I think that's a good way to not have everybody on the lobbyists register, that would become unmanageable, although include the significant players that we really want to capture.

But the examples I cited to you, they would never be engaged in lobbying activity at a level that would require them to be registered and so I wonder whether in order to complete the picture to capture those who are engaged in a particular lobbying activity for their own personal interest or take the example, the quite common example, of the member of parliament who lobbies on behalf of a constituent, that we need to look at the person being

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1 lobbied to also impose some sort of obligation on the 10:57:58AM
2 ministerial adviser or the minister to disclose the fact 10:58:04AM
3 that they have been lobbied regardless of whether the 10:58:08AM
4 person lobbying them is a registered lobbyist?--Yes, 10:58:12AM
5 I think that's a really good point and certainly my 10:58:17AM
6 recommendation would be for proactive disclosure of 10:58:20AM
7 ministerial diaries and ministerial adviser diaries and 10:58:24AM
8 senior public servants' diaries for them to disclose who 10:58:28AM
9 they're meeting, including MPs, and MPs are in a special 10:58:32AM
10 position, aren't they, because they are elected members 10:58:38AM
11 and they do have representational roles, but they also 10:58:41AM
12 have to abide by their own set of regulations in terms of 10:58:45AM
13 conflicts of interest and they are subject to codes of 10:58:50AM
14 conduct and so forth. So, there are for MPs other 10:58:54AM
15 regulatory mechanisms that can be brought to bear because 10:59:00AM
16 of their special position, because they are elected and 10:59:03AM
17 they have to favour the public interest and not their 10:59:07AM
18 personal interest. So they have additional 10:59:11AM
19 responsibilities and that justifies the additional 10:59:14AM
20 regulation that they are subject to in terms of a code of 10:59:16AM
21 conduct and the obligation to avoid conflicts of interest. 10:59:21AM
22 And certainly your point is very strong as well 10:59:25AM
23 that we should get the public officials to disclose 10:59:28AM
24 information about who they are meeting as well, and my 10:59:33AM
25 proposal is the publication of the diaries of ministers, 10:59:37AM
26 ministerial advisers and public servants, the senior 10:59:40AM
27 public servants. And what we've seen in Victoria in fact 10:59:44AM
28 is that someone made an FOI request for the diary of the 10:59:47AM
29 chief of staff of the Victorian Premier and the department 10:59:53AM

1 fought tooth and nail to get to court to appeal the 10:59:57AM
2 decision by (indistinct) that said that the diary was 11:00:01AM
3 accessible and they did have to disclose it. But that was 11:00:06AM
4 a big fight, court cases and so forth, and this is why I'm 11:00:10AM
5 recommending a proactive disclosure scheme where the 11:00:15AM
6 ministers, ministerial advisers and senior public servants 11:00:19AM
7 are obliged to disclose their diaries in certain 11:00:23AM
8 intervals, say monthly, such as in New South Wales. So 11:00:27AM
9 this does exist in New South Wales and Queensland. 11:00:29AM
10 Ms Harris, Dr Murray had some view about how that form of 11:00:35AM
11 transparency might in fact ultimately encourage a form of 11:00:42AM
12 corruption, did he not? 11:00:47AM
13 MS HARRIS: Yes. Dr Ng, Dr Murray's position was that it 11:00:49AM
14 essentially acts as a marketing tool for lobbyists, that 11:00:55AM
15 if you have full disclosure of their contacts and their 11:01:00AM
16 success, that it would effectively promote their business. 11:01:04AM
17 What's your position on that?---Yes, maybe lobbyists might 11:01:12AM
18 derive a benefit from showing that they can have this 11:01:17AM
19 access to ministers. But the members of the public also 11:01:21AM
20 derive a benefit because they know that, okay, so this 11:01:23AM
21 lobbyist does have a disproportionate amount of access and 11:01:27AM
22 influence, and it enables other groups to know as well. 11:01:31AM
23 So, say the environmental groups or civil society groups 11:01:34AM
24 or residents groups know that, 'Oh, there are all these 11:01:40AM
25 meetings taking place. We should try and get in as well 11:01:43AM
26 and counter-lobby and put forward our position.' So, even 11:01:46AM
27 if the lobbyist does derive a small benefit from the 11:01:49AM
28 disclosure, the benefit in terms of transparency, in terms 11:01:53AM
29 of the larger scheme of things I think is greater. 11:01:56AM

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And another thing is that the issue hasn't been so much that. The issue in Queensland and New South Wales is that the level of disclosure has been so poor that we haven't been able to figure out what's going on. So in terms of the subject matter of the disclosure, they'll just say 'Meeting' or 'Other'. So the problem is not the fact that they have to disclose this, it's the fact that the level of disclosures have been so low and it's uninformative and also the format of disclosures makes it impossible to see what's going on because everything is in PDF, each minister has a PDF of all their meetings each month. So it takes a really determined person to scroll, read, print all of it out, scroll through and compare and work it out. So the system could be made a lot more transparent in terms of accessibility. So what we have seen in terms of ministerial diaries in Queensland and New South Wales is not so much the lobbyists bragging but the fact that people haven't taken it seriously and there's no enforcement as well which means that they are even less likely to take it seriously.

In addition to those matters that you have outlined to increase transparency at page 4 of your submission you identify other controls that you believe would be effective in mitigating corruption risk in terms of lobbyist activity. Can you take us through what they are, please?---Yes, sure. So I talked about bans on success fees. So this is already banned at the state level through the lobbyists' code of conduct, and the reason why we want to ban success fees - so success fees are fees that are contingent on the

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success of the lobbyist - because that creates a really strong incentive for the lobbyist to behave in an improper way to obtain success. So that's justification for that ban, and that is imposed at the state level. It will be good if that is imposed at the local government level as well. Another reform could be bans - well, another good option is to ban lobbyists giving gifts to government officials. So having a blanket ban on gifts will remove that idea of, 'Oh, I'm sweetening you up for something that I want later'; so there's a blanket ban on gifts that will reduce the risk that public officials might be swayed in a certain way. Another element is a ban on post-separation employment for ministers, ministerial advisers and senior public servants, and that does exist in Victoria at the state level where there's a cooling-off period of 18 months for ministers and 12 months for public servants and ministerial advisers. But the problem with the post-separation bans is that they have not been - traditionally not been well enforced in Australia. So, yes, all these people do go in, take their comfortable jobs elsewhere in breach of the regulation, but there has been no repercussion. So that goes to a question of enforcement. The idea of a post-separation ban is that there are certain risks that might attend from a minister or ministerial adviser going to work for a property developer or lobbyist right after. So the idea is, 'I'll give you this comfortable job post-retirement if you make certain decisions in my favour right now.' So the idea is to not have that corruption quid pro quo. The second

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issue is that idea that the lobbyist - if you go out and become a lobbyist straight after public office, say you're a minister and then you approach your former department who were your underlings, the idea is that there's a stronger access and influence of these people. And the third idea is that of - yes, so there's that idea that confidential information might be exchanged as well. So if you are a minister you might know, 'Okay, a contract is just about to be awarded to somebody, and if I go and use this information to my benefit' then that's undesirable as well. So the idea of a cooling-off or post-separation employment ban is to prevent this. Although the ban does exist in Victoria and in Australia, they are not well enforced.

COMMISSIONER: Is that a regulation that applies at local government level?---No. So, yes, that's a good reform to put in. There's no real regulation at the local government level, and I think the weaknesses of that have been exposed in this investigation.

So that leads to another question. If the rationale for a cooling-off period is sound and the moral justification for it is sound then it must surely be the case also that it would be inappropriate for a councillor, a ministerial adviser or a minister to be engaged in negotiating or obtaining a contractual benefit from someone who has currently got a matter before the council or before the minister?---Yes.

But at least at local government level we don't seem to have any provision which would preclude that?---Yes, that's

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certainly right. There are a lot of corruption risks at the local government level because of the lack of regulation. So certainly there can be a lot of strengthening of lobbying regulation at the local government level as well as donation regulations.

MS HARRIS: In terms of the cooling-off period Dr Murray yesterday suggested that four years might be a more appropriate timeframe. What's your view on the current timeframe and on the proposal that four years might be appropriate?---In Canada it's a five-year post-separation ban for ministers, ministerial advisers and senior public servants. So certainly there has been precedent for a longer cooling-off period. I guess the main principle is to have a period that's long enough so that the relationships can cool off. So whether that's two years or four years or five years is just sort of where you cut it off. But, yes, the principle is to reduce the influence of those connections, and time reduces that influence. So I'm quite agnostic as to the precise number. But, yes, it just has to be long enough so that we can accrue the benefits. And the enforcement is what we have seen is lacking here, so the enforcement of that cooling-off period. There are some examples from overseas as well where in the UK they get an independent body that gives advice to ministers and MPs about the positions that they propose to take up, and that advice is published verbatim on their website. So that's very transparent. You can see what's going on there. In the US there is a public website that sets out how long the cooling-off

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1 period for each person is. So, say, this person can't 11:10:22AM
2 take up a position until 2025. So that's all public on 11:10:25AM
3 the website. You can see precisely if that's been 11:10:29AM
4 breached. So there are certainly different models that 11:10:32AM
5 can be adopted for that. 11:10:36AM
6 And where should the enforcement of that lie, in your 11:10:37AM
7 view?---Ideally in an independent body such as an 11:10:45AM
8 independent statutory officer or an independent 11:10:51AM
9 commissioner. So where it shouldn't lie is within a 11:10:54AM
10 government department because that's where we have seen 11:10:59AM
11 the issues come up where at the Commonwealth level they 11:11:02AM
12 refer it to the department, the department says, 'Yeah, 11:11:07AM
13 okay,' and even if they say, 'No, not okay,' they just go 11:11:13AM
14 off and take their comfortable lucrative position 11:11:18AM
15 somewhere else and nothing happens. So what we don't want 11:11:22AM
16 is a body that sits within the co-executive. We do want a 11:11:24AM
17 body that is independent and an independent statutory 11:11:29AM
18 officeholder or independent commissioner. 11:11:34AM
19 Just finally on the topic of lobbying you indicate in your 11:11:36AM
20 paper that lobbying in relation to property development or 11:11:40AM
21 planning matters carries a higher risk of corruption. Can 11:11:44AM
22 you elaborate on what factors make it a higher risk and 11:11:48AM
23 how those risks could be mitigated?---Property developers 11:11:52AM
24 are a higher risk industry. We talked about this a bit 11:11:57AM
25 before. It's because their commercial interests at stake 11:12:01AM
26 are directly affected by these exercises of public power 11:12:05AM
27 and decision making, and this gives property developers a 11:12:08AM
28 particularly strong incentive to influence government in 11:12:12AM
29 their own self-interest. And the High Court majority in 11:12:16AM

1 McCoy found that the degree of dependence of property 11:12:22AM
2 developers on decisions of government on the zoning of 11:12:32AM
3 land distinguishes them from other actors in the economy. 11:12:34AM
4 And we've seen issues in terms of property developers 11:12:41AM
5 appearing before New South Wales ICAC, appearing before 11:12:46AM
6 this Commission, where there have been adverse reports 11:12:50AM
7 about their dealings with government, and it's because of 11:12:54AM
8 that particularly significant risk of their commercial 11:12:59AM
9 incentives that will sway them to behave in certain ways. 11:13:03AM
10 What in your view should be done about that?---Well, basically 11:13:08AM
11 in terms of donations either ban the donations from 11:13:16AM
12 property developers or, you know, right now there's no cap 11:13:24AM
13 at the local government level, have a cap on donations at 11:13:27AM
14 the local government level. This can be combined with a 11:13:31AM
15 ban on property developers. And that probably is 11:13:35AM
16 justified. And in terms of - - - 11:13:40AM
17 (Indistinct) impact on lobbying?---Lobbying? It's a little bit 11:13:45AM
18 harder to regulate the specific impact of property 11:13:50AM
19 developers and lobbyists. I would suggest just a broader 11:13:54AM
20 regulation in terms of the levels of disclosures enhance 11:13:59AM
21 in terms of each time a lobbyist approaches the decision 11:14:05AM
22 maker on behalf of the property developer that is 11:14:11AM
23 disclosed, and the client is disclosed, so the property 11:14:14AM
24 developer is disclosed, and also the ministerial diaries 11:14:18AM
25 and ministerial advisers' diaries and public servant 11:14:24AM
26 diaries disclose that they met with this lobbyist and the 11:14:29AM
27 purpose of the meeting was to advance the interests of 11:14:33AM
28 this property developer in relation to this particular 11:14:36AM
29 parcel of land, and name the parcel. 11:14:40AM

1 All right. Thank you. If we could move then to the topic of 11:14:43AM
2 ministerial advisers?---Yes. 11:14:48AM
3 You indicate in your submission at page 6 that ministerial 11:14:50AM
4 advisers have become an entrenched part of the executive 11:14:55AM
5 and exercise significant power and influence in modern 11:15:00AM
6 government, and sometimes that eclipses that of junior 11:15:04AM
7 ministers, MPs and the public service. In your view - or 11:15:07AM
8 what is your view, I should say, on the adequacy of the 11:15:15AM
9 controls around the accountability in relation to 11:15:19AM
10 ministerial advisers?---Basically they are very poor in 11:15:21AM
11 terms of regulating ministerial advisers. So what has 11:15:26AM
12 happened over the last 30, 40 years is that ministerial 11:15:31AM
13 advisers have become very, very influential in our system 11:15:36AM
14 of government. But at the very beginning when the 11:15:39AM
15 constitution was drafted there were just two main actors, 11:15:43AM
16 which are ministers and the public servants. So the law 11:15:47AM
17 has evolved to focus on regulating ministers and public 11:15:51AM
18 servants but has lagged behind in regulating the actions 11:15:55AM
19 of ministerial advisers. And the reason why advisers are 11:15:58AM
20 influential is because they are the closest actors to 11:16:03AM
21 ministers. They are the minister's eyes and ears. They 11:16:06AM
22 are the people who are surrounding the ministers, and in a 11:16:12AM
23 hothouse environment they give their full loyalty to the 11:16:17AM
24 minister, the minister is loyal to them as well. And what 11:16:20AM
25 we see in Victoria is we can't find any real public 11:16:26AM
26 regulation of ministerial advisers. So I couldn't find a 11:16:31AM
27 publicly available code of conduct. There are certain 11:16:36AM
28 documents that refer to a code of conduct for ministerial 11:16:39AM
29 staff in Victoria, but it's a mystery, it's just not 11:16:43AM

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available in the public domain. And without any
transparency as to whether they are subject to a code of
conduct and the content of that code of conduct it's
impossible to hold them to account. In Victoria and the
Commonwealth there's been resistance for allowing
ministerial advisers to appear before parliamentary
committees. So that's an evasion of parliamentary
scrutiny as well where the minister goes, 'I don't know
what happened; my adviser did that,' and the adviser
doesn't appear. So there's an issue in terms of
accountability in Victoria and in Australia generally in
terms of the actions of ministerial advisers.

So what reforms do you think are necessary in relation to
ministerial advisers?---First of all to have a code of
conduct that is publicly available and for the code of
conduct to be independently administered by an independent
statutory officer or independent commissioner. So the
model that we see in Canada is that the code of conduct is
overseen by an independent commissioner and that gives
better enforcement of breaches of the code. So in
Australia at the Federal level there is a statement of
standards for ministerial staff that is administered
within the co-executive, so within the Prime Minister's
department. So breaches are never published. We don't
know what really goes on. It all happens behind closed
doors. So if we have an independent regulator that would
go a long way towards enhancing accountability and
transparency in this area.

We have spoken about making diaries publicly available and

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visible in relation to the lobbyist space, and that
I assume would also apply in relation to ministerial
advisers. Are there any other measures that you think
would be appropriate to increase that transparency and
accountability for ministerial advisers?---Sure. There
should be guidance as well in terms of how ministerial
advisers should interact with public servants and with
external stakeholders. There's some trouble or worries
that they might act beyond the scope of their role and
seek to act as an alter ego or represent the minister when
they are not properly authorised to do so or act beyond
what they are supposed to do. So having guidelines in
terms of their interactions between the public servants
and external stakeholders I think are quite important, and
to have proper training in place that these advisers know
what their obligations are. Because they are in such a
hothouse environment they tend to sort of learn on their
feet. But at the same time they are very powerful in our
system, they wield a lot of influence, and therefore that
should be regulated as well. We have gone to a system
where ministers and public servants are the main actors in
government to ministers, ministerial advisers and public
servants are the three main actors in government. We
therefore need to regulate ministerial advisers just as we
regulate public servants and ministers.

You've spoken about Canada having the independent
commissioners. Are you aware of models in other
jurisdictions that work particularly well in terms of how
they regulate ministerial staff and advisers?---So, yes,

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Canada is a very good one and when you put things in the hands of an independent commissioner like in Canada they do prosecute for breaches. They have prosecuted for conflicts of interest, and all this is in the public domain, and sanctions were imposed as well. So you can see that when things are in the hands of an independent regulator they will take their role quite seriously and they will monitor and investigate and impose sanctions. So it's quite a different system to what we see in Australia, which is all hidden within the government departments. They don't want information to go out that makes the government look bad. So the Canadian system I think is a very strong one. New Zealand has recently taken up a ministerial staff code of conduct overseen by an independent commissioner for the State Services Commission.

DEPUTY COMMISSIONER: Dr Ng, I just wanted to touch on that balance between the advisers' political role and their policy role and where that imbalance becomes problematic. Is there a way through perhaps the employment process to guard against that to ensure that the policy focus takes primacy?---Yes, that's a really good point because appointments to ministerial office are often very ad hoc and what you see is sometimes political apparatchiks who are very young appointed to the role, and it's quite a powerful role ordering all these senior public servants around. But if these people are fresh out of university and they don't have the policy expertise in a portfolio area there's an issue about the level of competence in

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terms of governing. We have seen that issue arise time and time again because they are appointed on the basis of patronage rather than the basis of merit as in the Public Service recruitment. So certainly I think the appointment processes could be strengthened and operate not just as, you know, 'I know this person from the party. They are an up-and-comer', that kind of basis; there could be a more independent recruitment process that takes into account matters of policy. Of course the adviser has to have the trust of the minister. It is a political position primarily. But certainly I think the merit considerations should be given primacy as well.

COMMISSIONER: Dr Ng, are the regulations and monitoring oversight of political - ministerial advisers rather more advanced in other states of Australia?---No, they are not very advanced anyway in Australia. So that's why my research has focused on this for a number of years, because when I looked overseas there was a lot more awareness about ministerial advisers, there was a lot more parliamentary scrutiny. So in the UK there have been a lot of investigations focusing on the special advisers there, which is the equivalent of ministerial advisers here. There are very few of them, but they are constantly under parliamentary scrutiny, media scrutiny, and there's a lot more knowledge about what they do and who they are. In Canada there's a lot of independent enforcement by commissioners, and in New Zealand it's quite a small culture so everything seems to be wonderful for the most part there. But, yes, so when I look at other

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jurisdictions Australia really is lagging behind in terms
of the regulation of ministerial advisers.
So when we look at public servants and we say that the
Westminster system applies to them and we expect
independent fearless advice, is there any suggestion that
that concept applies to a ministerial adviser?---It's less
so for a ministerial adviser because they are hired on a
political basis, so the basis of patronage, and that's
what my book has sought to highlight, that our Westminster
system is founded on this concept of merit and, you know,
people having the skills for their position. But this new
class of people, the ministerial advisers, sort of
subverts that Westminster principle derived from the
Northcote Trevelyan Report that it's grounded on merit.
Because advisers are appointed on the basis of loyalty to
the minister and patronage, that means that the merit
principle is lesser. They still provide advice to the
minister on all dimensions, so political, policy, media,
administrative support, so they work across the full
spectrum. But the greatest issues you tend to see come
from the political advice, interfering with the public
service advice, trying to change their advice, and also
the media advisers sometimes get into trouble, they leak
all these things to the media when they are not quite
supposed to. I spoke to an adviser in Canada, to the
Prime Minister there, and I asked, 'Do the media advisers
leak,' and he said, 'Is the Pope Catholic?' So it's
something that does create issues, but it does seem to be
a practice that is adopted.

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1 Thank you. 11:27:01AM

2 MS HARRIS: I have no other questions for Dr Ng. 11:27:04AM

3 COMMISSIONER: Nothing else? So, Dr Ng, we're really grateful 11:27:11AM

4 for the paper that you've prepared which is now or will be 11:27:16AM

5 very shortly on the IBAC website, and we encourage anyone 11:27:20AM

6 who's interested in the views that you have expressed to 11:27:25AM

7 take the opportunity of reading that paper. But thank you 11:27:28AM

8 for your time, the effort you've put into the 11:27:31AM

9 presentation. We are most grateful for your attendance 11:27:36AM

10 today. Thank you very much. 11:27:38AM

11 WITNESS: Thank you for the opportunity to present my views. 11:27:41AM

12 I appreciate it, and I hope there's reform. 11:27:44AM

13 COMMISSIONER: Thank you. What time are we resuming, 11:27:47AM

14 Ms Harris? 11:27:51AM

15 MS HARRIS: One pm with Mr Shanahan, Commissioner. 11:27:51AM

16 COMMISSIONER: Very good. We'll adjourn until 1 pm. Thank you 11:27:55AM

17 again, Dr Ng. 11:27:59AM

18 WITNESS: Thank you very much. 11:28:00AM

19 <(THE WITNESS WITHDREW) 11:28:02AM

20 LUNCHEON ADJOURNMENT 11:28:03AM

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